

Time for a Plan B:

**The European Refugee Crisis, the Balkan Route
and the EU-Turkey Deal**

A DPC Policy Paper

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ZUSAMMENFASSUNG

Im Laufe des Jahres 2015 machten sich geschätzte 1,5 Millionen Menschen, die größte Gruppe unter ihnen Kriegsflüchtlinge aus Syrien, von Griechenland über die Balkanroute auf den Weg nach Westeuropa. Die Verlagerung hin zu dieser vormals marginalen Route für die irreguläre Einreise von Flüchtlingen und Migranten in die EU führte zum Zusammenbruch der Außengrenzen der Union in der Ägäis, und verwandelte das langjährige Problem einer fehlerhaften gemeinsamen europäischen Asylpolitik, welche die südlichen Mitgliedsstaaten unverhältnismäßig in Mitleidenschaft zog, in eine ernsthafte Krise.

Dabei handelte es sich um eine hausgemachte Krise der EU, welche bei ausreichendem politischem Willen hätte vermieden werden können. Hätte die internationale Gemeinschaft die Syrienprojekte des UNHCR für 2015 voll finanziert anstatt lediglich 35 Prozent des erbetenen Budgets bereit zu stellen, und hätten sich einige Mitgliedsstaaten bereit erklärt, zusammen 200-300.000 Syrer aus der Türkei, dem Libanon und Jordanien in die EU umzusiedeln, hätte die Union 2015 höchst wahrscheinlich nicht mehr Asylbewerber zu verzeichnen gehabt, als in den Vorjahren.

Stattdessen brachen das Dublin-System und - infolge der Wiedereinführung von Grenzkontrollen in einem halben Dutzend Mitgliedsstaaten - auch Schengen zusammen, garniert mit weiteren Zutaten: Schwäche der öffentlichen Verwaltung in Griechenland, Fragilität von Asylsystemen, mangelnde bürokratische Kapazitäten und ungenügend demokratische Polizeibehörden im Westbalkan, sowie die autoritäre Transformation des politischen Systems in Ungarn.

Dennoch war die Flüchtlingskrise noch bis in den Herbst 2015 hinein voll und ganz zu bewältigen. Die unmittelbare Reaktion der EU folgte dem Drehbuch, wie es seit der dem Beginn der Eurokrise in verschiedenen Krisen Anwendung gefunden hatte – einer Kombination aus reaktiver deutscher Führung, unterstützt durch eine Koalition williger Mitgliedsstaaten. Am 4. September verabredeten Kanzlerin Merkel und ihr österreichischer Kollege Werner Faymann mit Ministerpräsident Viktor Orbán den Transit von Flüchtlingen und Migranten aus Ungarn mit der Absicht, eine Eskalation der Situation in dem Land zu vermeiden. Merkel versammelte eine Koalition williger Staaten um sich, die sich bereit erklärten, den Großteil der Flüchtlinge und Migranten aufzunehmen, und arbeitete mit den Ländern auf der Balkanroute daran, regionale Spannungen angesichts der Flüchtlingsströme zu vermeiden und kurzfristig einen reibungslosen Transit ohne massenhafte Menschenrechtsverletzungen zu erreichen.

Doch im Unterschied zu früheren Krisen scheiterte Merkel daran, das unmittelbare Krisenmanagement in eine gemeinsame europäische Politik zu überführen. Merkel und die EU steckten fest, als Ende September ein Umverteilungsschlüssel von 160.000 Asylsuchenden von einer qualifizierten Mehrheit an Mitgliedsstaaten beschlossen wurde, und dies den Widerspruch des slowakischen Ministerpräsidenten Robert Fico provozierte. Ficos Ankündigung, welche von anderen mittelosteuropäischen Staaten unterstützt wurde, dass die Slowakei den Umverteilungsschlüssel nicht umsetzen werde, markierte einen Wendepunkt: damit hörte die EU im Feld der Flüchtlings- und Asylpolitik faktisch auf, als eine regelbasierte Entität zu existieren. Der nachfolgende Anstieg unilateraler Maßnahmen der Mitgliedsstaaten führte zur schrittweisen Erosion und schlussendlich zum Zusammenbruch der Koalition der Willigen, als Frankreich, Schweden und Österreich von ihr abfielen und ihre liberale Asylpolitik aufgaben. Doch erwies sich das

Nachgeben gegenüber populistischem Druck als erfolgloser Versuch zur Mobilisierung der Wählerschaft: selbst in der Slowakei musste Ficos Partei in der Folge schwere Verluste zugunsten der rechten politischen Kräfte hinnehmen, von denen sie ihre migrationsfeindliche Rhetorik übernommen hatte. Zugleich geriet auch Kanzlerin Merkel zuhause für ihre liberale Politik unter Druck.

In Abwesenheit gemeinsamen Handelns der EU konzentrierten die Aufnahmeländer ihre ganze Aufmerksamkeit zusehends darauf, Wege zur Reduzierung des Stroms an Flüchtlingen und Migranten auf der Balkanroute zu finden, selbst wenn das bedeutete, dass die Länder entlang der Route nationales und internationales Recht verletzen mussten. Die Länder auf der Balkanroute wurden von nun an von einzelnen Mitgliedsstaaten der EU, allen voran von Österreich, in Geiselhaft genommen. Die Politik Wiens führte zur schrittweisen Schließung der Route.

Das Scheitern des etablierten Krisenmanagements der EU offenbarte das Kernproblem hinter der Flüchtlingskrise: die ungelösten internen Probleme der EU, welche eine außerordentliche, aber handhabbare Migrationslage in eine existentielle Bedrohung für die Union verwandelten. Merkels Politikstil – der einer Politik-Managerin, welche vor Risiken, Großstrategien und Visionen zurückscheut – hatte die EU durch ein Krisenjahrzehnt hindurchmanövriert, aber zugleich den Kern der Schwäche der Union verdeckt: den Widerwillen, sich mit den eigenen strukturellen Herausforderungen zu befassen. Letztendlich trug dieses Scheitern zur Erosion von innerer Legitimität und gemeinsamem Handeln bei – zwei Faktoren, die dem schlafwandelnden Austritt Großbritanniens aus der EU massiv Vorschub geleistet haben.

Aufgrund dieser risikoscheuen Grundhaltung blieb Merkel als einzige Option das verzweifelte Outsourcen des Managements der Flüchtlingskrise in die Türkei, welches durch den EU-Türkei Flüchtlingsdeal vom 17. März besiegelt wurde. Es liegt sowohl eine Ironie als auch eine gewisse Logik in der Tatsache, dass der Deal, welcher die Flüchtlingsfrage mit der Wiederbelebung des Beitritts- und Visaliberalisierungsprozesses der Türkei verknüpfte, das Ergebnis der Politik zweier Mitgliedsstaaten - Deutschland und Österreich - war, die über Jahre hinweg die Beitrittsperspektive der Türkei blockiert hatten.

Das Abkommen stoppte praktisch über Nacht den Zustrom an Flüchtlingen und Migranten über die Ägäis. Doch mittel- und langfristige wird es mehr Kollateralschaden verursachen als es kurzfristigen Nutzen bringt: Erstens hat die EU dadurch, dass sie die Türkei zu einem sicheren Land für Asylsuchende erklärt hat – eine juristische Manipulation, welche die Rückführung der auf den griechischen Inseln Ankommenden in die Türkei ermöglicht – ihre Legitimität nach innen als eine auf liberal-demokratischen Werten und Regeln gründende Union beschädigt, und die innere Durchsetzung von Entscheidungen und Regeln in allen Politikfeldern gefährdet; zweitens beschneidet die EU mit ihrem Angebot an Ankara von Fortschritt im Beitrittsprozess ohne einen internen Konsens über eine eventuelle Mitgliedschaft der Türkei die „transformative power“ ihrer Erweiterungspolitik als Ganzes, und unterminiert die pro-europäischen, reformorientierten Kräfte in der Türkei im Besonderen; drittens macht sich die EU abhängig von der Türkei dadurch, dass sie das Management der Flüchtlingskrise zu einem zusehends autoritären Regime in Ankara auslagert und es gleichzeitig unterlässt, sich mit ihren internen Strukturproblemen zu befassen. Das lässt nichts Gutes ahnen für die Fähigkeit der EU, zukünftige Krisen zu meistern.

Der gescheiterte Putschversuch vom 15. Juli in der Türkei und die daraus resultierenden Spannungen

zwischen Ankara und Brüssel haben keine substantiellen Auswirkungen auf das Flüchtlingsabkommen gehabt. Doch die Drohung der türkischen Regierung, die Tore nach Europa wieder zu öffnen, sowie die Forderungen aus der EU nach einem Einfrieren des türkischen Beitrittsprozesses haben die zentralen Mängel des Abkommens zum Vorschein gebracht.

Um langfristigen Schaden für die Union abzuwenden und das Risiko einer rein reaktiven Antwort für den Fall zu vermindern, dass der Flüchtlingsdeal in sich zusammenbrechen sollte, ist es höchste Zeit für die EU, einen nachhaltigeren Plan B für die Bewältigung der Flüchtlingskrise zu entwickeln und die hinter der Krise offen zutage getretenen, zentralen Strukturprobleme anzugehen.

Handlungsempfehlungen

Die Flüchtlingskrise stellt eine ernsthafte Herausforderung für die EU dar, für die es keine schnellen Lösungen gibt und die mit Lasten und Kosten, wie auch Nutzen, verbunden ist. Jedoch muss sie keineswegs eine existentielle Bedrohung für die EU oder ihre Mitgliedsstaaten darstellen. Sie ist zu bewältigen, wenn dies gemeinsam versucht wird. Die zentrale, interne Krise der EU hingegen ist viel tiefgreifender und in der Tat existentiell, und muss schleunigst angegangen werden – erst recht nach dem Brexit-Votum vom 23. Juni.

I. Die Bewältigung der internen Krise der EU

Merkel und die anderen Spitzenpolitiker in der EU müssen das Brexit-Votum als Weckruf verstehen und umgehend eine Debatte über eine Reform der EU initiieren. Diese Debatte muss sowohl unter den Mitgliedsstaaten als auch als breite, partizipative öffentliche Diskussion geführt werden, um die Union als Staatengemeinschaft, die auf gemeinsamen liberal-demokratischen Werten gründet, zu bestätigen und um eine breite Basis unter den Bürgern für eine derartig wiederlebte Europäische Union zu schaffen. Eine der denkbaren Optionen für die Umsetzung dieses Vorhabens wäre die nochmalige Arbeit an einer EU-Verfassung.

II. Eine nachhaltige Politik zur Bewältigung der Flüchtlingskrise

Parallel dazu muss die EU, ihre Institutionen und diejenigen Mitgliedsstaaten, die sich einer wertebasierten europäischen Asylpolitik verpflichtet fühlen, auf eine Änderung der gegenwärtigen Asyl- und Migrationspolitik hinarbeiten. Als ersten Schritt muss die EU einen nachhaltigen Ansatz in der unmittelbaren Flüchtlingskrise wählen, welcher fest verwurzelt ist in den rechtlichen Verpflichtungen der Union und auf gemeinsamem Handeln und gemeinsamer Verantwortung gründet.

Ein neues EU-Türkei-Abkommen

Die EU sollte das Abkommen mit der Türkei vom 18. März aufkündigen und Ankara stattdessen ein neues Abkommen anbieten, welches die Türkei für die Kooperation bei der Bekämpfung irregulärer Grenzübertritte nach Griechenland mit einer echten Lastenteilung belohnt, und zugleich den Beitritts- und Visaliberalisierungsprozess von der Migrationsfrage abtrennt. Ein solches neues Abkommen sollte folgende Elemente beinhalten:

- Intensivierung der Bemühungen gegen den irregulären Grenzübertritt in der Ägäis, unterstützt von und in Kooperation mit der EU;
- Aufhebung der geographischen Limitierung der Anwendung der Genfer Flüchtlingskonvention von 1951 durch die Türkei;
- Beibehaltung der von der EU im März gegenüber der Türkei eingegangenen finanziellen Verpflichtungen zur Unterstützung syrischer Flüchtlinge von insgesamt 6 Billionen Euro;
- Erstregistrierung von Asylsuchenden, die die griechischen Inseln erreichen, durch die griechischen Asylbehörden, unterstützt durch EU-Agenturen und Mitgliedsstaaten, in offenen hotspots;
- Rückführung in die Türkei nur jener Migranten, die erklären, keinen Asylantrag stellen zu wollen;
- Umverteilung der Asylsuchenden unter den Mitgliedsstaaten nach einem fairen Verteilungsschlüssel, basierend auf objektiven Kriterien. Mitgliedsstaaten wie z.B. Deutschland, welche über eine längere Tradition an Einwanderung und Asyl verfügen, sollten sich bereit erklären, freiwillig höhere Quoten zu übernehmen, um damit die Quoten anderer Mitgliedsstaaten erheblich zu reduzieren;
- innerhalb der Quoten der Mitgliedsstaaten sollten Gruppen von Asylbewerbern aus Herkunftsländer, welche innerhalb der EU eine niedrige Anerkennungsquote aufweisen, auf solche EU-Länder verteilt werden, welche über effizientere Asylbehörden verfügen, um so die schnelle Bearbeitung von Asylanträgen und Rückführung in die Heimatländer des Großteils an Migranten, die keinen Anspruch auf internationalen Schutz haben, sicherzustellen;
- Schließung der griechisch-mazedonischen Grenze von griechischer Seite um zu verhindern, dass die Balkanroute wiederbelebt wird;
- Temporäres resettlement von einigen hunderttausend Syrern und anderen Flüchtlingen aus der Türkei in die EU, und zwar v.a. in Mitgliedsstaaten, die freiwillig bereit sind, den Hauptanteil zu tragen, aber zumindest mit der symbolischen Beteiligung auch aller übrigen EU Länder.

Andere, flankierende Maßnahmen:

Die EU und ihre Mitgliedsstaaten sollten einige, nicht mit der Türkei verbundene zusätzliche Maßnahmen unternehmen:

- konsequente Anwendung durch die Europäische Kommission von Vertragsverletzungsverfahren gegen Bulgarien aufgrund der systematischen Verletzung der Grundrechte von Migranten und Asylbewerbern;
- konsequente Anwendung von Vertragsverletzungsverfahren gegen Ungarn und Österreich, damit die beiden Länder ihre jüngst geänderte Asylgesetzgebung wieder in Einklang mit dem EU *acquis* und europäischen und internationalen Konventionen bringen;
- die Kommission muss durch die Anwendung von Vertragsverletzungsverfahren Druck auf Griechenland ausüben, flankiert durch erhebliche Unterstützung aus der EU, um das Asylsystem des

Landes in Einklang mit dem EU *acquis* und europäischen und internationalen Konventionen zu bringen;

- die Kommission muss die Schaffung effektiver Asylsysteme in Einklang mit dem EU *acquis* zur Bedingungen für den weiteren Fortschritt der Westbalkanländer auf dem Weg in die EU machen, unterstützt durch EU-Mittel und andere Formen der Unterstützung;
- freiwilliges resettlement einer größeren Zahl an syrischen Flüchtlingen aus dem Libanon und Jordanien, gebunden an die Stärkung von Rechten und Unterstützungsleistungen von Flüchtlingen;
- die EU und die USA müssen starken Druck auf Saudi-Arabien und andere Länder, die sich bisher nicht an der Finanzierung humanitärer Hilfe für syrische Flüchtlinge beteiligen, ausüben, damit auch diese in Zukunft einen erheblichen Beitrag leisten;
- die EU-Mitgliedsstaaten und der Europäische Auswärtige Dienst müssen frühzeitig an die neue US-amerikanische Administration herantreten, um mit Nachdruck für ein starkes gemeinsames neues Engagement im Mittleren Osten, insbesondere in Syrien, als auch in Nordafrika zu werben;
- Deutschland und andere Mitgliedsstaaten sollten ihren Dialog mit den Visegrad-Staaten intensivieren. Als vertrauensbildende Maßnahme sollte die Bundesregierung vom Pipeline-Projekt North Stream II Abstand nehmen.

III. Eine echte gemeinsame europäische Asyl- und Migrationspolitik

Sobald die Flüchtlingskrise nachhaltig unter Kontrolle gebracht ist, sollten Deutschland, andere führende Mitgliedsstaaten und die EU-Institutionen einen Vorstoß für eine grundlegende Reform des Gemeinsamen Europäischen Asylsystems unternehmen. Eine derartige Reform muss auf vier Grundprinzipien beruhen:

- a. Kriegsflüchtlingen, die dies wünschen, zu ermöglichen, in der unmittelbaren Umgebung ihrer Heimatländer zu bleiben;
- b. unter den Flüchtlingen und Migranten, die die EU erreichen, eine klare Unterscheidung zu treffen zwischen Kriegsflüchtlingen, die einen temporären Schutz genießen, und zwar solange, bis die Bedingungen für eine Rückkehr in ihre Heimatländer gegeben sind, und Asylbewerbern, welche (aufgrund von Verfolgung wegen ethnischer Zugehörigkeit, Geschlecht, sexueller Orientierung, politischer Überzeugung etc.) Anspruch auf dauerhaften Schutz haben;
- c. Anreize zu schaffen, um Migranten, die sich aus ökonomischen Gründen auf den Weg in die EU machen, davon abzuhalten, Asyl zu beantragen;
- d. Vermeidung des kompletten Transfers der Zuständigkeit für die Asyl- und Migrationspolitik von den Mitgliedsstaaten auf die EU. Stattdessen sollte der Fokus von Reformen darauf gelegt werden, dass die Mitgliedsstaaten die gemeinsame Verantwortung, die Harmonisierung der EU-weiten Asyl- und Migrationspolitiken und die konsequente Umsetzung von EU-Direktiven akzeptieren.

Eine reformierte EU Asyl- und Migrationspolitik sollte sich auf die folgenden Elemente konzentrieren:

- eine Reform des Dublin-Verfahrens, basierend auf dem Prinzip der Lastenteilung. Die Verteilung der Asylsuchenden unter den Mitgliedsstaaten sollte weitgehend nach dem oben für die aktuelle Flüchtlingskrise vorgeschlagenen Schlüssel und Verfahren erfolgen. Mitgliedsstaaten wie Deutschland, die über eine längere Tradition an Einwanderung und Asyl verfügen, sollten sich freiwillig zur Übernahme eines überproportionalen Anteils verpflichten – insbesondere in Zeiten außergewöhnlicher Zuströme an Flüchtlingen und Migranten;
- eine EU-Asylagentur sollte das Umverteilungsverfahren managen, unterstützt durch andere EU Agenturen und die Mitgliedsstaaten;
- die Asylagentur sollte mit Instrumenten und Kompetenzen ausgestattet werden, um die progressive Harmonisierung der europäischen Asylgesetzgebung sowie ihre konsequente Umsetzung in allen Mitgliedsländern sicherzustellen;
- die Mitgliedsstaaten sollten Maßnahmen unternehmen, um die Rückkehr von all den Personen zu beschleunigen, die weder Anrecht auf internationalen Schutz haben, noch von den Möglichkeiten legaler Einwanderung Gebrauch machen können;
- innerhalb der Asylagentur sollte eine Plattform für die Analyse nationaler Integrationspolitiken und zum Austausch über lessons learned und best practise-Beispiele nationaler Integrationspolitiken zwischen den Mitgliedsstaaten geschaffen werden;
- Deutschland und andere Mitgliedsstaaten, welche demographisch auf Einwanderung angewiesen sind, sollten nationale Einwanderungsgesetze verabschieden, um legale Wege der Einwanderung für ökonomische Migranten in die EU zu schaffen. Kriegsflüchtlingen mit temporärem Schutz sollte die Möglichkeit zum Statuswechsel in die legale Einwanderung eröffnet werden.

EXECUTIVE SUMMARY AND SUMMARY OF RECOMMENDATIONS

Over the course of 2015, an estimated 1.5 million people – the bulk of them refugees from Syria – made their way from Greece to Western Europe via the Balkan route. The shift to this previously marginal route for irregular entry of refugees and migrants into the EU led to the collapse of the EU’s external border in the Aegean and turned the long-standing problem of the EU’s deficient common asylum policy, which disproportionately affected the southern member states, into a full-fledged crisis.

This crisis was of the EU’s own making and could have been avoided with sufficient political will. If the international community had fully funded UNHCR’s Syria refugee response plan rather than providing just 35% of the requested budget in 2015, and if a few EU member states had been willing to resettle 2-300,000 Syrians from Turkey, Lebanon, and Jordan, the EU most probably would not have seen more asylum-seekers in 2015 than in previous years.

Instead, the Union’s Dublin system broke down. Following the reinstatement of internal borders in half a dozen member states, so did Schengen, amplified by additional ingredients: the weakness of Greece’s public administration; the fragility of asylum systems, administrative capacities, and democratic policing in the Western Balkans; and the authoritarian transformation of Hungary’s political system.

As late as early autumn 2015, the refugee crisis was still fully manageable. The EU’s immediate response followed the playbook used in various crises from the eurozone crisis onwards – a combination of reactive German leadership supported by a coalition of willing member states. On September 4, Chancellor Merkel, supported by her Austrian counterpart Werner Faymann, arranged with Prime Minister Viktor Orbán for the transit of refugees and migrants from Hungary with the aim to avert an escalation of the situation in that country. Merkel assembled a coalition of willing states that accepted to receive the bulk of refugees and migrants and worked with the countries on the Balkan route to avoid regional tensions over the wave and to achieve an initial smooth transit free of major human rights violations.

However, unlike in previous crises, Merkel’s attempt to shift from crisis management to a joint European policy failed. Merkel and the EU got stuck when a relocation scheme for 160,000 refugees and migrants, approved later in September by a weighted majority of member states, provoked dissent from Robert Fico, Slovakia’s prime minister. Fico’s announcement (supported by other Central European countries) that Slovakia would not implement the scheme marked a turning point: with it, the EU in effect ceased to function as a rules-based entity in the field of refugee and asylum policy. A rise in subsequent unilateral measures by member states led to the gradual erosion and ultimate collapse of the coalition of the willing, with France, Sweden, and Austria defecting from it and abandoning their liberal asylum policies. Yet giving in to populist pressure still proved unsuccessful in mobilizing support from electorates: even in Slovakia, Fico’s party subsequently saw substantial losses to right-wing forces from which it had taken its anti-migration rhetoric. At the same time, Merkel also came under domestic pressure for her liberal approach.

In the absence of joint EU action, the receiving countries instead turned their attention to ways to reduce the flow of refugees and migrants through the Balkan route, even if that meant that the countries along the route would have to breaching domestic and international legal obligations. The countries on the

Balkan route were now being held hostage by individual EU member states, first and foremost Austria. Vienna's policy led in time to the complete closure of the route.

The failure of the EU's established crisis management revealed the core problem behind the refugee crisis: the EU's own unresolved internal problems which turned a manageable migration emergency into an existential issue for the EU. Merkel's policy style – managerial, and averse to risks, broad strategies, and vision – had seen the EU through a decade of crises, but at the same time camouflaged the core of the Union's weakness: the reluctance to address its structural challenges. In the end, this failure contributed to the erosion of internal legitimacy and joint action which greatly contributed to the UK's sleepwalking out of the EU.

In this change-averse environment, Merkel's only remaining option was the desperate outsourcing of the EU's refugee management to Turkey, sealed by the March 17 EU-Turkey refugee deal. There is both an irony and a political logic in the fact that the deal, which tied the refugee issue to the reanimation of Turkey's EU accession and visa liberalization process, was a product of the policy of two member states – Germany and Austria – that for years had blocked Turkey's EU bid.

The deal stopped the flow of refugees and migrants across the Aegean Sea practically overnight. But in the medium and long term, it will inflict more collateral damage than it delivers in short-term benefits. First, by declaring Turkey a safe country for asylum-seekers – a legal sleight-of-hand to enable the return of those arriving on the Greek islands to Turkey – the EU has damaged its internal legitimacy as a Union based on liberal democratic values and rules, and endangered the internal enforcement of decisions and rules in all policy areas. Second, by offering Ankara progress on EU accession without internal agreement on Turkey's eventual membership, the EU severely diminishes the transformative power of its enlargement policy and undermines pro-European, pro-reform Turks. Third, by outsourcing the management of the European refugee crisis to an increasingly authoritarian regime in Ankara while continuing to avoid addressing its own structural problems, the EU has made itself dependent on Turkey. This bodes ill for the EU's ability to deal with future crises.

The coup attempt in Turkey of July 15 and resulting political tensions between Ankara and Brussels have not substantially affected the refugee deal. But the Turkish government's threat to re-open the gates to Europe and the hypocritical demands from within the EU to freeze Turkey's EU accession process have highlighted some of its core deficiencies.

In order to prevent long-term damage to the EU and mitigate the risk of a purely reactive response should the deal collapse, it is high time for the EU to develop a more sustainable Plan B for handling the refugee crisis, and to address the core structural problems which openly lurk behind it.

Recommendations

The refugee crisis is a serious challenge for the EU that has no quick fixes and comes with burdens and costs, along with benefits; but it need not pose an existential threat to the EU or its member states. It is manageable if managed jointly. The EU's core crisis, by contrast, is far more profound and indeed existential, and it must be addressed quickly – even more so after the UK's June 23 Brexit vote.

I. Addressing the EU's internal crisis

Merkel and other EU leaders must take the Brexit vote as a wake-up call and initiate an urgent debate about a reform of the EU. This debate must take place both among member states' governments and as a broad, participatory public discussion, reaffirming the Union as a community of states based on common liberal-democratic values and building a civic constituency for such a reinvigorated EU. One option might be a new attempt to draft an EU constitution.

II. Towards a sustainable refugee crisis policy

In parallel, the EU, its institutions, and the member states that are committed to a values-based European asylum policy must work towards a change of the current asylum and migration policy. As a first step, the EU must adopt a sustainable approach to the immediate refugee crisis that is firmly rooted in legal obligations and based on joint action and responsibility.

A new EU-Turkey deal

The EU should cancel the EU-Turkey agreement of March 18 and instead offer Ankara a new deal that rewards Turkey for cooperation in curbing irregular border-crossing into Greece with genuine burden-sharing, while decoupling EU accession and visa liberalization from the migration issue. The main ingredients of such a new agreement should be:

- intensified efforts by Turkey against unauthorized crossings of the Aegean Sea, supported by and in cooperation with the EU;
- lifting of Turkey's geographical limitations in the application of the 1951 Geneva refugee convention;
- continued EU commitment of an overall €6 billion in support for Syrian refugees in Turkey as agreed in March 2016;
- registration and first screening of asylum-seekers who reach the Greek islands by Greece's Asylum Service in open hotspots, supported by EU agencies and member states;
- return to Turkey only of those migrants who have *not* claimed asylum;
- relocation of asylum-seekers among EU member states according to a fair distribution key based on objective criteria. Member states such as Germany with a longer tradition of immigration and asylum should voluntarily take in higher quotas, thus substantially lowering the quotas of the other member states;
- within member state quotas, groups of asylum-seekers from countries of origin with a low recognition rate inside the EU should be relocated to EU member states with more efficient asylum administrations, in order to secure swift processing and return to their home countries of the bulk of those not entitled to international protection;
- closure of the Greek-Macedonia border from the Greek side to prevent re-emergence of the Balkan route, and thus support the enforcement of relocation. EU member states' border police that

currently support the Macedonian authorities in sealing the border should move to the other side of the border and assist the Greek border police.

- temporary voluntary resettlement of several hundred thousand Syrian and other refugees from Turkey to the EU, primarily to member states willing to take on a major share, but with at least the symbolic participation of all EU countries;

Other supportive measures

Several other measures not linked to Turkey should be undertaken by the EU and its member states:

- the European Commission must make consistent use of infringement procedures against Bulgaria over its systemic violations of fundamental rights of migrants and asylum-seekers;
- the Commission must make consistent use of infringement procedures against Hungary and Austria to bring their recently changed asylum legislation back in line with the EU *acquis* and European and international conventions;
- the Commission must put pressure on the Greek authorities, through infringement procedures and backed by substantial EU support, to bring the country's asylum system in line with the EU *acquis* and European and international conventions;
- the Commission must condition further progress of the Western Balkan countries' towards EU accession on the establishment of effective asylum systems in line with the EU *acquis*, and support the effective functioning of those systems with sufficient EU funds and other forms of assistance;
- EU member states must voluntarily resettle a substantial number of Syrian refugees from Lebanon and Jordan, on condition that both countries improve refugee rights and benefits;
- the EU, supported by the US, must put strong pressure on Saudi Arabia and other non-contributors, to finally add substantial funds for the financing of humanitarian aid for Syrian refugees;
- EU member states and the EEAS must engage with the incoming U.S. administration early on and press for a strong joint US-EU re-engagement in the Middle East, especially on Syria, and in North Africa;
- Germany and other member states should intensify dialogue with the Višegrad countries. As a trust-building measure, the German government should give up on the North Stream II pipeline project.

III. Towards a genuine common European asylum and migration policy

Once the current refugee crisis has been brought under sustainable control, Germany, other leading member states, and the EU institutions must push for a thorough reform of the Common European Asylum System and the wider EU asylum and migration policy. A reformed policy must be based on four core principles:

- a. enable war refugees, who so wish, to stay as close to their home countries as possible;

- b. among refugees and migrants who reach the EU, separate out the war refugees – who are entitled to temporary protection for as long as conditions are not met for them to return to their countries of origin – from asylum-seekers entitled to permanent asylum (due to prosecution based on ethnicity, gender, sexual orientation, political conviction, etc.);
- c. create disincentives for migrants who enter the EU for economic reasons and are not entitled to international protection to claim asylum;
- d. avoid a full transfer of competencies on asylum and migration from member states to the EU, instead concentrating reforms on member states to accept joint responsibility, harmonization of asylum and migration policies and more consistent implementation of EU directives.

A reformed EU asylum and migration policy should focus on the following elements:

- a reform of the Dublin regulations based on the principle of burden-sharing. Distribution of asylum-seekers among member states should largely follow the proposed relocation key and procedures for the current refugee crisis. Member states such as Germany with a longer tradition of immigration and asylum should commit to taking in a disproportionate share, especially in times of a large influx of refugees and migrants;
- an EU Asylum Agency should manage the relocation procedure, supported by other EU agencies and the member states;
- the Asylum Agency should be equipped with tools and competencies to ensure the progressive harmonization of asylum legislation and its consistent implementation across member states;
- member states should enhance measures to return to their home countries those neither in need of international protection nor eligible for legal immigration;
- within the Asylum Agency, a platform should be created for the analysis of national integration policies and the exchange among member states of lessons learned and best practices in national integration policies;
- Germany and other member states with a demographic need for immigration should adopt immigration laws to provide legal avenues for economic migration to the EU. War refugees enjoying temporary protection should be eligible for the status of legal immigrants.

Introduction

When German Chancellor Angela Merkel started her vacation in the summer of 2015 she must have been both relieved and optimistic. It seemed that for the first time since the financial meltdown of 2008, the EU was finally moving out of crisis mode. The euro crisis was not yet completely over, but the immediate threat of a break-up had been averted and the economies of the eurozone and the wider EU appeared to be on track to recovery. The Union had just survived the rise to power of the far-left Syriza government in Greece and a showdown with Athens over a third bailout package after the Greek parliament backed the deal in July 2015. Following Russia's aggression against Ukraine and its annexation of Crimea, Merkel, to the surprise of many, including Russian president Vladimir Putin, had succeeded in rallying the 28 EU member states and impose sanctions on Russia. The ongoing low-intensity conflict appeared manageable. In another part of the EU's periphery, in the Western Balkans, the Union had re-engaged with unresolved crises in Kosovo, Serbia, Bosnia and Herzegovina, and Macedonia. In all of these cases the EU applied a particular approach that appeared to allow the EU to move forward – a combination of reactive German leadership and 'coalitions of the willing,' *ad hoc* groupings of committed member states.

Yet when Merkel and other European leaders returned from their summer break, they found themselves in the middle of a new emergency – the European refugee crisis. In July, more than 50,000 refugees and migrants¹ had taken the previously rather marginal Eastern Mediterranean route into the EU, followed by 100,000 in August. The explosion in the number of refugees and migrants traveling the short distance from the Turkish coast across the Aegean Sea to the Greek islands, and then through the Balkans to Western and Northern Europe, turned the previously containable issue of a partly deficient EU asylum policy (which had affected Italy and Greece disproportionately) into a full-fledged crisis. By the end of 2015, an estimated 1.5 million refugees and migrants had reached the EU, almost all of them having arrived since summer. The collapse of the external Schengen border of the Union prompted the re-imposition of internal borders in half a dozen member states.

Once the crisis reached a new peak on September 4, the EU's response seemed to follow the precedent set in earlier emergencies, with Merkel taking the lead. In coordination with Austrian Chancellor Werner Faymann, she agreed with Hungary's Prime Minister, Viktor Orbán, to allow tens of thousands of refugees and migrants stranded in Hungary to proceed to Austria and Germany. EU leaders subsequently held no fewer than eight summits (formal and informal) in 2015 on the refugee crisis. But this crisis unfolded differently from its precedents: within less than half a year, the EU had gone from crisis management via manifest disunity to what appeared to be an existential threat to the Union itself.

The European refugee crisis has returned the Balkans to the forefront of EU policy in two very different ways. The so-called Balkan route, the overland route from Greece to Austria, became the major conduit for refugees and migrants towards the destination countries, and made cooperation with and between the Western Balkan states a top priority in the EU's crisis response. More importantly, as policy coordination among the Balkan states seemed to improve over time, the EU's own approach appeared

¹ "Refugees and migrants" refers to the entirety of the population that entered the EU – those fleeing civil wars, those seeking asylum due to individual or group-based persecution, and those migrating for other reasons, including economic ones. "Refugee crisis" is the commonly accepted short-hand for the ensuing emergency.

more and more “balkanized.” The winter weather gave the EU some reprieve as the number of refugees and migrants dropped. But the Union squandered this opportunity to align around a unified and sustainable refugee and migration policy. Unilateral acts and policy proposals of individual member states based on narrow national interests and limited to national policy horizons became more frequent. Not only did these moves severely undermine German leadership, they exacerbated frictions within the coalition of member states that had previously been willing to admit refugees and migrants.

Much has been said about the European refugee crisis in recent months, but the key question remains without a convincing answer: How is it that the refugee crisis turned into a crisis of the EU itself? Not disregarding the economic, financial, administrative, or cultural challenges associated with such a large influx of people, how is it that 1.5 million refugees and migrants could threaten the existence of a Union of 500 million citizens when, for example, the eurozone crisis with its economic dislocation and 10 million additional unemployed Europeans did not in the end threaten the collapse of the EU?

Instead of facing the essence of this question and finding a sustainable solution to the refugee crisis, the EU made an unprecedented move towards the end of the winter season. At an EU summit on March 17-18, 2016, Merkel pushed through a deal with Recep Tayyip Erdoğan’s Turkey, a country she had long prevented the Union from having a meaningful, strategic relationship with. Within the space of six months, Merkel went from championing a pro-refugee policy that promoted and defended European values to making a deal that put these very values into question, had a high likelihood of failing in its goals, and outsourced the EU’s refugee policy to an increasingly authoritarian regime, with uncertain consequences.

This paper seeks to explain why the European refugee crisis turned into an existential crisis for the EU, and how Merkel’s defense of European values during the early stages of the crisis gave way to a different approach and ultimately resulted in a deal with Ankara that offered no solution to a structural EU problem while potentially still inflicting serious damage on the Union. It will also put forward a basic proposal for a sustainable solution to the European refugee crisis centered on a joint EU asylum and migration policy.

The first section looks at the emergence of the Balkan route; the policy responses of the Western Balkan states; and their relations with each other and with the EU at the various stages of the European refugee crisis. The second section considers the EU’s policy and its crisis response, as well as the shifting relations between member states and between EU institutions and national governments at various stages of the refugee crisis. In both sections, special attention is given to existing asylum legislation and other relevant legal aspects. The third section examines the EU-Turkey deal. It analyzes the background to the agreement, the motivations of key actors, the legal basis of the negotiated refugee return arrangement and the medium- to long-term political costs for the EU. In the fourth and final section, the author sets out a comprehensive policy framework for a sustainable solution to the refugee crisis that takes into account the depth of the EU’s ongoing internal crisis.

I. The Balkan route: From “Balkanization” to coordinated crisis management

Before the storm

Before 2015, the Western Balkans, the source of the last major refugee crisis in Europe, played a rather marginal role as a route for refugees and migrants into the EU. But rising numbers in 2013 and in 2014 foreshadowed the emergency to come: while the EU registered 40,000 irregular border crossings via the Balkan route in 2013, that number rose by more than 50% in 2014, to 66,000 irregular border crossings and 70,000 asylum applications. Two-thirds of those came via Serbia and Hungary, for two obvious reasons – first, because Hungary provides, unlike Schengen non-member Croatia, direct access to the contiguous Schengen area, and second, because the Serbian-Hungarian border is physically easy to cross irregularly. Yet this rise in 2014 was not due to any significant rise in the number of refugees and migrants that crossed the Aegean Sea from Turkey to Greece, a group that made up only 30,000 unauthorized crossings, including a sharply rising share of Syrians and Afghans. The remainder was made up of citizens from the Western Balkans, first and foremost from Kosovo.²

An exceptional migrant wave from Kosovo to Serbia and onwards into the EU through Hungary (mostly to Germany and Austria, and non-member Switzerland) unfolded during the second half of 2014 and the first half of 2015. There were technical and economic reasons behind this unexpected wave. Kosovo, which declared independence in 2008 and has not been recognized by five EU member states, is still negotiating with the EU to benefit from a visa-free regime enjoyed by the other states in the region.³ As part of the EU-led dialogue between Kosovo and Serbia, in 2012 Kosovars gained the possibility to enter Serbia with their Kosovo documents, and thus to reach the borders of the EU. In addition, under pressure from EU institutions to meet its legal obligations, Hungary curtailed the practice of detaining irregular migrant families in closed facilities, in effect allowing them to move on to other destinations within the Schengen area. On the economic side, Kosovo has the youngest demographic structure in Europe and a very high youth unemployment rate of 55%.⁴

Yet it was first and foremost political reasons that motivated tens of thousands of mostly young Kosovars, among them many who had jobs or owned property, to seek asylum in the EU even though they stood little chance to actually be granted asylum. The loss of hope in political, social, and economic change, and very low trust in the country’s political elites and institutions, was shown in several polls to be the migrants’ main motivation. Trafficking networks exploited this mix of despair and hopelessness by spreading false rumors about economic and job opportunities in Germany, other EU countries, and Switzerland. Migrant numbers rose exponentially during a government formation crisis that started in June 2014. It virtually exploded at the end of the year, after a backroom deal supported by the EU ended the political crisis without spurring any structural changes.⁵ There were 40,000 asylum-seekers from

² Frontex, *Western Balkans Risk Analysis 2015*, Warsaw May 2015, available at: http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2015.pdf.

³ On May 4, 2016, the European Commission announced that Kosovo had fulfilled all remaining conditions and recommended the lifting of visa requirements for its citizens; see: http://europa.eu/rapid/press-release_IP-16-1626_en.htm.

⁴ *IMF Country Report no.222*, July 2013, available at: <https://www.imf.org/external/pubs/ft/scr/2013/cr13222.pdf>.

⁵ Weber, Bodo, *Progress undone? Trading democracy for solving the status dispute in Kosovo*, Democratization Policy Council (DPC) policy paper, Berlin November 2015, available at: http://democratizationpolicy.org/pdf/briefs/DPC_Policy_Paper_Trading_Democracy_in_Kosovo.pdf.

Kosovo in the EU and Switzerland in the second half of 2014, and over 70,000 in 2015.⁶ The Kosovo migration wave helped set the stage for the larger European migration crisis and the rise of the Balkan route as the main conduit into the EU, and facilitated the emergence of a larger smuggling industry at the Serbian-Hungarian border. When the much larger stream of refugees and migrants from outside Europe began transiting the Balkans, the number of Kosovo migrants had already been substantially reduced by a combination of measures by the main recipient countries such as accelerated asylum and re-admission procedures and awareness campaigns in Kosovo aimed at deterring new migrants with a firm “you will be sent back” message.

Another factor that played a role in the build-up of the Balkan route is the dire state of asylum systems in the region. All Western Balkan countries have established and developed their asylum systems over the last decade and a half in the framework of EU enlargement, to bring them in line with EU standards. The countries in the region have ratified the most important international conventions relevant for the protection of refugees and migrants.⁷ Full adjustment to EU legislation (the *acquis*) in the field of asylum only takes place during the actual accession process, under Chapter 24. Croatia, the newest EU member state adjusted its previously deficient asylum system only in the late stage of accession, in 2013, the year it joined the EU, through an amendment to its asylum law.⁸ Other Western Balkan states that are still (actual or potential) candidates owe the current state of their asylum and migration systems largely to the 2009-10 visa liberalization process; asylum legislation was part of the European Commission’s visa roadmap conditionality.⁹ Yet these reforms happened at a time in the history of the EU’s evolving enlargement policy when conditionality was still focused on the adoption of legislation, not its implementation. As a consequence, the asylum systems of the two non-EU countries on the Balkan route, Serbia and Macedonia, still exhibit major structural deficiencies and inefficiencies, and UNHCR does *not* consider them safe countries for asylum-seekers.¹⁰

Since 2008, when Serbia took over its asylum management from UNHCR, it has made excessive use of the ‘safe third country’ concept to deny protection to a large number of refugees and migrants. Its list of safe countries includes not only neighboring countries such as Macedonia and countries traditionally not recognized as safe third countries by the EU, such as Greece and Turkey, but also others such as Belarus, which is recognized within the EU as a dictatorship with serious human rights shortcomings. And those refugees and migrants whose countries were not on Serbia’s list were largely discouraged from seeking asylum by the country’s insufficient administrative capacities. Thus, the Serbian asylum office, in charge

⁶ Kaltrina Rexhepi, “Back to Struggling,” *Prishtina Insight*, February 28, 2016, available at: <http://prishtinainsight.com/back-to-struggling-mag/>.

⁷ *UN Convention relating to the Status of Refugees of 1951* (the “Geneva refugee convention”); *Protocol relating to the Status of Refugees of 1967*; *International Covenant on Civil and Political Rights*; *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; *UN Convention on the Rights of the Child*; *European Convention for the Protection of Human Rights and Fundamental Freedoms*; *European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment*.

⁸ Vedrana Baričević and Senada Šelo Šabić, “Croatia,” in: Anna Triandafyllidou and Ruby Gropas, *European Immigration. A Sourcebook*, 2014, pp.55-66; Hrvatski Pravni Centar, *Hrvatski Sustav Azila u 2013.*, available at: <http://www.hpc.hr/download.aspx?f=dokumenti/Razno/HRVATSKISUSTAVAZILAU2013.doc>.

⁹ For the visa liberalization roadmaps for the Western Balkan countries see: <http://www.esiweb.org/index.php?lang=de&id=352>.

¹⁰ Interview with UNHCR official, Belgrade October 2015.

of the first-instance procedure, including interviews with asylum-seekers, worked only on an *ad hoc* basis until the end of 2014, when the office was finally formally established and for the first time fully staffed with 15 officers. This led to substantial procedural delays and prompted even those few refugees with a serious interest in seeking asylum in Serbia to move on to the EU. Serbia granted refugee status for the first time only in 2012.¹¹

In Macedonia, a large number of asylum applications are rejected at first instance by the institution in charge, the Section for Asylum, by declaring that the applicant poses a danger to the security of the state. Those decisions regularly lack a complete explanation and instead refer to alleged evidence from the State Security Bureau that is not accessible to the asylum-seeker. As the Administrative Court, the second instance authority, decides on appeals only in relation to procedural matters, not the substance of negative first-instance decisions, the asylum system *de facto* remains without any legal remedies. Macedonia granted no form of legal protection to any person between 2009 and 2013.¹²

The Geneva refugee convention and Serbia's Law on Asylum provide that no asylum-seeker is to be punished for irregular border-crossing. But Serbia's Law on Foreigners and its Law on Protection of the State Border prescribe that irregular border-crossing is to be prosecuted as a misdemeanor. Likewise, some of Macedonia's legislation demands that irregular border-crossings be prosecuted and migrants and refugees jailed.¹³ As refugee and migrant numbers were rising since the beginning of this decade, reception centers were overwhelmed. After 2012, Serbia added three more reception centers to the existing two, raising capacities from 250 to 500 – still vastly less than what is needed. In Macedonia there is only one reception center, Vizbegovo near Skopje, with a capacity of 150. In the Gazi Baba municipality of Skopje, a detention center for foreigners located in a suburb of the capital has a similar capacity. In Croatia, there are only two asylum reception centers, with a total capacity of 700.¹⁴ In none of the Western Balkan states, including EU member Croatia, is there a real integration policy supported by adequate resources. There were additional factors that made the countries unattractive as a destination for asylum seekers – difficult economic conditions, high levels of xenophobia and negative attitudes towards asylum-seekers, including in the media. All of these factors are a legacy from the nationalist transformation of the region's societies during the 1990s.¹⁵

The rising attractiveness of the Balkan transit route towards the EU and the deficiencies of the local asylum systems and policies reinforced each other in the run-up to the European refugee crisis. Despite rising

¹¹ UNHCR, *Srbija kao zemlja azila*, Belgrade August 2012, available at: http://www.unhcr.rs/media/Srbija_zemlja_azila.pdf; Belgrade Center for Human Rights, *Right to Asylum in the Republic of Serbia 2014*, Belgrade 2015, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/04/Right-to-Asylum-in-the-Republic-of-Serbia-2014.pdf>; interviews with international asylum experts and representatives of Serbian human rights organizations, Belgrade 2015.

¹² Belgrade Center for Human Rights, *An NGO perspective on the state of asylum in the region of Southeastern Europe*, chapter on Macedonia, Belgrade 2014, pp.55-62, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/State-of-Asylum-FINAL.pdf>.

¹³ Miroslava Jelačić, "Može li se sistem azila u Republici Srbiji smatrati funkcionalnim? Izazovi u funkcionisanju Sistema azila u Republici Srbiji;" Amnesty International, *Europe's borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary*, London July 2015, p.25, available at: http://www.amnesty.be/IMG/pdf/rapport_balkans_eng.pdf.

¹⁴ *An NGO perspective on the state of asylum in the region of Southeastern Europe*.

¹⁵ *An NGO perspective on the state of asylum in the region of Southeastern Europe*.

numbers of asylum-seekers in 2013-14, in the four to five digits in every one of the countries on the future Balkan route (Macedonia, Serbia, Croatia, Slovenia), *none* granted refugee status to more than a dozen asylum-seekers during that time. Serbia, which registered an overall number of 28,000 asylum applications between 2008 and the end of 2015 – including 16,000 in 2014 alone – over the whole period granted refugee status to only six persons.¹⁶

Initial chaos, repressive reflexes and the absent state

From spring into the summer of 2015, the refugee crisis built up, as the number of arrivals to Greece grew and accelerated, and refugees and migrants moved on along the Balkan route. The number of arrivals to Greece rose from 8,000 in March to 18,000 in May, 31,000 in June, and 55,000 in July. In August it doubled to 108,000 arrivals.¹⁷ In addition, a growing number of migrants from the region, from Kosovo, Serbia, and especially Albania, joined the refugee and migrant stream towards the EU. Authorities in the Western Balkans were caught unprepared, as were their counterparts in the EU.

The first country that refugees and migrants entered on leaving Greece – Macedonia – was in the midst of its own percolating crisis. Against the background of Greece’s decade-long stalling of the country’s EU membership bid, Prime Minister Gruevski had embarked on an authoritarian transformation of the political system, undermining political pluralism and the rule of law. In the spring of 2015 he faced a serious political challenge over the illegal wiretapping of 20,000 citizens. In May, in Kumanovo, which lies near the northern exit of the Balkan route to Serbia, a two-day shootout between security forces and heavily armed ethnic Albanians, the most serious incident since the brief Macedonian-Albanian civil war of 2001, left 18 dead. The opposition accused the government of staging an inter-ethnic incident to distract from the political crisis.¹⁸

Faced with an overwhelming refugee problem, the Macedonian authorities initially reacted with repressive measures. Hundreds of refugees caught by the border police were forcibly pushed back over the border to Greece – a clear violation of the Geneva refugee convention and the European Convention on Human Rights. Many of those apprehended by the police were subjected to ill-treatment, beaten with batons, punched, kicked, and verbally assaulted. Human Rights Watch reported a case in which refugees were forced to “run a gauntlet between two rows of police officers who struck them with police batons.”¹⁹ In addition, many refugees were subjected to violence from smugglers. The UK’s Channel 4 even reported cases of kidnapping of refugees who were held for ransom.²⁰ Hundreds of refugees intercepted by the

¹⁶ *Right to Asylum in the Republic of Serbia 2014*, p.17-20.

¹⁷ UNHCR data, available at: <http://data.unhcr.org/mediterranean/regional.php>.

¹⁸ “Five Police Killed in Gunbattle in Macedonia,” *Balkan Insight*, May 9, 2015, available at: <http://www.balkaninsight.com/en/article/heavy-shootout-disturbs-macedonian-town>; Kurt Bassuener, *No Stability without Accountability – The West’s Responsibility in Macedonia*, DPC Policy Paper, Sarajevo June 2015, available at: <http://democratizationpolicy.org/pdf/briefs/DPC%20Policy%20Paper%20-%20The%20West's%20Responsibility%20in%20Macedonia-1.pdf>.

¹⁹ Human Rights Watch, “*As though we are not human beings.*” *Police brutality against migrants and asylum seekers in Macedonia*, September 2015, p.2, available at: https://www.hrw.org/sites/default/files/report_pdf/macedonia0915_4up.pdf.

²⁰ “Tracking down Macedonia’s migrant kidnap gang,” *Channel 4*, June 5, 2015, available at: <http://www.channel4.com/news/tracking-down-macedonias-migrant-kidnap-gang>.

police were held at the Gazi Baba detention center. Many were held there for weeks and months as witnesses against smugglers without any opportunity to claim asylum or access to legal counsel. This was not only a breach of international conventions, but also of domestic law which limits the detention of witnesses to 12 hours. In the totally overcrowded facility, refugees experienced inhumane conditions and treatment. There were not enough beds for men, no separate sections for families and unaccompanied minors, and couples were separated. Food was insufficient, meals were made up of only bread, butter, and jam and occasionally canned fish or processed food. Sanitation and health care were also inadequate; there was only one functioning shower and two toilets and no hot water. Skin diseases spread, and refugees had only one hour a day of fresh air in an inner courtyard. People in the center experienced violence from the guards, including gender-based violence.²¹

As irregular entry and passage through the country was a criminal offense, many refugees moved along railway tracks in order to avoid passing through major settlements and risk being detected. More than two dozen were killed by trains. On June 16, Macedonia changed its asylum law. People were now allowed to apply for asylum at the border or the nearest police station, which allowed them to move freely through the country for three days, and transporting them within Macedonia was also decriminalized.²² While this 72-hour deadline, basically copied from the Serbian asylum system, was formally granted to the asylum-seeker to reach the reception center Vizbegovo, it was *de facto* introduced to legalize the transit of refugees and migrants through the Macedonian part of the Balkan route. Macedonia had shifted its policy from fighting the refugee flow to assisting its progress along the Balkan route. As one of the first consequences of this shift, the government, under strong pressure from civil society, the country's ombudsperson, and UNHCR, began in mid-July to close the Baba Gazi detention center.²³ Police violence tapered off, yet judging by available sources no investigations were ever undertaken, let alone sanctions imposed on police and border police officers because of inhumane treatment of refugees and migrants. Faced with the exploding number of refugees and migrants, Macedonia declared a state of emergency on August 20 and closed the border to Greece. This led to clashes between the police and refugees at the main border crossing near the Greek town of Idomeni, with police using tear gas and rubber bullets to prevent the refugees stuck on the Greek side of the border from entering Macedonia. After three days, the authorities gave up,²⁴ and a day later opened a refugee reception center in the nearby town of Gevgelija aimed at what would define the policy in the months to come – to manage the refugees' transit to Serbia.²⁵

After exiting Macedonia, the refugees entered the last country on the Balkan route, Serbia. Serbia had opened EU accession negotiations the year before under a government made up by the political heirs of

²¹ *Europe's borderlands*, p.15-25; "As though we are not human beings."

²² *Europe's borderlands*; p.27.

²³ "As though we are not human beings," p.4.

²⁴ "Macedonia Declares Crisis on Border Over Refugees," *Balkan Insight*, August 20, 2015, available at: <http://www.balkaninsight.com/en/article/macedonia-declares-crisis-on-border-over-refugees-08-20-2015>; "First Migrant Wave Reaches Hungary After Crossing Balkans," *Radio Free Europe*, August 22, 2015, available at: <http://www.rferl.org/content/first-migrant-wave-reaches-hungary-after-crossing-balkans/27207140.html>.

²⁵ "Macedonia: Migrant Reception Center to be Assembled outside Gevgelija," available at: <http://www.independent.mk/articles/21284/Macedonia+Migrant+Reception+Center+to+Be+Assembled+outside+Gevgelija#sthash.Y2q6aHBx.dpuf>.

the 1990s Milošević regime, led by Prime Minister Aleksandar Vučić. Under Vučić, the ruling coalition made a pro-European policy turn and accepted the Union's condition of normalizing relations with Kosovo, the former Serbian province whose independence Serbia rejects. Yet in parallel, Vučić established a government based on his charismatic leadership that increasingly exhibited authoritarian traits. The rule of law in Serbia remains weak, with a largely unreformed judiciary and police.

Serbia's immediate reaction to the rising flow of refugees and migrants largely mirrored that of its southern neighbor on the Balkan route. Although it already had a mechanism in place to enable refugees and migrants to transit the country – the 72-hour deadline – the authorities initially, too, tried to stem the flow through repression. Migrants (including minors) caught near the village of Miratovac, the first settlement on Serbian soil near the border with Macedonia where most refugees and migrants crossed, were regularly pushed back after having been registered at the local police station. There was ill-treatment by police all along the route through Serbia, at Miratovac, in Belgrade, and in police stations near the Serbian-Hungarian border. Refugees and migrants, including pregnant women, were beaten by police, often in police stations, and money and mobile phones were stolen from them. During the first half of 2015 and over the summer several hundred refugees and migrants were jailed and several thousand fined for irregular border-crossing, a procedure not only legally dubious, but also practically useless since most of them were later released and made their way to Hungary.²⁶

Although a first refugee reception center was opened in July with the support of UNHCR in the southern Serbian town of Preševo, a humanitarian crisis was building up in the capital Belgrade, aggravated by what a Serbian refugee activist called “the absence of the state.” During the first few months of the refugee crisis, people went through Belgrade where they stayed for about a month. During that period they legalized their status as asylum-seekers in order to be able to receive money through Western Union to finance their onward journey, and to get in touch with human traffickers. Hundreds of refugees spent the night in a small park near the main train and bus station. It was citizens and civil society that reacted first. A coalition of private initiatives and NGOs, Refugee Aid Serbia, was launched to deliver humanitarian aid and information, and to coordinate aid coming in from all over Europe – a pattern that was repeated in all other states along the Balkan route. As a refugee activist noted, “the government did not act at all on the mounting numbers of refugees in Belgrade, it waited and weighed its options.” Another activist added that “in the beginning, no institutions were present, only civil society and volunteers. There were no toilets in the park, garbage was not taken care of, the police was not present, refugees were regularly robbed during the night while sleeping. A representative from the Commissariat for Refugees [in charge of accommodating refugees and migrants] showed up only once, with an interpreter. The interpreter told me privately: ‘I am here to tell them to leave Serbia.’”²⁷

Right-wing extremist groups started to mobilize against the refugees and held two protest meetings, one in the capital, and one in the northern province of Vojvodina that borders Hungary. On August 19, Prime Minister Vučić was the first government representative to visit the park; he chatted with refugees and

²⁶ Human Rights Watch, *Serbia: Police abusing migrants, asylum seekers*, April 15, 2015, available at: <https://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers>; *Europe's borderlands*. pp.31-34.

²⁷ Interviews with Serbian refugee activists and other civil society representatives, Belgrade October 2015.

announced that the institutions would take care of their needs. “That changed everything – Vučić gave the signal, that was the beginning of a government refugee policy,” a refugee activist said. Anti-Islamic language in the media stopped, and the media began spreading the government’s positive messaging on refugees and on the government’s supposedly pro-active refugee policy.²⁸ The Interior Ministry banned a demonstration announced by two extremist organizations, SNP Naši and Obraz, for August 31 in Belgrade under the slogan “Against the settlement of 400k migrants in Serbia.”²⁹ As the representative of an international aid organization put it, “Serbs developed pride in their state helping refugees – the first time Serbs developed collective pride in something positive since Novak Djoković [the world number one tennis player].”³⁰ Pervasive police violence eased, although, just as in Macedonia, police violence was never seriously investigated, let alone prosecuted. The practice of arresting and fining refugees and migrants for irregular border-crossing stopped. The authorities in charge of asylum procedures stopped applying the previously dominant ‘safe third country’ concept to Macedonia, Greece, and Turkey. While Serbia thus brought its policy in line with international conventions and EU standards for safe third countries, it acted against the legal provisions that constituted the basis for previous practice.³¹

Hungary closes its borders

The number of arrivals to Greece continued to rise month after month throughout the fall of 2015 – there were 147,000 arrivals in September and 210,000 in October, pushing the daily numbers on the Balkan route up to 8,000 on some days.³² The route itself also changed. Hungary completed the construction of a 176 km fence on the border with Serbia on September 16. The unannounced closure left 5,000 people stranded on the Serbian side of the border and led to clashes with the Hungarian border police at the Horgoš crossing. Hungarian police used tear gas to prevent the refugees and migrants from entering the country. They quickly turned towards Croatia, passing the Serbian-Croatian green border through fields and village paths in Eastern Slavonia, a theater of war in the 1990s still contaminated with land mines. In order to manage the flow, Croatia closed all but one border crossing (at Berkasovo-Bapska, near the Serbian town of Šid). Having entered Croatia, most of the refugees and migrants then quickly made their way to Hungary.³³

The Hungarian border closure triggered a brief tussle between the countries on the Balkan route, including an eight-day trade war between Croatia and Serbia. Croatia’s then Prime Minister Zoran Milanović, whose Social Democrats were facing a defeat in a forthcoming parliamentary election, used the refugee crisis to

²⁸ Interviews with Serbian refugee activists and other civil society representatives, Belgrade October 2015.

²⁹ “Zabranjeni skupovi protiv migranata u Beogradu,” *mondo.rs*, August 25, 2015, available at: <http://mondo.rs/a824278/Info/Drustvo/Obraz-i-Nasi-prave-skup-protiv-migranata-nvo-se-bune.html>.

³⁰ Interview with an international refugee aid organization representative, Belgrade October 2015.

³¹ Interview with asylum and migration expert, Belgrade October 2015.

³² UNHCR data, available at: <http://data.unhcr.org/mediterranean/regional.php>.

³³ Doctors without Borders, *Obstacle course to Europe*, December 2015, p.43, available at: https://www.doctorswithoutborders.org/sites/usa/files/msf_obstacle_course_to_europe_report2.pdf; “Do 22 sata u Hrvatsku ušlo više od 11 tisuća izbjeglica; Zatvoreni granični prijelazi sa Srbijom,” *Novi list*, September 17, 2015, available at: <http://www.novolist.hr/Vijesti/Hrvatska/Do-22-sata-u-Hrvatsku-uslo-vise-od-11-tisuca-izbjeglica-Zatvoreni-granicni-prijelazi-sa-Srbijom>.

try to raise his popularity. The government started to close its border with Serbia on September 17. Accusing the Serbian government of striking a deal with the Orbán government in Hungary to redirect all refugees and migrants to Croatia, Milanović ordered the closure of the border for trucks from Serbia, thus starting a trade war, accompanied by increasingly ill-tempered rhetoric from both sides. Milanović, for example in a press conference, interpreted that the Hungarian government was “building a wall against barbarians, against Serbs.”³⁴ And after an ultimatum had expired, the Serbian government imposed a counter-blockade on September 24. An EU official explained that the blockade had taken both Brussels and Belgrade by surprise and that it was a “clear breach of the free trade arrangement by which Croatia is bound under its Stabilization and Association Agreement.”³⁵ This prompted Jean-Claude Juncker, President of the European Commission, to dispatch top officials to the region: On September 25, the Commissioner for Enlargement, Johannes Hahn, met Vučić in Belgrade, while the EU’s foreign policy chief, Federica Mogherini, spoke with Milanović on the phone. The two convinced both sides to end their trade war.³⁶

On October 16, Hungary closed its border with Croatia with a second fence. The redirection of the Balkan route from Croatia to Slovenia generated tensions between the two former Yugoslav republics, with Ljubljana accusing Croatia of unilaterally driving huge numbers of refugees to the Slovenian border. On October 18, Slovenia announced it would cap refugee numbers at 2,500 a day and called in the army to assist in controlling the border. This unilateral move created a bottleneck and left 10,000 refugees stranded at the Serbian-Croatian border. The cap, which meant the rejection of access to asylum based on arbitrarily set numbers, was in open breach of the Geneva refugee convention and EU law. After three days, Ljubljana gave up and lifted the restrictions.³⁷

Brussels’ intervention in the Serbian-Croatian quarrel marked a turning point towards ever closer cooperation and coordination among the four Yugoslav successor states along the Balkan route in their joint efforts to organize the swift passage of refugees and migrants from Greece to what was now the first destination, Austria. On October 23, the Serbian and Croatian interior ministers reached the first agreement between the two neighboring countries since the beginning of the refugee crisis. They arranged a new border regime to transport refugees from the town of Šid directly to Croatia’s new reception center at Slavonski Brod. Five days later, Croatia and Slovenia reached a similar agreement to transport the refugees further to the reception center on the Slovenian side of the border, at Dobova. The new free train service from Serbia to Slovenia came into effect on November 3. A week later, Slovenia

³⁴ “Milanović: Mađarska gradi zid prema Srbima, Srbi su barbari,” September 24, 2015, available at:

<http://www.maxportal.hr/milanovic-austrija-ne-ali-madarska-gradi-zid-prema-srbima-srbi-su-barbari/>; “Izbeglička kriza kroz prizmu srpsko-hrvatskih zategnutosti,” RFE, September 23, 2015, available at:

<http://www.slobodnaevropa.org/content/izbeglicka-kriza-kroz-prizmu-srpsko-hrvatskih-zategnutosti/27264997.html>; “Politika otvorila Bajakovo, kamiondžije zatvorili,” RFE, September 22, 2015, available at:

<http://www.slobodnaevropa.org/content/zatvaranje-bajakova-poruka-srbiji/27262634.html>; “Granica Hrvatske i Srbije zatvorena sa obe strane,” RFE, September 24, 2015, available at: <http://www.slobodnaevropa.org/content/granica-hrvatske-i-srbije-zatvorena-s-obe-strane/27267183.html>.

³⁵ Interview with EU official, Belgrade October 2015.

³⁶ “Hrvatska i Srbija otvorile granice, Vučić uživo na HRT,” RFE, September 25, 2015, available at:

<http://www.slobodnaevropa.org/a/milanovic-najavio-mogucnost-ukidanja-zabrane-za-srpska-vozila/27269902.html>.

³⁷ *Obstacle course to Europe*, p.43.

announced a plan to erect a razor-wire fence along its border with Croatia as a measure to control the refugee flow and direct it towards the reception center.³⁸

Thus, during the fall of 2015, the movement of masses of refugees and migrants along the Balkan route functioned as a well-organized, regional undertaking. People crossed the border from Greece walking to the nearby reception center at Gevgelija where they received aid and were fingerprinted and registered as asylum-seekers. From there, they moved northwards through Macedonia by train, and a smaller part by bus or taxi, to the Tabanovce reception center at the border with Serbia. They crossed into Serbia reaching the village of Miratovac (a walk of a few kilometers). Buses brought the refugees from the village to the reception center at Preševo. From there, people moved further north to the Serbian side of the border with Croatia, at first to Berkasovo – where they crossed over to Croatia by foot, and later to Šid – where they boarded trains.³⁹ During the same period, the countries along the route started to register the refugees and migrants at entry points (Gevgelija, Preševo, etc.): they were fingerprinted, their basic data was entered into an electronic database, and they were provided with a document that legalized their status as asylum-seekers. With the support of EU-compatible equipment, registration became systematized over time. In Gevgelija, the authorities initially registered only about one third of all refugees and migrants. Serbia began to systematically register refugees and migrants at the beginning of October, after a joint action of eight EU and Western Balkans state border police forces against smugglers in the Preševo area. By the end of October, daily registration capacities were up from an initial 800 to 6,000.

Use of the registration data was uneven but telling. Croatia, an EU member state, refused to feed its data into the EU database, EURODAC, in clear violation of its legal obligations, fearing that it could otherwise end up with the bulk of refugees and migrants should the consequent implementation of the EU's Dublin rules be reinstated.⁴⁰ Macedonia on the other hand, though not an EU member, shared its data with EURODAC – for which there was no basis in domestic law.⁴¹ Serbia's handling of the data remained a bit of a mystery. Serbian asylum experts from civil society suspected their government of irregularly sharing the data with the EU, but had no proof. A UNHCR representative noted: "What they do with the data, we don't know. The government insists they don't share with EURODAC." An EU official likewise insisted they don't know what happened to the data. "We asked the Serbian government, they said they share it with governments in the region."⁴²

The mass transit of refugees and migrants also had a business dimension that in Macedonia and Serbia evolved over time from spontaneous mass corruption into a more or less organized form of private-public partnership. Refugees in Macedonia had to pay 25 Euros for the train ticket from Gevgelija to the Serbian border. By demanding a price three and a half times higher than for locals and by insisting on payment in

³⁸ "Dogovorena saradnja Hrvatske i Srbije, Slovenija odbija pomoć Zagreba," *RFE*, October 23, 2015, available at: <http://www.slobodnaevropa.org/content/izbjeglicka-kriza-slovenija-trazi-lokaciju-za-jos-jedan-prihvatni-centar/27322068.html>; "Slovenija postavlja ogradu na granici," *RFE*, November 10, 2015, available at: <http://www.slobodnaevropa.org/a/slovenija-postavlja-ogradu-na-granici/27356346.html>.

³⁹ Interview with Serbian refugee activist, Belgrade December 2015.

⁴⁰ "Europsko vijeće: 'Dublin' ćemo mijenjati, ali dotad ga primjenjujte," *Večernji list*, December 12, 2015, available at: <http://www.vecernji.hr/eu/europsko-vijece-dublin-emo-mijenjati-ali-dotad-ga-primjenjujte-1046077>.

⁴¹ Interview with high-level Macedonian government official, December 2015.

⁴² Interviews with Serbian civil society, UNHCR and EU representatives, Belgrade October and December 2015.

Euros, Macedonia's public railway company breached domestic laws. It refused to change the practice in spite of massive pressure from civil society and the country's ombudsman.⁴³ Once refugees and migrants crossed into Serbia and reached Miratovac, free buses paid by international aid organizations waited at the other end of the village to drive them to the Preševo reception center. But taxis intercepted the refugees on the 3 km walk through the village and convinced many to take a ride (at a tidy profit). At Preševo, police officers initially took 20 Euros for preferential treatment during registration, a practice that ended when registration became more professionalized. Buses from Preševo to the Croatian border cost another 35 Euros per ticket. Initially, there were informal dispatchers that led the refugees to the buses, taking another 5 Euros. As long as refugees and migrants had to cross into Croatia at Berkasovo, they had to exit buses at a main road and walk another 2 kilometers along a smaller path to the border crossing, so taxi drivers were waiting for them at this road crossing to drive them along this small distance at inflated rates. As long as refugees and migrants passed through Belgrade, they had to pay an extra 5 Euros at the main bus station ticket counters, in addition to the ticket price.⁴⁴ However problematic and unethical this business part of the transit regime was, the amount of money paid by refugees and migrants to pass the Balkan route was rather modest when compared to what they paid to smugglers in Turkey to cross the Aegean Sea.

Despite this improvement in the countries' management of the refugee flow, international actors differed in their assessment of the performance of the governments in the region compared with the massive role of domestic civil society and international aid organizations such as UNHCR, IOM, and Doctors without Borders. "President Nikolić in his speech at the UN Security Council said 'we gave them shelter'," an aid organization representative in Serbia noted. The representative continued: "This is not true – we financed it all, even public security. At Horgoš, the police stood by and did not react at all, we tried to organize public order; at Preševo we even paid the road barriers. All the work is done by civil society and international organizations like ours – what the state does, we pay. Refugees are a business, Serbia pays nothing for them."⁴⁵ The representative criticized the government for its belated reaction to calls to come up with an action plan for winterization, refusing the offered assistance. An EU representative was less critical: "True, they did not accept help, including from the EU. In the end, when they finally presented an action plan, it was already outdated. But it nevertheless laid the ground for further planning and donor coordination."⁴⁶ A German government official said: "Both Serbia and Macedonia are keen to do the right thing, to clearly demonstrate a pro-EU policy. Concerning them simply letting people transit, don't forget that under the Geneva refugee convention they are obliged to allow transit to those refugees that don't want to apply for asylum in their countries. In general, both Serbia and Macedonia are working at the limit of their capacities."⁴⁷

⁴³ "Public call to PE Macedonian Railways and Government of the Republic of Macedonia," Joint statement by several Macedonian civil society organizations, October 20, 2015, available at: <http://soros.org.mk/CMS/Files/Documents/JAVEN%20POVIK%20do%20JP%20Makedonski%20zeleznici%20i%20Vlada%20na%20ORM%20-%20ENG.pdf>.

⁴⁴ Interviews with Serbian refugee activists and journalists, Belgrade October and December 2015.

⁴⁵ Interview with an international aid organization representative, Serbia October 2015.

⁴⁶ Interview with EU representative, Belgrade October 2015.

⁴⁷ Interview with German MFA official, Berlin November 2015.

Faced with an unprecedented humanitarian and organizational challenge, the states along the Balkan route acted within tight institutional and political limits. Institutionally weak public administrations and economies constrained operational performance and left most work to non-state actors. Politically, governments emphasized their commitment to a humanitarian policy in line with the EU, which also served as self-promotion for their membership bids, especially in the case of Serbia. But this positive attitude towards refugees had narrow, untested limits. Both domestic and EU interlocutors agreed that the public mood, and hence the policy, would turn against the refugees should a larger number of them decide to remain in the countries of the Balkan route.⁴⁸ In that sense, the policy of (relatively) smooth transit through the countries along the Balkan route was in line with the primary interest of the EU during this period, which was still limited to short-term crisis management. Concretely, it was to prevent major political conflict among affected Western Balkan states and larger scale human rights violations.

From national segregation to daily quotas – with irregular means towards gradual closure

With winter approaching, the debate in the EU increasingly turned to stemming the flow of refugees and migrants, with repercussions on the performance of the countries along the Balkan route. On November 18, Slovenia, Croatia, Serbia, and Macedonia announced a new regime, to take effect immediately. Entry and passage would from now on only be granted to citizens of Syria, Iraq, and Afghanistan. Slovenia was first to announce the new regime, and the other countries followed through in a kind of chain reaction, fearing being stuck with large numbers of refugees and migrants – a pattern that would be repeated in the weeks to follow.⁴⁹ The decision came as a surprise. A day earlier, in the Slovenian town of Brdo, interior ministry officials from Slovenia, Serbia, Macedonia, and Greece had met to agree on better coordination of the refugee and migrant flow. Statements at the meeting mentioned the aim to slow down the flow and the measures that had been agreed at a previous EU-Western Balkan summit, but fell well short of even hinting at the new regime.⁵⁰ As the new regime took effect, Macedonia began building a fence on its border with Greece. On February 5, 2016, building began on a second fence, a reinforcement that was to run parallel to the first one.

This *de facto* collective decision to restrict entry and passage to only three kinds of nationals among the refugees and migrants was both totally arbitrary and illegal. It presented a segregation based on nationality that included the denial of the right to asylum based on having the ‘wrong’ nationality. This was clearly in violation of the Universal Declaration of Human Rights, of the principle of non-discrimination enshrined in the European Convention on Human Rights, and of the right to asylum under the EU Charter of Fundamental Rights. How arbitrary this decision was becomes evident when one compares EU recognition rates of the three nationalities with those of asylum-seekers from some other countries. In

⁴⁸ Interviews with refugee activists, Zagreb and Belgrade September-October 2015, German government officials, November 2015.

⁴⁹ “Kroz balkansku rutu samo Sirijci, Iranci i Avganistanci,” *RFE*, November 19, 2015, available at: <http://www.slobodnaevropa.org/content/srbija-pusta-samo-sirijce-iracane-i-avganistance/27375103.html>.

⁵⁰ “Better operational cooperation and more effective management of the influx of migrants discussed at Brdo pri Kranju,” Slovenian interior ministry press statement, November 17, 2015, available at: http://www.mnz.gov.si/en/media_room/news/article/12208/9506/a197c87b8615119441b024fb6bcc8b25/.

the fourth quarter of 2015, 98% of Syrian applications for international protection inside the EU were approved, while 80% of Iraqis and 57% of Afghans were granted protection. Yet in the same period 93% of Eritreans, 57% of Sudanese and 55% of Iranians who made it to the EU also received international protection. Those nationalities were now blocked from moving along the Balkan route.⁵¹ When asked in private about the basis for the November 18 decision in domestic law, a Macedonian government official was clear: “No, there is no legal basis.”⁵² Also, the new regime gave interpreters – employed by border police of the four countries to check the accents of refugees and migrants – *de facto* executive power with no legal remedies. In order to lend the segregation decision some kind of legal façade, government officials from the region started to label all those refugees and migrants denied entry as either “economic migrants” or “irregular migrants” – totally arbitrary terminology that was nevertheless gradually taken over by their EU counterparts.⁵³

The background of the November 18 decision remains unclear. Slovenian government officials declared that they had received informal signals from Germany and Austria that prompted their move. But a German government official said: “Slovenia insists they received signals, we insist we sent no such signals.” Nevertheless, the fact that neither Berlin nor Vienna went beyond a simple denial of responsibility, and that they issued no explicit criticism of the decision taken by Slovenia and the other three countries, indicates that they at least tacitly approved the move in the hope it would help reduce the refugee and migrant flow. The only clear criticism came from the European Commissioner for Migration, Dimitris Avramopoulos, who noted the illegality of the decision at a meeting with Western Balkan interior ministers in Sarajevo in December – but without catching much public attention in Europe nor producing any practical effect.⁵⁴

Whether the illegal measure had any major practical effect on reducing the number of refugees and migrants crossing into the EU is unclear. Numbers did indeed drop after October, from 165,000 arrivals to Greece by sea in November to 119,000 in December 2015.⁵⁵ But most of the reduction in numbers was arguably due to bad winter weather on the Aegean Sea, while a ferry strike of several days in November in Greece also contributed to the reduction. There were reports that the new regime discouraged migrants from North Africa from taking the Balkan route, but that many of them were preparing to take

⁵¹ Lydia Gall, “Dispatches: Macedonia blocking its borders to people at risk,” Human Rights Watch, November 25, 2015, available at: <https://www.hrw.org/news/2015/11/25/dispatches-macedonia-blocking-its-borders-people-risk>; *First instance decisions by outcome and recognition rates, 30 main citizenships of asylum applicants granted decisions in the EU-28, 4th quarter 2015*, Eurostat, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_by_outcome_and_recognition_rates,_30_main_citizenships_of_asylum_applicants_granted_decisions_in_the_EU-28,_4th_quarter_2015.png.

⁵² Conversation with Macedonian government official, December 2015.

⁵³ “Balkan countries to bar ‘economic’ migrants,” *Balkan Insight*, November 10, 2015, available at: <http://www.balkaninsight.com/en/article/balkan-closes-doors-for-economic-migrant--11-19-2015>.

⁵⁴ Interview with German government official, Berlin December 2015; “Remarks by Commissioner Avramopoulos at EU-Western Balkans Ministerial Forum on Justice and Home Affairs,” Sarajevo December 7, 2015, available at: https://ec.europa.eu/commission/2014-2019/avramopoulos/announcements/remarks-commissioner-avramopoulos-eu-western-balkans-ministerial-forum-justice-and-home-affairs_en; “Refugees suffer under Macedonia’s new border rules” *Balkan Insight*, December 17, 2015, available at: <http://www.balkaninsight.com/en/article/refugees-suffer-under-macedonia-s-new-border-rules-12-16-2015>.

⁵⁵ UNHCR data, available at: <http://data.unhcr.org/mediterranean/regional.php>.

the alternative (and ever more dangerous) Mediterranean route from Libya once the winter was over. Also, the number of asylum-seekers originating from the Western Balkans were down dramatically, due to measures taken by the receiving EU member states. In Germany in January 2016, citizens of Kosovo and Albania made up just 1-2% of the total. Thousands of refugees and migrants who were not from Syria, Iraq, or Afghanistan were left stranded at Idomeni after November 18. The Greek authorities forcibly cleared the border region after several days and moved refugees and migrants back to reception facilities in Athens.⁵⁶

But their fate, and the fate of the newly arriving refugees and migrants to Greece, remained unclear. Many tried to acquire Syrian passports as a counterfeit passport business sprang up in Athens. Others paid smugglers and went on re-opened alternative irregular routes into Macedonia. Several hundreds, even thousands of refugees and migrants were moving between the Greek-Macedonian and the Slovenian-Austrian borders and many of them got stuck, completely deprived of any rights. Several hundred of them filled up the area around the Belgrade train station, where they slept in the open, and another few hundreds stayed in Šid trying to pass the Serbian-Croatian border unnoticed. Ill-treatment by border police and other forms of irregular treatment in the region resumed. The Macedonian police irregularly pushed back thousands they had caught entering the country, refugees and migrants returned to Idomeni were regularly beaten, often brutally, some returned with broken bones. The Gazi Baba detention center started to fill again with refugees and migrants irregularly held, ostensibly as witnesses against smugglers. At the Serbian-Croatian border, too, human rights groups documented irregular push-backs by the Croatian police to Serbia, including of minors, as well as the use of violence against those having been caught crossing into Croatia.⁵⁷

The alternative Balkan route – Bulgaria, the EU’s star pupil

As the Balkan route via Greece and Macedonia closed for many asylum-seekers and migrants, an alternative Balkan route caught more public attention, leading from Turkey through Bulgaria to eastern Serbia, near the town of Dimitrovgrad.

Around 30,000 took the land route into Bulgaria in 2015 – a significant number given that Bulgaria built a fence on the border with Turkey in 2013, and given Bulgaria’s restrictive regime. Reports by various human

⁵⁶ “New rules along Balkan route slash number of migrants,” *Balkan Insight*, February 22, 2016, available at: <http://www.balkaninsight.com/en/article/new-rules-along-balkan-route-slash-number-of-migrants-02-21-2016>; Bundesamt für Migration und Flüchtlinge (BAMF), *Aktuelle Zahlen zu Asyl*, January 2016, p.5., available at: https://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-januar-2016.pdf?__blob=publicationFile.

⁵⁷ Interview with Serbian refugee activist, Belgrade December 2015; “Forged identity papers big business for traffickers in Greece,” *Ekathimerini*, November 20, 2015, available at: <http://www.ekathimerini.com/203930/gallery/ekathimerini/special-report/forged-identity-papers-big-business-for-traffickers-in-greece>; Greece/Macedonia: Asylum seekers trapped at the border, *Human Rights Watch*, February 11, 2016, available at: <https://www.hrw.org/news/2016/02/11/greece/macedonia-asylum-seekers-trapped-border>; Macedonia: New move to lock up asylum seekers, *Human Rights Watch*, December 22, 2015, available at: <https://www.hrw.org/news/2015/12/22/macedonia-new-move-lock-asylum-seekers>; Moving Europe, *Report on Systemic Police Violence and Push-Backs against Non-SIA People Conducted by Croatian Authorities*, January 28, 2016, available at: http://moving-europe.org/wp-content/uploads/2016/01/28.01.2016_Report-Police-Violence-and-Push-Backs.pdf.

rights organizations, confirmed by Serbian refugee activists working at the reception center in Dimitrovgrad, paint a picture of systemic violence applied against refugees and migrants in Bulgaria. If caught, they are taken in custody. Refugees and migrants are regularly beaten by border police with truncheons, wooden branches, fists and electric batons, and bitten by dogs set on them. They are stripped of their belongings, including money and mobile phones. They are pushed back by force across the border to Turkey. In detention camps, they are often deprived of food and water and subject to violence, too. There are also deaths. In March 2015, two Yazidis from Iraq allegedly died after having been beaten and pushed back to Turkey. On October 15, there was the first confirmed death of an Afghan from a bullet fired by a border police officer, allegedly fired in self-defense – a claim rejected by other Afghans present during the incident. Neither case led to any sanctions for the officers involved. Bulgaria’s repressive policy, which runs counter to its international obligations, was defended by the deputy minister of interior, Philip Gounev, who explained in an interview that “the presumption of each police officer is that those people are guilty until proven innocent – they are being captured while committing a crime, crossing the border illegally.”⁵⁸

Though the European Commission opened infringement proceedings against Bulgaria in 2014 and again in 2015, the EU has remained largely silent on Bulgaria’s actions, while Union officials have regularly praised the country for its effective border control. When Bulgarian Prime Minister Boyko Borisov had to leave the October 2015 European Council and return to his country because of the border shooting case, the presidents of the European Council and the European Commission, Donald Tusk and Jean-Claude Juncker, declared to “stand behind Bulgaria.” During a visit of the Bulgarian-Turkish border together with Borisov, then UK Prime Minister David Cameron praised the Bulgarian government’s border regime, stating that “I think there are real lessons to be learned here.”⁵⁹

Meanwhile on the main Balkan route via Greece and Macedonia, the restrictive policy adopted in the U-turn of November 18 continued into 2016. The countries along the route were increasingly forced to deal with unilateral moves by individual EU member states, most notably Austria, which in effect took the countries on the Balkan route hostage. On January 21, Macedonia announced that it would only let those refugees and migrants from Syria, Iraq, and Afghanistan who named Germany or Austria as their final destination pass. This followed a similar practice related to refugees and migrants’ final destination

⁵⁸ “Bulgaria Denies ‘Policy’ of Violence to Refugees,” *Balkan Insight*, December 11, 2015, available at: <http://www.balkaninsight.com/en/article/bulgaria-denies-policy-of-violence-to-refugees-12-11-2015-2>; Lydia Gall, “Dispatches: Asylum seekers stuck at the Serbian/Bulgarian border,” *Human Rights Watch*, December 7, 2015, available at: <https://www.hrw.org/news/2015/12/07/dispatches-asylum-seekers-stuck-serbia-bulgaria-border>; “Bulgaria: Pushbacks, abuse at borders,” *Human Rights Watch*, January 20, 2016, available at: <https://www.hrw.org/news/2016/01/20/bulgaria-pushbacks-abuse-borders>; “Bulgaria: It’s time to address the allegations of abuse of refugees and migrants by the police,” *Amnesty International statement*, December 11, 2015, available at: <https://www.amnesty.org/en/documents/eur15/3058/2015/en/>; *Safe Passage. Testimony of people arriving in Dimitrovgrad, Serbia from Bulgaria*, Belgrade Center for Human Rights, available at: <http://www.bgcenter.org.rs/bgcenter/wp-content/uploads/2015/12/Safe-Passage.pdf>; interviews with Serbian refugee activists, Belgrade October and December 2015.

⁵⁹ “Bulgaria Denies ‘Policy’ of Violence to Refugees”; “David Cameron warned not to condone abuse at Bulgarian border,” *Guardian*, December 3, 2015, available at: <http://www.theguardian.com/politics/2015/dec/04/david-cameron-warned-avoid-condoning-abuse-refugees-bulgarian-border>.

already being applied by Germany and Austria after Sweden and Denmark had resumed border controls. What's more, a day before, on January 20, Austria had announced that it would apply a cap of 37,000 asylum-seekers in 2016. It had also announced a daily quota of 80 persons it would let into the country to apply for asylum in Austria, plus 3,200 it would allow to transit to Germany. Reacting to the Austrian *diktat*, that entered into force February 19, Slovenia, Croatia, Serbia, and Macedonia introduced daily quotas of around 500 persons allowed to transit. In addition, only Syrians and Iraqis were to be allowed in, with Afghans removed from the previous arrangement. The elements of the latter regime were already visible in a joint statement from a meeting of the heads of police of the four countries and Austria that took place on February 18. The statement notes, among others, that "restrictions of destination countries (for example daily quotas) will also be taken into account" – a clear reference to Austria's cap. That the whole regime deviated ever more from the existing legal frameworks is demonstrated by the police heads defining not only Turkey, but also Iran as a "safe third country."⁶⁰

As part of the new arrangement, the direct transit of Refugees and migrants by train from the Macedonian-Greek border at Gevgelija to the Austrian border was agreed. Any refugees and migrants entering the Western Balkans in a different way, for example via Bulgaria and Dimitrovgrad, were excluded from the transit regime and to be expelled. The drastic reduction of the refugee and migrant flow along the Balkan route prompted those EU member states that were in favor of a restrictive policy, first and foremost Austria, to demand the complete closure of the Balkan route. Even though these member states failed to convince German Chancellor Merkel at a March 7 European Council meeting devoted to the refugee crisis to agree to declare the Balkan route closed,⁶¹ the countries along the route reacted just one day after the summit: on March 8, the Slovenian government announced that it would close the border for all refugees and migrants not in possession of a Schengen visa, forcing Croatia, Serbia, and Macedonia to do the same. As of March 9, the Macedonian border to Greece, and with it the Balkan route, was closed completely.⁶²

II. The European Union: from Dublin breakdown to "Balkanization"

Before the crisis: a broken Dublin system

The beginning of an EU asylum policy goes back to the 1985 Schengen Agreement on the abolition of internal borders and the 1990 Dublin Convention adopted by a number of member states. The Dublin

⁶⁰ EU/Balkans/Greece: Border curbs threaten rights," *Human Rights Watch*; available at:

<https://www.hrw.org/news/2016/03/01/eu/balkans/greece-border-curbs-threaten-rights>; *Joint statement of the heads of police services from the meeting held in Zagreb, Croatia, on 18th February 2016*, available at:

http://www.mup.hr/UserDocsImages/topvijesti/2016/veljaca/migranti_sastanak/joint_statement.pdf; Asylgipfel am 20. Jänner 2016 Gemeinsame Vorgangsweise von Bund, Ländern, Städten und Gemeinden, Bundeskanzleramt, available at: <https://www.bka.gv.at/DocView.axd?CobId=61858>.

⁶¹ Due to the German Chancellor's resistance, the sentence in the original draft summit statement, "The Balkan route is now closed" was rephrased as "Irregular flows of migrants along the Western Balkans route have now come to an end;" see: "Merkel resists Balkan route 'closure' in EU summit draft text," *Deutsche Welle*, March 7, 2016, available at: <http://www.dw.com/en/merkel-resists-balkan-route-closure-in-eu-summit-draft-text/a-19098870>.

⁶² "MUP: Makedonija potpuno zatvorila granicu za migrante," *RFE*, March 9, 2016, available at: <http://www.slobodnaevropa.org/a/27600171.html>.

Regulation was introduced as a legal instrument aimed at establishing mechanisms to identify the member state in charge of processing a particular asylum application. Dublin I, as it was called later, defined the basic principle which remains in force today – that the EU member state through which an asylum-seeker first enters EU territory is the one that has to process his or her application. The regulation aimed at doing away with two problems that resulted from the lack of coordination on refugee and asylum matters: ‘asylum shopping’, the filing of multiple applications in different countries, and ‘refugees in orbit’ – endless transfers of asylum seekers among member states with none taking responsibility. It was not created as a burden-sharing mechanism, but presented the lowest common denominator on balancing two imperatives – refugee protection and border protection. With the 1999 Treaty of Amsterdam, the Schengen *acquis* was integrated into the treaty framework, while the Dublin Convention was followed in 2003 by the Dublin II Regulation, which left the basic principle of the Convention intact. This marked the beginning of a Common European Asylum System (CEAS) and of the EU’s progressive development of new competencies in the area of asylum. Besides the Dublin Regulation, the EU introduced EURODAC, a joint EU fingerprint database of all asylum-seekers, and adopted three directives aimed at creating common standards for asylum rights and procedures for all member states (the Asylum Procedures Directive, the Reception Conditions Directive, and the Qualification Directive). It also set up a European Asylum Support Office (EASO) intended to help improve implementation of the CEAS and practical cooperation among member states.⁶³

Yet major problems afflicted the common asylum policy and especially the Dublin Regulation from the outset. The first-entry principle put major burdens on the countries on the EU’s external border, on Italy, Greece, and later Malta and Hungary. In addition, Dublin could only work if member states’ national asylum systems met the prescribed legal standards – but many did not. In 2011, the European Court of Human Rights (ECtHR) for the first time stopped the readmission of asylum seekers to Greece under the Dublin rules because of major deficiencies in the country’s asylum system. Similar rulings followed on Italy, Hungary, and Bulgaria. The rulings created a disincentive for member states on the EU’s periphery to fix their asylum systems and improve standards. At the same time, those states did only partly fulfill their legal obligation to register asylum seekers and feed their data into the EURODAC database, thus in practice enforcing an (irregular) burden-sharing with other member states. Such practices increased at times when member states at the EU’s external border were faced with larger refugee and migrant waves. In 2011, in the midst of the Arab Spring, when growing numbers of refugees and migrants were crossing the Mediterranean from Libya to Italy, Italy found little support from other EU member states. The government in Rome openly threatened it would start to wave through asylum seekers without registration – to no avail. The 2013 revision of the Dublin rules, Dublin III, again did not produce an agreement on burden-sharing, due to continued resistance from Germany and the Central and Eastern European member states that were not affected by the issue. Instead, it basically legalized a situation in which processing asylum claims falls to an EU member state that is not the country of first entry if there

⁶³ Parliamentary Assembly of the Council of Europe, *After Dublin - the urgent need for a real European asylum system*, report by the Committee on Migration, Refugees and Displaced Persons, October 3, 2014, pp.7-9, available at: <http://website-space.net/documents/19863/1278654/20150909-AfterDublin-EN.pdf/755eb5b6-3bd1-4d99-af22-0b18fdb5a513>; European Commission, *A Common European Asylum System*, Brussels 2014, available at: http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf.

are legal obstacles to returning the asylum-seeker to the EU country of first entry.⁶⁴

As a result, the Common European Asylum System has been highly dysfunctional, operating more on an *ad hoc* basis than on the rules and regulations by which all member states are bound. In principle, and partly also in practice, a high burden was being placed on those southern states that had already suffered heavily from the Euro crisis – especially Italy and Greece – and whose asylum systems remained seriously deficient. Yet at the same time, a major burden also fell on the northern members, especially Germany and the Scandinavian countries as a result of their strong asylum systems and high legal standards. In those countries, recognition rates of asylum-seekers are very high compared to those in the southern member states of first entry. A lack of political will to fix the EU's asylum system and move towards a real common asylum policy, one that would have to be based on the principle of just burden-sharing was evident. Instead, a largely informal, broken system remained in place. It was clear that it could not survive a large influx of refugees and migrants.⁶⁵

As the number of refugees and migrants that made the dangerous Mediterranean journey from the Libyan coast to the Italian island of Lampedusa on unsafe smugglers' boats rapidly rose in 2013 and hundreds or thousands drowned in the sea every year, the Italian Coast Guard in October 2013 launched the mission Mare Nostrum. In one year, it rescued more than 100,000 people near Lampedusa, but also close to the Libyan coast. Yet it was criticized by other member states for allegedly creating a pull effect. By the end of 2014, a year in which the number of asylum-seekers in the EU had risen from 400,000 to 640,000 during which sea arrivals to Italy had reached a record high of 170,000, the EU agreed on a joint maritime successor mission, Triton. Yet the mission, to be led by the EU's external border protection agency, Frontex, was equipped with a much smaller budget than Mare Nostrum and a mandate that shifted the focus to combat irregular migration and border protection rather than save lives. The drowning of probably more than 800 people on April 19, 2015 when a smuggler's boat sank on the Mediterranean – the largest number of casualties in a single incident – did not prompt a policy change in the EU. Instead, member states decided to send a naval mission into the Mediterranean, EUNAVFOR, with a mandate to fight smugglers. The EU's militarized response without structural changes to its asylum system had one key effect: it laid the ground for shifting the migrant route into the EU towards the Eastern part of the Mediterranean. There, land borders from Turkey into the Union had been gradually closed. In 2012, Greece built a fence on parts of its border with Turkey, and increased security on the Evros River, which forms the remainder of the border. A year later, Bulgaria started building a 30km fence on its border with Turkey. As a consequence, refugees from Syria and other crisis spots were forced to take the one remaining route into the EU – the Aegean Sea route from the Turkish coast to the nearby Greek islands, which was less dangerous than the route to Italy but still quite dangerous, as subsequent events would

⁶⁴ Julia Lehmann, "Flucht in die Krise – Ein Rückblick auf die EU-Flüchtlingskrise 2015," in: *Aus Politik und Zeitgeschichte*, No.52/2015, available at: <http://www.bpb.de/apuz/217302/ein-rueckblick-auf-die-eu-fluechtlingskrise-2015?p=all>; *After Dublin - the urgent need for a real European asylum system*; Susan Fratzke, *Not Adding Up: The Fading Promise of Europe's Dublin System*, Migration Policy Institute Europe, March 2015, available at: <http://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>; Sabine Riedel, *Fluchtursache Staatszerfall am Rande der EU*, Stiftung Wissenschaft und Politik, October 2015, pp.26-29, available at: http://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/AP-Riedel-Fluchtursache_Staatszerfall-16-10-2015.pdf.

⁶⁵ *After Dublin - the urgent need for a real European asylum system*; *Fluchtursache Staatszerfall am Rande der EU*.

prove.⁶⁶

The collapse of Dublin and Schengen

Greece

When the number of arrivals on the Greek islands started to rise towards the summer of 2015, it was not completely surprising, but the *size* of the refugee and migrant flow was both unpredictable and unprecedented. There was a mix of reasons behind the rise in numbers, among them the unstable security situation in Afghanistan, the rise of Islamic State, and ISIS' occupation of large parts of Iraq. But the single greatest driver was the ongoing civil war in Syria that had entered its fifth year with little end in sight. With daily life almost completely collapsed and the country largely abandoned by the international community, Syrians had lost hope of an end to the war, while their survival became increasingly untenable. The US and the EU, reluctant to engage in the Syrian war from the very beginning, concentrated their military activities in Syria on their air campaign against ISIS. While they declared the war to have become too complicated for any meaningful military intervention aimed at ending it, they insisted the only rational policy option that remained was to secure solid living conditions for the civilian population both inside Syria and for the millions of refugees in neighboring countries. There are at present 2.3 million Syrian refugees in Turkey, between 600,000 and 1.2m in Jordan, and 1-2m in Lebanon – a country of only 4.5m inhabitants. Yet the EU's and US' vehement pronouncements of support to refugees did not prevent the living conditions of Syrian refugees in the region from deteriorating dramatically. Even though Syrians became by far the largest national group within the massive influx of refugees and migrants into Europe, humanitarian aid dropped drastically in 2015. At the end of the year, the UNHCR had secured only 35% of the funds budgeted for its Syria refugee response plan. In Lebanon, for example, food aid rations had to be cut by a third, and the share of beneficiaries had to be reduced from three-quarters to only half of all Syrian refugees. At the same time, the vast majority of refugees in the region living outside refugee camps was running out of private funds or ended up heavily indebted with no improvement in sight – leaving few other options than to try to flee to Europe.⁶⁷

When hundreds and soon thousands of refugees and migrants started to arrive every day on the shores of the Greek island of Lesbos, and to a lesser degree of Chos, Samos, Kos, and Leros over the summer of 2015, they entered the EU through the country most heavily hit by the Euro crisis, which also had one of

⁶⁶ "Das Mittelmeer wird wieder unsicherer," *Süddeutsche Zeitung*, October 31, 2014, available at: <http://www.sueddeutsche.de/politik/seenotrettung-fuer-fluechtlinge-das-mittelmeer-wird-wieder-unsicherer-1.2199997>; Oliver Gerson, "Schutz von Freiheit, Sicherheit und Recht_ Frontex und die europäischen Außengrenzen," in: *Aus Politik und Zeitgeschichte*, No.25/2015, available at: <http://www.bpb.de/apuz/208011/frontex-und-die-europaeischen-aussengrenzen?p=all>; "700 migrants feared dead in Mediterranean shipwreck," *The Guardian*, April 19, 2015, available at: <https://www.theguardian.com/world/2015/apr/19/700-migrants-feared-dead-mediterranean-shipwreck-worst-yet>; *European Union Naval Force - Mediterranean Operation Sophia*, Factsheet, available at: http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf; Amnesty International, *Fears and fences. Europe's approach to keeping refugees at bay*, November 2015, available at: http://www.amnesty.eu/content/assets/Doc2015/2015_Documents/Report_-_Fear_and_Fences-EMBARGO.pdf.

⁶⁷ Björn Blaschke, "360 Grad Damaskus: Zur Lage der Flüchtlinge in der Region," in: *Aus Politik und Zeitgeschichte*, No.8/2016, available at: <http://www.bpb.de/apuz/221178/360-grad-damaskus-zur-lage-der-fluechtlinge-in-der-region?p=all>.

the most dysfunctional asylum systems of all the member states. Before June 2013, under the old asylum procedure in which the police was in charge, the asylum system was suffering from numerous problems that led to serious human rights violations and inefficient processing of claims. Due to a concentration of asylum applications at the Asylum Departments of the Aliens Division in Athens that far exceeded administrative capacities, the majority of asylum-seekers remained outside the asylum procedure. Long detention periods of thousands of asylum-seekers not only failed in its aim to serve as a deterrent, but was also often arbitrary and illegal under European and international refugee and human rights conventions.

Under the new procedure introduced in 2013, the processing of asylum claims was moved to a state body staffed with civil servants, the Asylum Service. Though a marked improvement in numerous respects, the system suffered from the general weakness of public administration and the burden put on it by the strict austerity policy imposed by the EU and the International Financial Institutions (IFIs). Thus, by September 2015, only 6 out of the 13 planned Regional Asylum Offices (RAO) had become operational, including only one on an island (Lesbos). The RAO in Athens remained the main focus of asylum-seekers and was understaffed. An appeals backlog remained a major problem, with 23,000 cases under the old procedure still pending in the autumn of 2015, leaving a number of asylum-seekers waiting for up to 10 years for a decision. A legal remedy under the new procedure continued to be ineffective due to various shortcomings. Accommodation available to asylum-seekers was grossly inadequate, with just a little over 1,000 places. At the same time, the response of the Greek authorities to the rising numbers of refugees and migrants arriving on the islands was slow, and they were ill-prepared to handle the situation. Of eight First Reception Centers to be established at the main entry points under plans that predated the refugee crisis, only one was operational when the number of arrivals increased – at the Greek-Turkish land border, which was no longer a flash point. The second one, on Lesbos, became operational only in September 2015. By that point, of the over 400 staff that were supposed to be in place, just 10% had actually been recruited due to the budgetary situation and various restrictions on recruitment of additional civil servants under the austerity regime; no additional staff were recruited in the first three quarters of the year.⁶⁸

The refugee crisis hit the Syriza government of Alexis Tsipras which had just taken office in early 2015. Committed to upholding human rights, the government had initially undertaken steps to curtail the illiberal detention practices. While the refugee crisis gathered steam, the government had just survived a dramatic struggle with the EU and the IFIs over the third financial aid package that saw banks closed for weeks and brought both the ruling coalition and the country as a whole to the brink of collapse. Under such conditions, the Greek state was completely unprepared and unable to cope with an unprecedented influx of refugees and migrants. The authorities essentially gave up on trying to enforce formal rules and procedures. Under the pressure of the refugee and migrant wave, the security services stopped the surveillance and protection of Greece's sea border, instead concentrating on rescue activities and on regulating peoples' movements "like traffic policemen."⁶⁹ After initial paralysis, the Greek authorities,

⁶⁸ Asylum Information Database (aida), *Country Report: Greece*, European Council on Refugees and Exiles, November 2015, available at: <http://www.asylumineurope.org/reports/country/greece>.

⁶⁹ Andreas Takis, "Refugee crisis 2015: Chronicle of a foretold crisis," December 7, 2015, available at: <https://gr.boell.org/en/2015/12/07/refugee-crisis-2015-chronicle-foretold-crisis>.

under pressure from municipal governments on the affected islands, started to organize special ferry services in order to ease the overcrowding by bringing the refugees and migrants to the mainland, to the ports of Piraeus and Kavala. From there they moved onwards to the Greek-Macedonian border near Idomeni. On the islands, reception infrastructures, from accommodation and food to registration and identification, were far below needed capacities. Basic needs were secured by local and international NGOs and humanitarian organizations. According to estimates, the Greek authorities in September registered only about 8% of all those arriving on the islands.⁷⁰ With no joint European response in sight, the Greek government with its crisis measures semi-officially turned the country back into what it has always been – a country of passage with poor reception conditions, slow asylum procedures, and non-existent integration prospects for asylum-seekers. The momentous collapse of both the EU’s external border and of the EU’s Common Asylum system created an additional pull effect.⁷¹

The collapse of the already rickety Dublin system transferred the decision about which member state would file and process an asylum request from the EU to the refugees and migrants themselves – who decided with their feet. Moving along the Balkan route, the refugees and migrants, the vast and still increasing majority of whom were coming from Syria, Iraq, and Afghanistan, were joined by a number of people from the Western Balkans with little prospect of getting asylum in the EU. By the end of 2015, Albania, Kosovo, and Serbia were among the top ten countries of origin of asylum-seekers.⁷² The stream of refugees and migrants entered or re-entered the European Union through another problem child of the Union – Hungary.

Hungary

In Hungary, the conservative FIDESZ government of Prime Minister Viktor Orbán was pursuing a tough asylum policy in contravention of the country’s European and international legal obligations. In 2010, Budapest introduced a policy of detaining essentially all asylum-seekers without effective legal remedy, a move that prompted several EU member states to suspend returns to Hungary under the Dublin rules and that was identified by the ECtHR as a breach of the European Convention on Human Rights. Under EU pressure, the government in June 2013 amended the asylum act in order to limit the grounds for detention. Families with children subsequently were no longer detained. But with three of Hungary’s seven asylum centers remaining of closed nature, 25% of all asylum-seekers and 40% of all single men were still being detained. Detention was ordered based on totally arbitrary criteria – including nationality and the availability of places in open asylum centers. Among those detained were also unaccompanied minors, which was illegal even under national law.⁷³

⁷⁰ Takis; “Gestrandet auf der Balkanroute,” *Die Zeit*, February 23, 2016, available at: <http://pdf.zeit.de/politik/2016-02/fluechtlinge-balkanroute-eu-warnung-humanitaere-katastrophe.pdf>.

⁷¹ Takis; Nada Ghandour Demiri, “Refugee crisis in Greece”, October 22, 2015, available at: <https://gr.boell.org/el/node/461>; “Greek asylum system is broken cog in Turkey plan”, *EUobserver*, March 14, 2016, available at: <https://euobserver.com/migration/132677>.

⁷² “Record number of over 1.2 million first time asylum seekers registered in 2015,” Eurostat New Release, March 4, 2016, available at: <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/>.

⁷³ Nils Muižnieks, Council of Europe Commissioner for Human Rights, *Report following his visit to Hungary from 1 to 4 July 2014*, Strasbourg, December 16, 2014, pp.36-38, available at:

The substantial increase in the number of refugees and migrants entering Hungary in 2014, most of them Kosovo Albanians intending to transit towards other EU member states such as Germany, Austria, and Sweden, prompted the government to embark on a xenophobic campaign against refugees and migrants in early 2015. The campaign included a parliamentary session on what they called “livelihood immigrants”, the distribution of a questionnaire to 8 million citizens asking them whether those irregularly entering the country should be detained, and a billboard campaign with anti-asylum and anti-immigration messages. In addition, Orbán and other high-level government officials announced amendments to the asylum and immigration laws aimed at returning to the strict pre-2013 regime – in full awareness of the breach of EU law.⁷⁴

When the large refugee and migrant wave hit Hungary in the summer of 2015, the official reaction was more organized, but also considerably more repressive than that of Greece. With a clearly stated ideological intention to reject receiving any asylum-seekers or immigrants, especially from Muslim countries, and no interest in participating in any EU efforts towards a joint refugee and asylum policy, the Hungarian government was both underperforming and acting indecisively. A detention center was built at Röske near the Hungarian-Serbian border, where refugees and asylum migrants were being fingerprinted and identified; it became notorious for its shortages of food and water and sanitary supplies, and for ill-treatment by the police that ran it. From there, refugees and migrants were let go to reach one of the asylum centers located in the north of the country by train via Budapest. In the capital, the main train stations Keleti, Nyugati, and Deli and their surroundings turned into informal refugee camps with unbearable conditions, with local authorities providing almost no aid except for a few showers and toilets. Most support was organized by volunteers. Faced with the fact that the refugees and migrants absconded, taking trains in Budapest towards Austria and Germany, the authorities developed new tactics. On September 2, they suspended trains from Keleti to Austria and platforms were closed for refugees and migrants. The next day, the train service resumed, but instead of going to Austria, the train stopped outside the capital at the town of Bicske where refugees and migrants were forced by riot police into the local reception center. News of this reached those stuck in Budapest prompting thousands to take to the highways leading to Austria, on foot. The chaos was only stopped by the intervention of the German and Austrian Chancellors on September 5, reopening safe passage through Hungary.⁷⁵

The building of the fence at the Hungarian-Serbian border created a strong pull factor for refugees and migrants to reach Hungary before its completion and as a consequence, arrivals to the Greek islands

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2831773&SecMode=1&DocId=2218468&Usage=2>.

⁷⁴ Hungarian Helsinki Committee, *Media Information note*, March 4, 2015, available at: <http://helsinki.hu/wp-content/uploads/Asylum-2015-Hungary-press-info-4March2015.pdf>

⁷⁵ *Europe's Borderlands*, pp.53-61; Amnesty International, *Fenced out. Hungary's violations of the rights of refugees and migrants*, October 2015, pp.10-12, available at: <https://www.amnesty.org/en/documents/eur27/2614/2015/en/>; Lydia Gall, “Volunteer Lifeline for asylum seekers in Hungary,” Human Rights Watch, August 25, 2015, available at:

<https://www.hrw.org/news/2015/08/25/dispatches-volunteer-lifeline-asylum-seekers-hungary>; Lydia Gall, “Stranded in Budapest’s train station,” Human Rights Watch, September 4, 2015, available at:

<https://www.hrw.org/news/2015/09/04/dispatches-stranded-budapests-train-station>; Lydia Gall, “Refugees march out of Hungary,” Human Rights Watch, August 25, 2015, available at: <https://www.hrw.org/news/2015/09/05/dispatches-refugees-march-out-hungary>.

swelled in the weeks leading up to the eventual closure of the border on September 15. At the same time, a series of legislative amendments entered into force and established an asylum regime even stricter than that in place prior to 2013.⁷⁶ In its list of safe third countries Hungary included Serbia, the only EU member state to do so. Moreover, the changes essentially turned the safe third country mechanism into an automatic collective and peremptory rejection of almost all asylum claims with no practical chances for asylum-seekers to have their cases examined on an individual basis. In addition, access for refugees and migrants to Hungary was reduced to two “transit zones” – a number of containers integrated into the border fence that were declared by the Hungarian government to be a kind of no man’s land, though clearly located on Hungarian state territory. Irregular border crossing was made a criminal offense to be sanctioned with up to eight years in prison. The new regime, in essence, presented a multifaceted gross violation of almost all international and European refugee and human rights conventions, and introduced regulations that had already been declared unconstitutional by the country’s Constitutional Court. With this almost hermetic exclusion of refugees and migrants from protection in Hungary, the country *de facto* took itself out of the EU’s Common European Asylum System, while it continued to be one of the main obstacles to generating a joint policy response to the European refugee crisis.⁷⁷

Berlin seizes leadership – and gets stuck in transition

When German Chancellor Angela Merkel phoned her Hungarian counterpart Orbán on September 4 in the midst of the escalating refugee crisis and reached agreement to let the thousands of refugees and migrants stuck at Budapest’s train stations move on to Germany and Austria,⁷⁸ she seized European leadership just as she had in various previous European crises such as the Euro crisis or the Ukraine crisis. Already in August, the German Federal Office for Migration and Refugees had temporarily suspended application of the Dublin rules for Syrian nationals, leaving Germany as the only member state that had adjusted its policy to the crisis on the ground by receiving large numbers of refugees and migrants. And just as in previous crises, Merkel’s intervention followed a well-established pattern of reactive German leadership and the formation of a coalition of willing member states.⁷⁹ The coalition consisted mostly of Germany, Austria, and the Scandinavian and Benelux states, which subsequently became the main receiving countries for refugees and migrants. This approach fully fit Merkel’s technocratic-managerial policy style that served her well in handling severe short-term challenges, but was devoid of any relevant long-term policy strategies or visions. In the case of the refugee crisis, as an exception to the rule, the German Chancellor demonstrated an unusual, emphatic public defense of her policy by referring to

⁷⁶ Hungarian Helsinki Committee, “Building a legal fence – Changes to Hungarian asylum law jeopardise access to protection in Hungary,” August 7, 2015, available at:

<http://helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf>.

⁷⁷ Hungarian Helsinki Committee, “No country for refugees,” Information note, September 18, 2015, available at:

http://helsinki.hu/wp-content/uploads/HHC_Hungary_Info_Note_Sept_2015_No_country_for_refugees.pdf.

⁷⁸ “Fast 20.000 Flüchtlinge in München angekommen,” *Tageschau.de*, September 78, 2015, available at:

<http://www.tagesschau.de/ausland/fluechtlinge-771.html>.

⁷⁹ Like, for example, in the euro crisis, in the Ukraine crisis or in the Kosovo-Serbia conflict in 2011. See: Bodo Weber,

“Deutschlands außen- und sicherheitspolitische Verweigerung,” in: Heinrich Boell Foundation, *15. Außenpolitische*

Jahrestagung: Auf dem Weg zu mehr Verantwortung?, June 2014, available at:

https://www.boell.de/sites/default/files/e-paper_aupo2014.pdf.

European democratic and humanitarian values – on the national level. It gained her the support of a German society that had embraced the notion of a ‘welcome culture’ (*Willkommenskultur*) to an unprecedented degree. Asked about the alleged pull-effect of opening Germany to refugees, she said that if it was necessary to apologize for “showing a friendly face in an emergency situation, *then this is not my country.*”⁸⁰

Merkel’s September 4 intervention with a friendly face were soon attacked both in Germany and in the wider EU as the single most important act that caused the refugee movement to get out of control. It is true that the border opening and the German welcome culture delivered an additional pull effect. But no feasible alternative to Merkel seizing leadership existed in European crisis management. The clash between the authoritarian and xenophobic Orbán government and the stream of refugees and migrants attempting to transit Hungary at the beginning of September 2015 risked chaos with unpredictable consequences. At the same time, German government officials from the outset underscored that Germany’s opening of its border presented a one-time crisis intervention measure that did not free other member states from their obligations under the Common European Asylum System.⁸¹ What caused the refugee crisis to get out of control over subsequent months was not Merkel’s *intervention*, but that her attempt to *transition* German leadership of a coalition of the willing into a joint EU policy failed for the first time since the outbreak of the Euro crisis.

At the national level, members of the coalition of the willing took several immediate steps to better manage the refugee and migrant flow. These were uncontroversial among all the EU member states. Thus the German government in September decided to add the last three remaining Western Balkan states – Kosovo, Albania, and Montenegro – to its list of countries of safe origin based on the assessment that the vast majority of asylum-seekers from the region were not in need of international protection. Other member states followed suit. Over the next half year, numbers of asylum-seekers from these countries dropped to a very low level.⁸² Meanwhile, at the EU level, the European Commission in May presented the European Agenda on Migration,⁸³ a proposal for a comprehensive reform of the Union’s asylum and migration policy that had been long in the works. It covered four main areas – a stepped-up fight against irregular migration, a securing of the EU’s external borders, a more harmonized, common asylum policy,

⁸⁰ Transcript of German Chancellor Merkel’s press conference with Austrian Chancellor Werner Faymann, September 15, 2015, available at: <https://www.bundeskanzlerin.de/Content/DE/Mitschrift/Pressekonferenzen/2015/09/2015-09-15-merkel-faymann.html>; “Willkommenskultur für Flüchtlinge. Was hinter der Hilfsbereitschaft der Deutschen steckt,” *Süddeutsche Zeitung*, September 11, 2015, available at: <http://www.sueddeutsche.de/leben/willkommenskultur-fuer-fluechtlinge-was-hinter-der-hilfsbereitschaft-der-deutschen-steckt-1.2642991>;

⁸¹ “Steinmeier – Grenzöffnung nicht ‚zur Praxis machen‘,” *Die Welt*, September 5, 2015, available at: <http://www.welt.de/politik/deutschland/article146071274/Steinmeier-Grenzoeffnung-nicht-zur-Praxis-machen.html>; “CSU kritisiert Merkel-Entscheidung zur Flüchtlingsaufnahme,” *Bayrischer Rundfunk*, September 5, 2015, available at: <http://www.br.de/nachrichten/koalition-krach-fluechtlinge-100.html>.

⁸² Thus in January 2016, according to data from the interior ministry, the share of asylum seekers originating from the Western Balkans was between one and two percent. See: Bundesamt für Migration und Flüchtlinge BAMF, *Aktuelle Zahlen zu Asyl*, January 2016, p.5., available at: https://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-januar-2016.pdf?__blob=publicationFile; “Treffen zur Flüchtlingshilfe. Die Ergebnisse im Detail,” *tagesschau.de*, September 25, 2015, available at: <https://www.tagesschau.de/inland/bund-laender-ergebnisse-101.html>.

⁸³ European Commission, *A European Agenda for Migration*, May 13, 2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf.

and a new policy on legal migration. In addition, the Commission proposed a number of short-term responses to the mass influx of refugees and migrants. These measures became the main point of contention of the EU's approach to the refugee crisis among member states, rather than the comprehensive reform measures. A temporary relocation scheme for the distribution of refugees and migrants from Greece, Hungary, and Italy to all other member states was supposed to ease migration pressure on the countries located on the periphery of the Union. A redistribution key based on objective criteria such as population size, GDP, unemployment rate, and the number of asylum applications filed in recent history were meant to assure a fair burden-sharing system. A new hotspot approach was also proposed for identification, registration and fingerprinting of refugees and migrants by frontline member states (like Greece, Italy), supported by EU agencies (EASO, Frontex, Europol). The European Asylum Support Office (EASO), Frontex, Europol and the EU Judicial Cooperation Agency were to support Greece and Italy in setting up hotspot systems for the efficient identification, registration, and fingerprinting of the large number of refugees and asylum-seekers; the (open) hotspots would also be used for the implementation of the relocation scheme. Five hotspots were supposed to be established in Greece, all on the most affected islands (Lesvos, Kos, Chios, Leros, Samos). In the longer term, the principle of redistribution should become part of a permanent emergency response system, according to the Commission.

At the end of May 2015, the Commission proposed to relocate 40,000 refugees and migrants from Greece and Italy, and to resettle an additional 20,000 refugees from third countries, mostly Syrians from Turkey, Jordan, and Lebanon, over a period of two years. The suggestion was adopted by the Council of the EU in July. Faced with a dramatically growing refugee and migrant wave over the summer, the Commission at the beginning of September proposed an additional relocation scheme for 120,000 refugees and migrants from Greece, Italy and Hungary. Due to the lack of consensus, the decision on the scheme was moved from the European Council, where member states have a veto right, to the Council of the EU, more precisely to the interior ministers of the 28 member states, where the rules offer the opportunity to decide by a so-called Qualified-Majority Vote. On September 22 the Council indeed approved the relocation scheme with a qualified majority vote.⁸⁴ The Czech Republic, Hungary, Slovakia, and Romania voted against the decision – with the exception of Hungary, none of these countries had been affected by the refugee crisis at all. The decision was the EU's first under its joint asylum policy, based on the principle of burden-sharing. It provoked massive active and passive resistance, despite the fact that the EU-wide overall number of 160,000 was modest in relation to the evolving overall influx. On the day of the Council decision, Slovakia's Prime Minister Robert Fico attacked it as a "*diktat* from Brussels" and declared that "as long as I am prime minister, mandatory quotas will not be implemented on Slovak territory."⁸⁵ His Hungarian counterpart Viktor Orbán later announced a national referendum against the relocation scheme.⁸⁶ Following parliamentary elections in Poland in October that were won by the conservative

⁸⁴ European Council, Justice and Home Affairs Council, *Outcome of the 3405th Council meeting*, July 20, 2015, available at: http://www.consilium.europa.eu/de/meetings/jha/2015/07/st11097_en15_pdf/.

⁸⁵ "EU backs refugee relocation plan, but faces continental drift," September 22, 2015, available at: <http://euranetplus-inside.eu/eu-back-refugees-relocation-plan-but-faces-continental-drift/>.

⁸⁶ "Hungary to hold referendum on EU migrant relocation," *Politico Europe*, February 24, 2016, available at: <http://www.politico.eu/article/hungary-to-hold-referendum-on-eu-migrant-relocation-asylum-refugee-crisis-news/>.

nationalist opposition, the Law and Justice (PiS) Party, the countries of the Visegrad group aligned behind Orbán's xenophobic anti-asylum and anti-immigration policy. During that time, the German government's insistence on the so-called North Stream II pipeline project with Russia further alienated the Visegrad countries. Berlin's insistence on the project ran contrary to the burden-sharing Eastern European member states had accepted in the EU's approach to another joint pipeline project with Moscow, South Stream, during the Crimea crisis in 2014 which ultimately led to the cancellation of the pipeline construction plans.⁸⁷

By early January 2016, only 272 asylum-seekers had been relocated, a miniscule proportion of the (piddling) 4,200 places that had been made available by member states.⁸⁸ At the same time, Greek authorities were slow to establish the planned hotspots – fearing that the other EU member states could decide to return to the existing Dublin rules and massively return asylum seekers once Athens re-established effective control over the Union's external border and improved the country's asylum system. Only one out of five hotspots, on Lesbos, was operational by the end of 2015. It took until April 2016 to get them all up and running – by this time the main refugee wave had already subsided.⁸⁹ This overt and covert resistance against what was a legally binding Council decision demonstrated that the EU had effectively ceased to function as a rules-based community of states on refugee and asylum policy. The Union proved incapable of any meaningful joint action. For the next half year – and despite around a dozen formal and informal EU Council meetings throughout the refugee crisis – EU member states were unable to agree on any substantial policy decision.

Triage in the absence of Union

Caught between the failure to agree to a mechanism for joint burden-sharing and the growing numbers of refugees and migrants reaching the EU, Germany and the other members of the initial coalition of the willing were forced throughout the autumn to focus their political efforts on helping Greece to better handle the refugee and migrant flow and on assisting the countries on the Balkan route to defuse their relationships and improve their operational capacities to enable a smooth transit. As this coalition essentially consisted of the only EU countries receiving refugees and migrants, Berlin and its allies embarked on a desperate search for ways to reduce the flow. More systematic – and redundant – registration of refugees and migrants at each successive border may indeed slightly have reduced the velocity of the flow. But better coordination among countries of the region counteracted the stalling effect of the registration processes. As winter approached, officials hoped that bad weather would at least temporarily stem the flow.

⁸⁷ "Tusk joins 'Visegrad Four' in attack on Nord Stream 2," *EurActiv.com*, December 18, 2015, available at: <http://www.euractiv.com/section/energy/news/tusk-joins-visegrad-four-in-attack-on-nord-stream-2/>.

⁸⁸ European Commission, *Member states support to emergency relocation mechanism*, as of January 7, 2016, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_member_state_pledges_en.pdf (accessed: January 10, 2016).

⁸⁹ European Commission, *Second report on relocation and resettlement*, April 12, 2016, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160412/communication_second_report_relocation_resettlement_en.pdf.

Against this background, the heads of EU institutions met on October 25, 2015, with the leaders of the Western Balkan countries, and other countries in the region (Albania, Bulgaria, Romania, Hungary), and the UN High Commissioner for Refugees. In their final statement, the leaders declared that they would “discourage the movement of refugees or migrants to the border of another country of the region.”⁹⁰ They committed themselves to a substantial increase of temporary shelter to be ready for the winter season – 50,000 placements in Greece, including 20,000 in private accommodation, and another 50,000 in the countries along the Balkan route. This very general commitment left key questions open, for example: whether the number of placements along the Balkan route also included Austria and other Western Balkan countries not directly affected by the migration wave, or how refugees and migrants who wanted to move on towards Germany and other EU countries could be made to stay in these reception centers other than by force.⁹¹ But one signal from the meeting was clear: the EU was determined to use the countries on the Balkan route to keep a substantial proportion of refugees and migrants in the region and away from the main EU receiving countries through the winter. And this was precisely the reason why the idea failed. In the absence of political will in the EU to confront the problem and accept a level of burden-sharing, the countries along the route (whether EU member states or not) correctly viewed the October 25 plan as an attempt by the EU to outsource its internal problem to them. Understandably, they resisted such an attempt.

The four countries on the main Balkan route indeed began to winterize their reception centers. The European Commission’s December 2015 implementation report⁹² noted that Greece had started with the creation of 27,000 out of the 50,000 placements, and that along the Balkan route 20,000 placements had been made available or were in the planning stage. However, of these 27,000 placements in Greece, only 7,000 were in first reception facilities on the islands; the rest were in private accommodation on the mainland. On the Balkan route, the Commission counted 2,000 placements in Macedonia, 6,000 in Serbia, 5,000 in Croatia, and 7,000 in Slovenia. Yet in reality, in Serbia the government *never* gave the green light for the several thousand additional placements to which it had committed. The remaining placements in the four countries listed in the Commission report were basically winterized short-term reception sites, as the Commission itself admitted in the report in noting a “lack of political will to create reception capacities for a stay of more than 24 hours... a ‘transit’ philosophy which is not in line with a full commitment to contribute to slowing the flow of migrants and refugees.” The governments along the Balkan route were – most charitably – paying lip service to the commitments they had made at the summit.

The debate shifts from Dublin to Schengen

During the fall of 2015, the EU’s internal debate over the refugee crisis shifted towards the question of

⁹⁰ Leaders’ Meeting on refugee flows along the Western Balkans Route: Leaders’ Statement, October 25, 2015, available at: http://ec.europa.eu/news/2015/docs/leader_statement_final.pdf.

⁹¹ Interviews with EU officials, Belgrade October 2015, and German government officials, Berlin, November 2015.

⁹² European Commission, *Report on the follow-up to the Leaders’ Meeting on refugee flows along the Western Balkans Route*, December 15, 2016, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/report_western_balkans_en.pdf.

the future of Schengen.⁹³ Following the collapse of the Union’s external border in the Aegean, the member states that ended up with the bulk of refugees and migrants gradually reintroduced border controls. Germany started on September 13 with a focus on its border with Austria, and Austria followed three days later, concentrating controls on its borders with Hungary and Slovenia.⁹⁴ Northern Schengen members Sweden, Norway, and Denmark reintroduced border controls on land and ferry connections among themselves and with Germany between the end of November and the beginning of January 2016. For the first time in 50 years, controls between Sweden and Denmark were re-introduced. This especially affected traffic over the Øresund Bridge.⁹⁵ The Schengen member states thereby made use of provisions of the Schengen Borders Code that allow for the temporary reintroduction of controls in case of a “serious threat to public policy or internal security” (Articles 23, 24, 25). The European Commission had confirmed the use of this mechanism based on the “threat” that arose from the uncontrolled, unregistered mass influx of refugees and migrants. It also clarified that the installation of border fences as such was not against EU law as long as the rights resulting from the EU asylum *acquis* were not impeded.⁹⁶ In May 2016, the Commission went a step further and proposed the collective extension of internal border controls for all five member states that had introduced them.⁹⁷ In February, the Commission published a report on the deficiencies in Greece’s management of the external borders that included a set of recommendations to be fulfilled within a three-month period.⁹⁸ When the Commission assessed in May that Greece had not met that deadline, it invoked Article 19 (formerly 26), the last resort under the Schengen regulations which enables the reintroduction of internal border controls with one or more states in the case of a threat to the overall functioning of the internal Schengen area.

The reintroduction of border controls further fueled the internal EU debate about the Union’s crisis response. Various leaders including Commission President Jean-Claude Juncker and German Chancellor Merkel warned that should Schengen fail, the Euro and with it the whole EU would also be at risk. Hungarian Prime Minister Orbán and others reinforced their argument that the key to a solution of the refugee crisis lay in the effective control of the EU’s external border, not in any redistribution of refugees and migrants. However, the Schengen debate as a whole served as a distraction, shifting discussion away from the core problem – the collapse of Dublin and the joint EU asylum policy. The partial collapse of the

⁹³ See for example: “Judy Asks: is Schengen Dead?”, Carnegie Europe, August 26, 2015, available at: <http://carnegieeurope.eu/strategieurope/?fa=61105>.

⁹⁴ *Commission opinion on the necessity and proportionality of the controls at internal borders reintroduced by Germany and Austria*, European Commission, October 23, 2015, available at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/borders-and-visas/general/docs/commission_opinion_necessity_proportionality_controls_internal_borders_germany_austria_en.pdf.

⁹⁵ “Ein gefährliches Spiel,” *Die Zeit*, January 28, 2016, available at: <http://www.zeit.de/2016/03/grenzkontrollen-skandinavien-schweden-daenemark-schaeden>.

⁹⁶ *Eighth biannual report on the functioning of the Schengen area*, European Commission, December 15, 2015, available at: <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-675-EN-F1-1.PDF>; *The Schengen Rules Explained*, European Commission Fact Sheet, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/the_schengen_rules_explained_20160210_en.pdf.

⁹⁷ *Questions & Answers: A coordinated EU approach for temporary internal border controls*, European Commission Fact Sheet, May 4, 2016, available at: http://europa.eu/rapid/press-release_MEMO-16-1628_en.htm.

⁹⁸ “Council Implementing Decision setting out a Recommendation on addressing the serious deficiencies identified in the 2015 evaluation of the application of the Schengen *acquis* in the field of management of the external borders by Greece,” Council of the EU, February 12, 2016, available at: <http://data.consilium.europa.eu/doc/document/ST-5985-2016-INIT/en/pdf>.

Schengen system was not a cause of the refugee crisis, or even a contributing factor. Nor would its complete restoration have delivered any sustainable solution.

The initial reintroduction of internal border controls by countries including Germany and Austria did indeed serve the limited purpose of bringing the mass influx under control. But in the case of Hungary, the building of border fences denied refugees and migrants access to the international protection that EU legislation obliges member states to provide. The reintroduction of border controls among the three Scandinavian countries was clearly intended to keep asylum-seekers away from these countries. This aim was achieved through the subsequently introduced practice of Germany and Austria – outside of any Schengen and Dublin rules and in de facto cooperation with the four states on the Balkan Route – to refuse entry to those refugees and migrants who named Scandinavia as their final destination. In the end, this served all countries involved in reducing the flow of refugees and migrants. Meanwhile, the failure of Greek authorities to ensure systematic registration of refugees and migrants arriving on their shores was declared to be the key threat to Schengen. Yet the Croatian government, despite its early success in systematically registering people entering its territory, systematically refused to enter registration data into the EURODAC database out of fear the EU would at some point reinstate the Dublin rules and start to return a huge number of refugees and migrants to Croatia. Finally, even if the Greek authorities had successfully established effective border management, including in the Aegean Sea, this would only have meant the systemic and comprehensive registration of all refugees and migrants. It would not have solved the refugee crisis or reduced the influx – unless “establishing full control over the EU’s external borders” meant keeping refugees and migrants away from access to asylum procedures in the EU, in open violation of the Union’s internal and international legal obligations.

The collapse of the coalition of the willing

EU leaders had hoped the winter season would lead to a substantial reduction in arrivals, providing breathing space for agreement around a collective and sustainable policy solution. Initially, in the early days of winter, numbers indeed dropped to a certain extent (from 165,000 in November 2015 to 73,000 in January 2016⁹⁹), but the EU failed to take advantage of the lull to develop a coherent common policy. As the winter dragged on, a series of policy proposals from member states were thrown into the debate. In common was the evident abandonment among their sponsors of even seeking a joint EU policy. A growing number of member states made unilateral moves – including some of the members of Merkel’s coalition of the willing. As a consequence, within two months – in January 2016 – the coalition would collapse.

France was the first and most influential EU member to drop out of the coalition. Following the terrorist attacks in Paris in November,¹⁰⁰ the French government of President François Hollande and Prime Minister Manuel Valls redefined the French policy debate on the refugee crisis as a security issue rather than a humanitarian question. Under intensified pressure from the far-right *Front National*, the government

⁹⁹ UNHCR data, available at: <http://data.unhcr.org/mediterranean/regional.php>.

¹⁰⁰ “Paris attacks kill more than 120 people – as it happened,” *the Guardian*, November 13, 2015, available at: <https://www.theguardian.com/world/live/2015/nov/13/shootings-reported-in-eastern-paris-live>.

quietly abandoned any intention to take in a larger number of refugees and migrants, despite Hollande reassuring Merkel of French solidarity.¹⁰¹ At the end of November, Sweden, another key ally of Merkel's European refugee policy, followed suit when the center-left/Green minority government announced measures to reduce the flow of refugees and migrants. The move was a U-turn for a country that had taken in 160,000 asylum-seekers in 2015 (more per capita than any other member state) and that had traditionally had a liberal asylum policy that made it a role model within the EU.¹⁰² In the end, it was Merkel's closest ally who dealt the death blow to the coalition of the willing – Austrian Chancellor Werner Faymann. Austria, with 90,000, had taken in more asylum-seekers per capita than Germany. After weeks in which Faymann, a Social Democrat, had rejected political demands of his conservative coalition partner, the Austrian People's Party (ÖVP), to introduce a cap on asylum-seekers by pointing out that such a move would be in breach of the right to asylum as established in the Austrian constitution and EU law, he surrendered. Following a national asylum summit on January 20, the government announced the introduction of a cap on asylum applications for the following three years and of daily entry and transit quotas.¹⁰³ Vienna subsequently drastically militarized its rhetoric. It joined Hungary, Slovenia, and other EU member states in threatening Greece with the closure of the Macedonian-Greek border – to which Greece reacted with the counter-threat to block all EU decision-making should the country be left alone with the refugee crisis. Finally, the Austrian government began to take the countries on the Balkan route hostage, a policy that peaked with a Western Balkans-Austria migration summit on February 24, and the final, complete closure of the Balkan route following the March 7-8 EU-Turkey summit – a move that ran counter to the European Council conclusions.¹⁰⁴

Several common denominators in these U-turns by Germany's closest allies can be identified: 1) The policy turns in countries like Austria and Sweden were followed by the introduction of very restrictive asylum legislation; 2) The protagonists declared their policy shift not to have been their first choice, but a Plan B in response to the lack of a joint EU policy (Sweden, Austria); 3) The main political parties in all three countries were collectively in crisis, unable to implement long-needed structural political reforms, and therefore found themselves under political pressure from populist, right-wing parties; 4) Giving in to populist demands on asylum policy failed to drain support from the populists. France's main parties of

¹⁰¹ "Angela Merkel defends Germany's open-door refugee policy," *Financial Times*, November 25, 2015, available at: <http://www.ft.com/intl/cms/s/0/a60f289a-9362-11e5-bd82-c1fb87bef7af.html#axzz48rFjSVq0>.

¹⁰² "Hilflose Attacke gegen das schwedische Modell," *Die Zeit*, January 13, 2016, available at: <http://www.zeit.de/politik/ausland/2016-01/fluechtlingspolitik-fluechtlinge-schweden-daenemark-asyl-grenze>.

¹⁰³ An expert opinion commissioned by the Austrian government to assess the legality of its decision on a cap on asylum-seekers concluded that it violates both EU law and the Austrian constitution, see: *Gutachten Völker-, unions- und verfassungsrechtliche Rahmenbedingungen für den beim Asylgipfel am 20. Jänner 2016 in Aussicht genommenen Richtwert für Flüchtlinge*, Innsbruck-Wien March 26, 2016, available at: <http://www.bundeskanzleramt.at/DocView.axd?CobId=62571>.

¹⁰⁴ "Werner Faymann: Flüchtlinge an den Grenzen besser kontrollieren," January 12, 2016, available at: https://www.bka.gv.at/site/cob__61785/currentpage__0/5911/default.aspx; *Gemeinsame Vorgangsweise von Bund, Ländern, Städten und Gemeinden zum Asylgipfel am 20. Jänner 2016*, January 20, 2016, available at: <https://www.bka.gv.at/DocView.axd?CobId=61858>; „Österreich erwägt Militärmission auf dem Balkan," *Spiegel Online*, February 5, 2016, available at: <http://www.spiegel.de/politik/ausland/fluechtlinge-oesterreich-will-notfalls-soldaten-auf-den-balkan-schicken-a-1075965.html>; *Managing Migration Together: Declaration*, Austrian Federal Ministry of European Integration and External Affairs, Vienna February 24, 2016, available at: https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussendungen/2016/Westbalkankonferenz_Draft_Declaration_Letztfassung.pdf.

center-left and center-right failed to regain the trust of French citizens, while in Austria both mainstream candidates failed to make it into the second round of a presidential election and Faymann was forced to resign as chancellor and leader of the SPÖ.¹⁰⁵

With the departure of its main allies, Germany was effectively left as the sole receiving country of refugees and migrants in the EU. The Union's refugee crisis policy essentially fell to Merkel alone. At the same time, her open-door policy came under increasing pressure *within* Germany. The events in Cologne on New Year's Eve changed the public debate about refugees and migrants. Several hundred instances of pickpocketing and aggressive sexual harassment and even assault against women were reported to have been committed by young men of Arab and North African origin in a crowd of around 1,000 celebrating in front of the main train station.¹⁰⁶ Although the full background and dynamics of the incident are somewhat unclear even today, discussions about "the Arab man"¹⁰⁷ and the compatibility of Islam and Muslim culture with Western societies dominated public discourse for weeks and served to question the *Willkommenskultur*. The debate mirrored both the uncertainty of Western societies about the rise of collective religious (and ethnic) fundamentalism in the 21st century as well as Germany's unresolved collective self-understanding as a nation following the late political consensus, reached a decade earlier, that the country was indeed a country of immigration.

The debate also breathed new life into the ailing, new populist right-wing party *Alternative für Deutschland* (AfD). At the same time, Merkel came under attack from her party's Bavarian sister party, the CSU. CSU leader and Bavarian Prime Minister, Horst Seehofer, constantly attacked Merkel's liberal refugee policy and demanded the introduction of a cap on asylum claims, demands that also resonated within the ranks of Merkel's CDU.¹⁰⁸ Merkel was not impressed. In her traditional technocratic way, she kept repeating her argument that there existed no legal basis for a cap and that her policy of insisting on a joint EU solution to the refugee crisis was the only rational option. Yet what both the changed public debate and Merkel's reaction had in common was the failure to acknowledge the elephant in the room – the lack of unity among EU member states over the refugee crisis and the conclusions to be drawn from the disunity.¹⁰⁹

Faced with the collapse of the coalition of the willing within the EU, and mounting political pressure inside Germany, Merkel turned to the outside in her increasingly desperate search for a political solution to the European refugee crisis – to Turkey.

¹⁰⁵ "How to not handle an anti-immigration backlash," *Politico.EU*, May 10, 2016, available at:

<http://www.politico.eu/article/werner-faymann-how-not-to-handle-anti-immigration-backlash-refugee-crisis-austria-far-right/>.

¹⁰⁶ "Die Kölner Silvesternacht und ihre Folgen," *Die Welt*, April 6, 2016, available at:

<http://www.welt.de/regionales/nrw/article154073827/Die-Koelner-Silvesternacht-und-ihre-Folgen.html>.

¹⁰⁷ "Wer ist der arabische Mann?," *Die Zeit*, January 17, 2016, available at: <http://www.zeit.de/2016/03/sexismus-fluechtlinge-islamismus-araber-frauen>.

¹⁰⁸ "Seehofer fordert Obergrenze von 200.000 Flüchtlingen pro Jahr," *FAZ*, January 3, 2016, available at:

<http://www.faz.net/aktuell/politik/fluechtlingskrise/csu-chef-seehofer-fordert-obergrenze-von-200-000-fluechtlingen-pro-jahr-13994723.html>.

¹⁰⁹ "Merkel lehnt Kurswechsel in der Flüchtlingspolitik ab," *Süddeutsche Zeitung*, February 28, 2016, available at:

<http://www.sueddeutsche.de/politik/fluechtlingspolitik-merkel-lehnt-kurswechsel-in-der-fluechtlingspolitik-ab-1.2884828>.

III. Outsourcing the solution to EU's problems – the EU-Turkey deal

Re-engagement

As early as September 2015, Merkel and other EU leaders began stressing Turkey's key role in any solution to the European refugee crisis. This was the beginning of a re-kindled EU-Turkey relationship that would see Merkel visit the country no less than eight times between autumn 2015 and the final sealing of the deal with Ankara on March 18, 2016. In the years before, Turkey and the EU had engaged in a kind of non-relationship which seemed to satisfy key political players on both sides, with the EU accession process frozen and the Erdoğan regime becoming increasingly authoritarian. From 2002-12 the AK Party government led by Erdoğan had pursued an impressive agenda of democratization and economic reform, undertaken in the framework of the country's EU accession process. That process was basically cut short in 2012 by ideological resistance against Turkey's EU membership bid by Merkel and then French President Nicolas Sarkozy, aided by the unresolved Cyprus conflict. In that context and partly due to the EU's policy shift, Erdoğan moved towards a policy of ever faster rollback of democratic reforms and peace negotiations with the Kurdish minority in order to pursue his aim to turn the Turkish Republic into an authoritarian presidential system. Turkey's outsized ambition to become a key international player foundered in the wake of Egypt's coup of 2013 and the wars in Libya and Syria; the multidirectional expansion of its engagement left it more isolated than before. On Syria, where Turkey had taken an early stand against Assad, the US and the EU were only too happy to leave the initiative to Ankara. Turkey ended up isolated and largely alone in dealing with 2.3 million refugees.

When Berlin and the rest of the EU began to engage with Ankara on the refugee crisis, Turkey had only recently established a legal framework for asylum. Previously, Turkey's policy had been determined by the fact that it was one of the few countries that had ratified the 1951 Geneva refugee convention but kept the original geographical limitation of granting refugee rights to Europeans. Refugees and asylum-seekers from non-European countries were officially granted provisional residence until they were resettled in third countries. The system had been managed by the Turkish national police and was deficient in multiple aspects. The UNHCR had played an important role through an informal arrangement in registering and processing asylum claims with the aim of relocating asylum-seekers to other countries. In June 2013, an EU-inspired Law on Foreigners and International Protection was adopted within the framework of Turkey's visa liberalization process. Management of asylum and migration matters was moved to a civilian institution, the Civilian Directorate General of Migration Management (DGMM). Within the remaining geographical limitation the law provided for three types of individual international protection: 1) Full refugee status for European nationals; 2) A 'conditional refugee status' for non-Europeans with limited rights, not including long-term legal integration or access to citizenship and family reunification; and 3) A subsidiary protection status in line with international standards for those who did not qualify for the other two categories but could not be sent home to their countries of origin. In addition, since October 2014, Syrians enjoyed a special 'temporary protection' on a group basis. Roughly 10% of Syrian refugees lived a comparably stable life in state-run camps where they had access to food, health care, and education. Yet the remaining 90% of Syrian refugees lived in miserable conditions in private accommodation with little access to public services and with irregular work, since Syrian typically had no

right to work permits. Hundreds of thousands of children did not go to school for years as many of them were forced to work.¹¹⁰

Thus in 2015, the historic introduction of a legal framework for asylum still had limited practical impact. It was only in June 2015 that the transfer of the full caseload from the national police and UNHCR to the DGMM was completed. Very few decisions on international protection applications have been taken to date.¹¹¹

The November 29 EU-Turkey Joint Action Plan

On November 29, 2015, the EU and Turkey activated a Joint Action Plan on Managing the Refugee Crisis that had already been agreed on October 15.¹¹² It basically offered Turkey substantial financial support to care for Syrian refugees in return for undertaking a set of measures aimed at reducing the refugee and migrant flow to the EU. EU representatives had substantially diverted from unwritten political rules in advance of the deal to accommodate Erdoğan. On October 18, Merkel paid a visit to Ankara, at a politically sensitive moment – just two weeks ahead of early parliamentary elections in Turkey. In addition, the European Commission postponed publication of the EC 2015 (Progress) Report on Turkey until after the Turkish elections – the first time that politics so openly influenced what is supposed to be an objective assessment document.¹¹³

The joint action plan centered around a number of key measures: 1) The EU would provide 3 billion Euros for the costs of Syrian refugees in Turkey, in part to finance access to education for more children, and Turkey in return would introduce legal provisions to grant work permits to Syrians; 2) Turkey would strengthen its visa regime towards certain countries whose nationals made up a substantial share of the refugee and migrant flow to Europe; 3) Turkey and the EU would advance the entry into force of a readmission agreement for third-country nationals from 2017 to June 2016 and Turkey would unblock implementation of its bilateral readmission agreement with Greece; and 4) The Turkish Coast Guard would step up its border control activities, with operational support from the EU, with the aim to end irregular migration to Greece, or at least to substantially reduce the flow.¹¹⁴

During the 2015-2016 winter season, much of the agreement had in fact been implemented or at least

¹¹⁰ Asylum Information Database (aida), *Country Report: Turkey*, December 2015, available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_update.i.pdf; Nejat Taştan, “The Situation in Turkey With Respect to the Refugees from Syria,” *Heinrich Böll Foundation Turkey*, available at: <https://tr.boell.org/de/2014/06/18/situation-turkey-respect-refugees-syria>; Human Rights Watch, “*When I picture my future, I see nothing. Barriers to education for Syrian refugee children in Turkey*,” November 2015, available at: https://www.hrw.org/sites/default/files/report_pdf/turkey1115_brochure_web.pdf.

¹¹¹ Aida, *Country Report: Turkey*.

¹¹² European Commission, *EU-Turkey joint action plan - Fact Sheet*, October 15, 2015, available at: http://europa.eu/rapid/press-release_MEMO-15-5860_de.htm.

¹¹³ “Merkel shifts EU-Turkey stance upon migrant crisis,” *Hürriyet Daily News*, October 18, 2015, available at: <http://www.hurriyetaidailynews.com/merkel-shifts-eu-turkey-stance-upon-migrant-crisis.aspx?pageID=238&nID=90028&NewsCatID=510>; “EU sidelines critical Turkey report as it seeks migration deal,” *Financial Times*, October 16, 2015, available at: <https://next.ft.com/content/1b4044b8-7415-11e5-bdb1-e6e4767162cc>.

¹¹⁴ European Commission, *EU-Turkey joint action plan - Fact Sheet*.

begun to be implemented:¹¹⁵ Turkey introduced visa requirements for Syrians from third countries arriving by air or sea and took steps to seal the land border with Syria. It also abolished the option for Iraqi citizens to obtain visas at the border and limited e-visa procedures to citizens from the US and European countries. Yet several structural problems with the joint action plan remained, impeding its successful implementation: First, the complete closure of routes to Turkey (and hence, to Europe) for Syrians in Syria and in refugee camps in Lebanon and Jordan was tougher than the EU's approach during the 1990s Balkan wars, and clashed with Europe's professed humanitarian values. Second, work permits for Syrian refugees in Turkey (with its 10% unemployment rate) did not substantially relieve the existential challenges of those refugees not living in camps. Third, and most important, it quickly proved to be an unrealistic expectation for the Turkish authorities to seal the sea border with Greece, not least because of Turkey's long, winding Aegean coastline. At the same time, Turkish security forces were overstretched, not least because of a campaign against Kurdish insurgents in eastern Turkey (an issue that the EU avoided raising in order to win Ankara over on the refugee issue).¹¹⁶ Though the number of refugees and asylum-seekers reaching the Greek islands substantially dropped, to 70,000 in January and 60,000 in February 2016,¹¹⁷ there was agreement within the EU that the drop was primarily due to the weather, not the agreement. In February, Merkel managed to convince Ankara and Athens to agree to a NATO naval mission in support of both countries' coast guards in the fight against irregular migration.¹¹⁸ Yet with Austria's unilateral policy to enforce the gradual closure of the Balkan route, Merkel was running out of time with her Turkey policy; it had to start producing tangible results. As a consequence, Berlin and other EU actors started to brainstorm about a Plan B, an upgraded EU-Turkey agreement. The thinking revolved around two elements that had been floating around as policy proposals¹¹⁹ for some time: First, that in order to ensure Ankara's cooperation in holding back refugees and migrants from Europe, the EU needed to offer some burden-sharing in the form of relocation to the EU of a substantial share of Syrians residing in Turkey; and second, that a substantial reduction of the refugee and migrant flow could only be achieved by finding some procedural mechanisms to return to Turkey all those arriving on Greek shores.

The March 18 EU-Turkey deal

Against that background, then-Turkish Prime Minister Ahmet Davutoğlu came to Brussels on March 7 with a new proposal that was partly modified by the EU and endorsed at a subsequent EU-Turkey Summit on

¹¹⁵ European Commission, *State of Play of Implementation of the Priority Actions under the European Agenda on Migration*, February 10, 2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf.

¹¹⁶ Interview with Turkish journalist, January 2016.

¹¹⁷ <http://data.unhcr.org/mediterranean/regional.php>.

¹¹⁸ "Nato enters the migration control business," *EUobserver*, February 18, 2016, available at: <https://euobserver.com/opinion/132309>.

¹¹⁹ These elements had been most clearly advocated in a plan by the Dutch MP Samson in the so-called Samson-plan, see:

"Dutch want migrant swap deal with Turkey," *EUobserver*, January 28, 2016, available at:

<https://euobserver.com/migration/132032>; elements had been earlier advocated by the European Stability Initiative (ESI), see:

Why people don't need to drown in the Aegean. A policy proposal, September 17, 2015, available at:

<http://www.esiweb.org/pdf/ESI%20-%20Why%20people%20drown%20in%20the%20Aegean%20-%2017%20September%202015.pdf>.

March 18. The agreement consists of six basic elements:

1. As of March 20, all refugees and migrants arriving to the Greek islands will be returned to Turkey.
2. For each Syrian national returned, another Syrian refugee will be relocated from Turkey to the EU. Relocations will first be covered by the remaining 18,000 of the 22,000 places to which EU member states had committed themselves in July 2015 under the resettlement scheme. Further needs will be covered up to a limit of 54,000 places from the September 2015 relocation scheme.¹²⁰
3. Once irregular crossings between Turkey and the EU have ended or at least substantially eased, EU member states will voluntarily take in an additional (to be determined) number of Syrian refugees from Turkey.
4. The EU will lift visa requirements for Turkish citizens no later than June 2016, provided that all 72 conditions of the visa roadmap have been met.
5. Chapter 33 in Turkey's EU accession process will be opened in the first half of 2016.
6. Turkey will receive *another* 3 billion Euros in aid from the EU.¹²¹

The deal was hailed as a great success for Merkel, who appeared to have regained her leadership on the EU stage, and also a return to joint EU policy-making on the refugee issue. Yet it raised serious questions: how likely was it that it could be implemented? And even if it was implemented – might the collateral damage not be greater than the immediate benefit? These doubts cover at least eight distinct areas of concern:

- a. It was unclear whether the return deal would have a substantial calming impact on the refugee and migrant flow across the Aegean Sea; and in the event it did, if the flow would not simply be diverted to other, new routes.
- b. The 1:1 resettlement deal would automatically cease once it exceeded the 18,000 plus 54,000 cap. At the same time, the member states had already proven they are unwilling to meet the commitments originating in the July 20 and September 22 relocation schemes.
- c. In order to have a legal basis for returning all refugees and migrants to Turkey, the EU decided to designate Turkey as a safe third country and first country of asylum. This was clearly a legal manipulation that severely violates and discredits the EU's commitments to the rule of law. Turkey clearly is neither a safe third country nor a safe first country of asylum for a number of reasons that open the possibility that persons returned from Greece will find themselves at risk of *refoulement* on account of the following
 - the legal limitations of asylum rights, especially the geographical limitation;
 - the DGMM's still underdeveloped capacities to proceed asylum claims;
 - the lack of legal guarantees for non-Syrians to (re)gain international protection status;
 - the practice of illegal detention of asylum-seekers and of the lack of or refusal of legal aid;
 - the politicization and weakness of the judiciary in Turkey; and
 - the serious allegations made by local and international human rights organizations about

¹²⁰ The places from the overall number of 160,000 relocation places that had originally been planned for Hungary, but became vacant as refugees and migrants had in the meantime moved on to other EU countries.

¹²¹ European Council, *EU-Turkey statement, 18 March 2016*, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

irregular pushback of Syrians and other nationals to their countries of origin.¹²²

All relevant local, European, and international human rights and asylum organizations, UNHCR and the Council of Europe are united in rejecting the deal’s legal basis.¹²³ The fact that Greece is *still* not recognized as a safe country by the EU, but Turkey now *is*, speaks for itself. There is a high probability that return to Turkey will not stand up to a legal challenge, either in Greece or before the European Court of Human Rights.¹²⁴

- d. The resettlement deal breaches the principles of non-discrimination as it excludes non-Syrians.
- e. Greek authorities have to process asylum claims from each individual applicant before he or she can be returned to Turkey. Even with staff support from EU institutions and member states, this will exacerbate Greece’s capacity problems.
- f. The concessions to Turkey on visa liberalization and EU accession after years of (EU critiqued) democratic rollback suggest that the EU has sacrificed its conditionality for political aims, with unforeseen consequences for the EU’s wider integration policy. EU representatives insisted they would not compromise on conditions. But the deal’s inclusion of deadlines for the lifting of visa requirements and the opening of an accession chapter contradicts this spin. This was set to create tensions between the agreement and the insistence on strict conditionality, creating a risk that the EU will either have to compromise over conditions or see the deal collapse. At the same time, the deal provided cover for Turkish and EU leaders to pursue their incompatible agendas: there is no sign that Erdoğan intends to use the revived accession process to deepen democratic reform, while Merkel and her party have not changed their opposition to Turkish membership in the EU. This has significant implications for the EU’s enlargement policy beyond Turkey, and will further discredit EU accession among Turkish citizens.
- g. Even if a visa-free regime is established, it will be at risk for as long as the Turkish government continues its campaign against Kurdish insurgents (Kurdistan Workers’ Party – PKK), since there is a potential for a rise in asylum claims from Turkish Kurds.
- h. The deal is based on, and deepens, the EU’s dependence on Turkey. Though German and EU officials reject this notion and insist that the dependence is mutual, this inter-dependence is nevertheless to the strong disadvantage of the EU. Merkel’s grand bargain with Erdoğan resulted from the lack of a joint EU refugee policy, and in effect marked the outsourcing of the Union’s fundamental problem of disunity to Ankara. It was telling that the European Commission postponed the publication of its proposals for a reform of the CEAS, including the Dublin regulation, originally planned for March 15, until after the EU-Turkey Summit.

The implementation of the EU-Turkey agreement has to date largely confirmed many of these serious concerns. The closure of the Aegean route on March 20 led to a dramatic drop in the number of daily

¹²² Amnesty International, *Europe’s Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey*, December 2015, available at: <https://www.amnesty.org/en/documents/eur44/3022/2015/en/>.

¹²³ See for example: Amnesty International, “EU-Turkey Summit: EU and Turkish leaders deal a death blow to the right to seek asylum,” March 8, 2016, available at: <https://www.amnesty.org/en/latest/news/2016/03/eu-turkey-summit-reaction/>; “U.N. rights groups say EU-Turkey migrant deal may be irregular,” Reuters, March 9, 2016, available at: <http://www.reuters.com/article/us-europe-migrants-idUSKCN0WA1D4>.

¹²⁴ Yves Pascouau, “EU-Turkey Summit on the refugee crisis Law and (dis)order?” European Policy Centre Commentary, March 21, 2016, available at: http://www.epc.eu/pub_details.php?cat_id=4&pub_id=6418.

arrivals to the Greek islands down to an average of 100-200 in the first few weeks.¹²⁵ The closure of the border with Macedonia stranded more than 50,000 refugees and migrants in the country, including some initial 20,000 at Idomeni. But the closure of the Macedonian border also meant that the islands, which had been emptied of refugees and migrants prior to March 20, no longer had that escape route available, and new arrivals were now backing up - some 5,600 by the beginning of April, over 10,000 by the end of July – far beyond reception capacities.¹²⁶

The technical and procedural implementation of the readmission process in the first weeks clearly confirmed that the EU had entered the deal with Turkey in an operational rush and through deliberate flouting of its legal obligations. The Greek authorities on March 20 turned the existing (open) hotspots on the islands into detention centers (closed hotspots). This automatic, group-based detention was clearly unlawful. On the eve of April 4, the day the return process was supposed to start, the Greek parliament adopted a set of amendments to the asylum law that legalized detention, established a fast-track procedure for the examination of asylum applications, and changed the provisions for the application of the concepts of safe third country and first country of asylum, partly lowering guarantees.¹²⁷ Due to their rejection of the legal basis of the EU-Turkey readmission agreement, UNHCR and all other international and local aid organizations ended their engagement on the Greek islands. As the Greek authorities were left to their own devices, detention center conditions dropped below acceptable standards, with poor quality of food, lack of proper access to health care, sanitation facilities or legal aid, and no services available for people with special needs (such as young children, pregnant women, unaccompanied minors, people with physical or psychological disabilities).¹²⁸ The unbearable conditions provoked revolts by inmates, which prompted the authorities to partially re-open the closed refugee and migrant centers. Moreover, only 390 persons were readmitted by Turkey in all of April (On April 4, 202 people were returned and 124 four days later; another 50 were returned on April 22 and only 15 in the last week of the month).¹²⁹ By July 11 the number of Syrians resettled from Turkey to the EU under the 1:1 scheme was up at 802.¹³⁰

The return process has been mired in secrecy. The first two return operations only involved migrants who according to Greek and EU officials had not requested asylum, prompting the other migrants on the

¹²⁵ IOM, *Mediterranean Migrant Arrivals in 2016: 180,245; Deaths: 1,232*, April 22, 2016, available at: <http://www.iom.int/news/mediterranean-migrant-arrivals-2016-180245-deaths-1232>.

¹²⁶ “Greece moves closer to enforcing EU-Turkey deal as situation on islands worsens,” *Ekathimerini*, April 1, 2016, available at: <http://www.ekathimerini.com/207556/article/ekathimerini/news/greece-moves-closer-to-enforcing-eu-turkey-deal-as-situation-on-islands-worsens>; *Summary statement of refugee flows at 8.00 10.08.2016*, Greek Coordination Body for the Refugee Crisis, available at: http://www.media.gov.gr/images/prosfygiko/REFUGEE_FLOWS-10-08-2016.pdf.

¹²⁷ aida, *Greece: Asylum reform in the wake of the EU-Turkey deal*, April 4, 2016, available at: <http://www.asylumineurope.org/news/04-04-2016/greece-asylum-reform-wake-eu-turkey-deal>.

¹²⁸ Human Rights Watch, *Greece: Asylum seekers locked up*, April 14, 2016, available at: <https://www.hrw.org/news/2016/04/14/greece-asylum-seekers-locked>.

¹²⁹ European Commission, *First Report on the progress made in the implementation of the EU-Turkey Statement*, April 20, 2016, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160420/report_implementation_eu-turkey_agreement_nr_01_en.pdf.

¹³⁰ European Commission, *Fifth report on relocation and resettlement*, Brussels July 13, 2016. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/fifth_report_on_relocation_and_resettlement_en.pdf

islands to lodge asylum claims immediately. Greece's Asylum Service, even with staff assistance from the EU, is unable to process large numbers of asylum applications and to manage the readmission deal with Turkey. On the other hand, if the authorities had accelerated returns to Turkey, this would have exposed the EU's inability to implement its side of the bargain – the relocation of 160,000 asylum-seekers out of Italy and Greece to other member states, and the resettlement of Syrians from Turkey under the 1:1 scheme. (By mid-April, the European Commission was forced to concede that only 0.7% (1,145) of the 160,000 relocations agreed the previous summer had been implemented.¹³¹ By July 11 that number had gone up to a still meager 3,271.¹³²

At the same time, the readmission procedures, despite the low numbers, appear highly flawed. UNHCR insisted that at least 13 persons had been returned to Turkey despite having applied for asylum, while testimonies collected by human rights groups suggest that most of those returned were not ever informed that they would be taken back to Turkey and that they had a right to claim asylum. In Turkey, the groups of returned migrants were, except for two Syrians, transferred to the Kırklareli closed detention/removal center and sealed off from both the media and NGOs providing legal advice – a breach of domestic and international law and a clear indicator that the Turkish authorities did not intend to grant them international protection, but to deport them to their countries of origin.¹³³

In May, appeals committees in Greece made a few rulings in favor of asylum-seekers not to be returned to Turkey and rejected the notion of Turkey as a safe country, thus putting the legality of the EU-Turkey deal into question. As of June 12, there were already 70 such rulings. One case is also pending at the European Court of Human Rights.¹³⁴

Meanwhile, the tensions inherent in the offer of a visa-free regime to Turkey as of June 2016 became evident early in May. On May 4, the Commission published its third report on Turkey's progress in fulfilling the conditions of the Visa Liberalization Roadmap. The Commission recommended the granting of visa-free travel to Turkish citizens under the condition that the remaining five benchmarks be met before June.¹³⁵ However, only a day later, Erdoğan forced then Prime Minister Davutoğlu, one of the architects of the refugee deal, to resign. The following day, he put the whole agreement with the EU in doubt by rejecting one of the key remaining conditions for visa liberalization – Turkey's anti-terrorism law, one of the main pieces of legislation that assisted the regime's consolidation of dominance over the media,

¹³¹ *Second report on relocation and resettlement*, European Commission, April 12, 2016, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160412/communication_second_report_relocation_resettlement_en.pdf.

¹³² *Fifth report on relocation and resettlement*.

¹³³ Human Rights Watch, *EU/Greece: First Turkey deportations riddled with abuse*, April 19, 2016, available at: <https://www.hrw.org/news/2016/04/19/eu/greece-first-turkey-deportations-riddled-abuse>; *Mülteci-Der's Observation on refugee situation in Turkey*, April 22, 2016, available at: <http://www.multeci.org.tr/haberdetay.aspx?Id=141>

¹³⁴ ProAsyl, *Hot Spots in der Ägäis: Zonen des Elends und der Rechtlosigkeit*, June 17, 2016, available at: <https://www.proasyl.de/news/hot-spots-in-der-aegaeis-zonen-des-elends-und-der-rechtlosigkeit/>.

¹³⁵ European Commission, *Third Report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap*, May 4, 2016, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf.

academic life, and society as a whole.¹³⁶ As an immediate consequence, the decision on visa liberalization was postponed to October. Whatever the outcome of this conflict in the end – whether both sides agree on a compromise or the EU sticks to its conditions and the agreement collapses – these frictions demonstrate the potential damage done to the EU by the deal as well as the Union’s dependence on an unpredictable and highly personalized regime.

Meanwhile in Brussels, on April 6 the European Commission finally presented its proposal for a reform of the Common European Asylum System to member states and the European public.¹³⁷ The proposal includes suggestions on two alternative options for the reform of the Dublin regulations, both based on the principle of burden-sharing, and on the establishment of a centralized EU Asylum Agency with operational competencies. Given the struggle to develop a joint EU policy response to the refugee crisis, it remains a mystery how the Commission thinks it can bring member states to agreement on any substantial reform of the Union’s asylum system

¹³⁶ “Europe to Turkey: We won’t be bullied on refugees,” *Politico Europe*, May 10, 2016, available at: <http://www.politico.eu/article/europe-to-turkey-we-wont-be-bullied-on-refugees-migration-crisis-europe-greece-migrants-asylum/>.

¹³⁷ European Commission, *Questions & Answers: Reforming the Common European Asylum System, May 4, 2016*, available at: http://europa.eu/rapid/press-release_MEMO-16-1621_en.htm.

Conclusions and recommendations

Conclusions

The European refugee crisis began in the first half of 2015 as a consequence of the long-term political disengagement of the US and the EU from the Middle East, especially from the civil war in Syria, and of a failed EU asylum policy. All the main players, including Germany, had been evading their joint responsibility until they were forced to deal with the real-life consequences of this behavior. It was also a crisis that had been predicted and could have been entirely avoided. Had the EU, or at least a coalition of willing member states, in early 2015 decided to pay a sufficient contribution to the UNHCR's Syria refugee response plan and to relocate 2-300,000 Syrian refugees from Lebanon, Turkey, and Jordan, there would have been no European refugee crisis and no breakdown of the Union's external borders. The EU would have ended up with far fewer refugees and asylum-seekers than it actually did in 2015, probably with little more than in 2014, if at all.

Instead, the refugee and migration issue developed into an unprecedented crisis over the summer. The EU's external borders along the Aegean Sea all but collapsed, and the utter dysfunctionality of the Dublin system and the Schengen regime was exposed. The crisis was aggravated by the fragile democracies and hybrid regimes along the Balkan route, difficult regional relations, the weakness of the Greek state, and the authoritarian transformation of Hungary's political system under Prime Minister Viktor Orbán.

Nevertheless, in early fall of 2015, the crisis was still manageable, as was evident when German Chancellor Angela Merkel stepped up to provide EU leadership on September 4. She applied an approach that she had previously used to defuse various EU crises – reactive German leadership, underpinned by assembly of a coalition of willing member states.

Yet the EU's crisis management capacity reached breaking point on September 22, when Slovakia and other Central European member states announced that they would not implement a legally binding decision, taken by a weighted majority of member states that day, to launch a refugee relocation scheme. At this point, the refugee crisis turned into an existential crisis for the EU. It became evident that the refugee crisis had exacerbated, and made visible, another crisis – a crisis of the EU as such, the result of an erosion of internal coherence and unity, and of the commitment to the Union's basic liberal-democratic values that had been underway since the beginning of the Eurozone crisis. Merkel and the other members of the coalition of the willing, however, shied away from addressing this core crisis at the heart of the refugee emergency, demonstrating once again that the EU has been suffering from an enduring lack of leadership and vision. Instead, the coalition's attempt to manage the refugee crisis without addressing the core problem led, through the winter of 2015-16, to the collapse of the coalition of the willing, leaving Germany as the sole EU crisis manager. As governing coalitions in Austria, Sweden, and other member states began giving in to domestic pressure from populist political forces, they added nothing to the solution of the refugee crisis, and at the same time failed to stem the decline of political support from their citizens. The collapse of the coalition of the willing was marked by an increase in unilateralism and talk of the refugee crisis as an existential threat to the EU.

Without the will to address the core crisis of the EU and without a coalition of the willing, Merkel was left

with no other option than to outsource the solution to an impossible yet compelling partner – Erdoğan’s Turkey. The deal has established a non-reciprocal dependence of the EU on Turkey. At the same time, it is a sad irony that both Austria, whose actions had forced Merkel into a deal with Ankara, and Merkel, who offered Ankara a new start to the EU accession process in return for taking back refugees and migrants from Greece, had for years been among Europe’s main opponents of Turkey’s EU bid.

The EU’s outsourcing deal with Erdoğan is dangerous because it leaves the crisis at the core of the EU unaddressed. Even as it may be delivering short-term relief on the refugee question, its long-term collateral damage far outweighs any benefits. The deal

- undermines the EU’s internal enforcement of common legislation and rules that are based on the Union’s core liberal-democratic values, including in the struggle against illiberal and authoritarian transformations in Poland and Hungary;
- damages the EU’s foreign policy reputation and weakens its international position, presenting an opportunity for Russia to weaken the EU through subversion;
- further undermines the EU’s enlargement policy and the leverage of its conditionality-based toolbox in pushing for democratic reforms in its neighborhood, by again demonstrating its willingness to sell out. This is a dangerous signal to ruling political elites that have an interest in undermining reforms, potentially affecting the Union’s policy towards Turkey, the Western Balkans, and Ukraine; and
- destroys prospects for the successful handling of any larger future influx of refugees by subverting the ideas of burden-sharing and of the strengthening of the Common European Asylum System.

The coup attempt in Turkey of July 15, has not substantially affected the conditions of the EU-Turkey refugee deal, but it highlighted the Union’s dependency on Ankara and the long-term damage from the deal.

Recommendations

The European refugee crisis is a serious challenge for the EU that has no quick fixes and comes with burdens and costs, along with benefits; but it need not pose an existential threat to the EU or its member states. It is manageable, if managed jointly.

The EU’s core crisis, by contrast, is far more profound and indeed existential, and it must be urgently addressed – even more so given the outcome of the UK’s June 23 Brexit vote.

1. Addressing the EU’s internal crisis

To that end:

- Merkel and other EU leaders need to take the UK’s June 23 Brexit vote as a wake-up call to urgently initiate a public discussion about a reform of the EU. This debate, besides addressing the socio-economic questions that arose from the crisis of the eurozone in a systematic and open way, needs to primarily aim at the re-affirmation of the Union as a community of states based on common liberal-democratic values. Only as a second step shall it aim at a new agreement on the division of

competencies between the Union and its sovereign member states in core policy areas. One option might be a new attempt to draft an EU constitution;

- This debate needs to both take place among member states' governments and as a broad, participatory public discussion. Member states governments, EU institutions, pro-European parties and civil society need to start a Europe-wide campaign to build and strengthen a constituency among citizens of all member states for such a re-affirmed EU founded in liberal democratic values.

2. Towards a sustainable refugee crisis policy

In parallel, the EU, its institutions, and the member states that are committed to a values-based European asylum policy must work towards a change of the current asylum and migration policy. As a first step, the EU must adopt a sustainable approach to the immediate refugee crisis that is firmly rooted in legal obligations and based on joint action and responsibility.

A different EU-Turkey deal

The EU should cancel the EU-Turkey agreement of March 18 and instead offer Ankara a new deal that rewards Turkey for cooperation in curbing irregular border-crossing into Greece with genuine burden-sharing, while decoupling EU accession and visa liberalization from the migration issue. This would avoid dependency on Ankara and collateral damage to the EU, while creating space for the Union to re-define its relationship with Turkey in the wake of the failed coup. The main ingredients of such a new agreement should be:

- intensified efforts by Turkish security agencies against unauthorized crossings of the Aegean Sea, supported by and in cooperation with the EU;
- lifting of Turkey's geographical limitations in the application of the 1951 Geneva refugee convention;
- continued EU commitment of €6 billion in support for Syrian refugees in Turkey as agreed in March 2016;
- registration of asylum-seekers who reach the Greek islands and a first screening of their asylum claims by Greece's Asylum Service, supported by EU agencies and member states in open hotspots;
- return to Turkey only of those migrants who have not claimed asylum;
- relocation of refugees and migrants seeking asylum among EU member states according to a fair distribution key based on objective criteria, such as those proposed by the European Commission in 2015. Asylum-seekers' preferences for a certain member state should be taken into account if possible, but not amount to a right to choose a country. Member states such as Germany with a longer tradition of immigration and asylum should voluntarily take in higher quotas, thus substantially lowering the quotas of the other member states;
- within member state quotas, groups of asylum-seekers from countries of origin with a low recognition rate inside the EU should be relocated to EU member states with more efficient asylum administrations, in order to secure swift processing and return to their home countries of the bulk of those not entitled to international protection. In addition, a corrective mechanism should annually adjust those member state quotas to the actual recognition rates of those received under the relocation scheme in previous years.

- closure of the Greek-Macedonia border from the Greek side to prevent re-emergence of the Balkan route, and thus support the enforcement of relocation. EU member states' border police that currently support the Macedonian authorities in sealing the border should move over to the other side of the border and assist the Greek border;
- temporary voluntary resettlement of several hundred thousand Syrian and other refugees from Turkey to the EU, primarily to member states willing to take on a major share, but with at least the symbolic participation of all EU countries.

Other supportive measures

Several other measures not linked to Turkey should be undertaken by the EU and its member states:

- the European Commission must make consistent use of infringement procedures against Bulgaria over its systemic violations of fundamental rights of migrants and asylum-seekers;
- the Commission must make consistent use of infringement procedures against Hungary and Austria to bring their recently changed asylum legislation back in line with the EU *acquis* and European and international conventions;
- the Commission must put pressure on the Greek authorities, through infringement procedures and backed by substantial EU support, to bring the country's asylum system in line with the EU *acquis* and European and international conventions;
- the Commission must condition further progress of the Western Balkan countries' towards EU accession on the establishment of effective asylum systems in line with the EU *acquis*, and support the effective functioning of those systems with sufficient EU funds and other forms of assistance;
- EU member states must voluntarily resettle a substantial number of Syrian refugees from Lebanon and Jordan, on condition that both countries improve refugee rights and benefits;
- the EU, supported by the US, must put strong pressure on Saudi Arabia and other non-contributors, to finally add substantial funds for the financing of humanitarian aid for Syrian refugees;
- EU member states and the EEAS must engage with the incoming U.S. administration early on and press for a strong joint US-EU re-engagement in the Middle East, especially on Syria, and in North Africa;
- Germany and other member states should intensify dialogue with the Visegrad countries. As a trust-building measure, the German government should give up on the North Stream II pipeline project.

3. Towards a genuine common European asylum and migration policy

Once the current refugee crisis has been brought under sustainable control, Germany, other leading member states, and the EU institutions must push for a thorough reform of the Common European Asylum System and the wider EU asylum and migration policy.

A reformed policy must to be based on four core principles:

- a. enable war refugees, who so wish, to stay as close to their home countries as possible;
- b. among refugees and migrants who reach the EU, separate out the war refugees – who are entitled to temporary protection for as long as conditions are not met for them to return to their countries of origin – from asylum-seekers entitled to permanent asylum (due to prosecution based on

- ethnicity, gender, sexual orientation, political conviction, etc.);
- c. create disincentives for migrants who enter the EU for economic reasons and are not entitled to international protection to claim asylum;
 - d. avoid a full transfer of competencies on asylum and migration from member states to the EU, instead concentrating reforms on member states to accept joint responsibility, harmonization of asylum and migration policies and more consistent implementation of EU directives.

The reformed EU asylum and migration policy should focus on the following elements:

- a reform of the Dublin regulations based on the principle of burden-sharing. Distribution of asylum-seekers among member states should largely follow the proposed relocation key and procedures for the current refugee crisis. Member states such as Germany with a longer tradition of immigration and asylum should commit to taking in a disproportionate share, especially in times of a large influx of refugees and migrants;
- an EU Asylum Agency should manage the relocation procedure, supported by other EU agencies and the member states;
- competencies for asylum policy should rest with the member states, and (contrary to the current Commission proposal) not be centralized at EU level. However, the Asylum Agency should be equipped with tools and competencies to ensure the progressive harmonization of asylum legislation and its consistent implementation across member states;
- member states should enhance measures to return to their home countries those neither in need of international protection nor eligible for legal immigration.
- within the Asylum Agency, a platform should be created for the analysis of national integration policies and the exchange among member states of lessons learned and best practices in national integration policies. This forum could also be the place to discuss the failure of integration policies of member states such as Belgium and France, and to decrease fears of member states that have not yet taken in large numbers of asylum-seekers and migrants, such as the Visegrad countries;
- Germany and other member states with a demographic need for immigration should adopt immigration laws to provide legal avenues for economic migration to the EU. War refugees enjoying temporary protection should be eligible for the status of legal immigrants.