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DEALS WITHOUT BORDERS: EUROPE'S FOREIGN POLICY ON MIGRATION

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SUMMARY

- Europe has long relied on outsourcing the responsibility for managing migration to other countries. But its failure to offer real incentives to its partners means that these deals have done little to address irregular migration at the external borders.
- In addition, EU foreign policy on migration has been inward-looking, and overly focused on domestic concerns.
- As the refugee influx has continued, Europe has been forced to call on its neighbours for urgent help to reduce numbers. The result is the recent EU-Turkey deal – a quick fix that may face insurmountable problems in implementation.
- As its partnerships have floundered, Europe has turned to a range of security tools, such as fortified borders and military operations against migrant smugglers, that cannot provide a sustainable solution.
- To address irregular arrivals, Europe needs a foreign policy on migration that shares the burden with partner countries, going beyond financial aid packages to offer real incentives such as legal avenues of migration. It should create tailored, flexible agreements that meet the needs of its partners, not vice versa.

As the EU and Turkey negotiated the final points of a deal to manage the flow of migrants into Europe, European Council President Donald Tusk announced that “the days of irregular migration to Europe are over”. German Chancellor Angela Merkel, meanwhile, welcomed the forthcoming deal as “a decisive point for resolving the refugee crisis”, and a “real chance at a sustainable and pan-European solution”.

Unfortunately, the deal is fraught with problems, from its unstable legal basis to the total lack of capacity to actually implement it. Perhaps most worrying is that it exemplifies the present inability of the EU to come up with a pan-European solution to the migrant crisis. Instead, member states have retreated to their old and familiar way of dealing with migration: passing the buck to countries outside the Union. The EU–Turkey deal is not a “European” solution in this sense but a temporary solution for Europe – and will only be that if it is fully implemented, which is in doubt. The agreement showcases the changed balance of power between the EU and its immediate neighbours, as well as the EU’s diminishing ability to export migration management policies.

In the absence of effective, multi-pronged policies to handle migration (including refugee flows) into Europe, many lives have been lost. Despite significant efforts by Italian and Greek coast guards, who perform daily search-and-rescue operations, thousands have died since 2014 in the Mediterranean; and more in the English Channel; the land border through the Western Balkans; and the passage from Russia to Norway, which migrants attempt to cover by bicycle during winter.

These ongoing tragedies are poignant reminders that the management of today's migration flows requires policy responses that address the domestic context within the EU but also look outside its borders to migrants' countries of transit and origin. Unfortunately, the EU's "foreign policy response" to migration is underdeveloped and overly conservative in outlook.

This paper will focus on the foreign policy approach to migration. The first section assesses the three most important diplomatic tools at Europe's disposal – regional processes, mobility partnerships, and readmission agreements. It finds that, due to member states' reluctance to make real concessions to partner countries – such as offering legal avenues of migration to their citizens – these tools have failed to curb irregular migration or halt the loss of life on Europe's borders. The second section uses the lens of the EU–Turkey deal to consider how these diplomatic tools have lost traction as the balance of power has shifted from Europe to its neighbours, and looks at the massive legal and practical obstacles blocking implementation of the deal. In the third section, the paper examines how EU policy has shifted back towards its old, security-focused methods of managing migration, from attacking smugglers to fortifying borders.

Finally, the paper calls on the EU and its member states to develop a bold foreign policy to cope with irregular migration. It offers a series of recommendations: create realistic means of legal migration for refugees and economic migrants; offer improved mobility for the citizens of partner countries; and develop flexible, targeted partnerships with key countries outside the Union that can help to bring the migrant crisis under control.

The EU's foreign policy on migration

For a long time, the EU's foreign policy on migration has focused on deterring irregular migration by outsourcing responsibility to other countries. The core argument has always been that for the Schengen area to function, its external borders must be tightly controlled to prevent unauthorised entry. The Union and its member states aim to achieve this through various forms of cooperation with non-EU countries of transit and origin, coupled with financial and development aid.

To date, because priorities have rarely converged and member states have been wary about over-committing, EU partnerships on migration have simply taken too long to negotiate, and yielded too little. These partnerships are often grossly unequal, leveraging partner countries' dependency on the EU, and placing undue burden and responsibility on them (examples include Libya, Senegal, and Mauritania).

The failure of partnerships is also a product of the over-dependency of migration policy on domestic concerns. Migration and asylum remain mainly under the EU's Justice and Home Affairs Council, which has a conservative outlook on these issues, focusing on a domestic agenda that

is translated into foreign policy initiatives, and limiting Europe's potential to build effective partnerships with other countries on this issue.

As a result, domestic reluctance to extend legal means of entry – for example – limits the EU's options in terms of what it can offer partner countries in exchange for their much-needed help in managing migrant flows. This has resulted in slow progress on policy initiatives; unequal partnerships that are not always to the benefit of the EU, because in the long run they are unsustainable; and an inability to respond in a flexible manner to migration emergencies as they arise.

The creation of the post of EU high representative for foreign affairs and security policy under the Lisbon Treaty was a positive step in shifting the internal focus of the agenda and policy design on migration. Now, migration is normally on the agenda of the Foreign Affairs Council meetings on the Middle East and Africa, bringing migration and asylum further into the domain of foreign and security policy. But the fundamentally internal orientation of the policy remains.

The EU's migration policy toolbox

When the EU first began to focus on the external aspects of migration, in 2005, it used diplomatic policy tools, primarily fostering partnerships with non-EU countries. The overarching framework for the foreign policy dimension of migration is the Global Approach to Migration and Mobility (GAMM). The aim was to move away from the previous security-dominated approach to migration. Later, as these tools proved inadequate on their own, the EU reverted once more to a security-oriented approach with greater use of military tools, primarily operations aimed at disrupting smuggling networks.

But both approaches have displayed serious limitations. The diplomatic tools have provided a forum for discussions with crucial partner states, but are limited by the lack of European cohesion and by excessive focus on Europe's domestic problems. The security tools have demonstrated more cohesion from member states, but because they fail to tackle the root cause of the problem – the absence of legal migration channels – they will ultimately only displace migratory flows to other routes.

Diplomatic policy tools

On the diplomatic side, the EU's partnerships with non-EU countries consist of a combination of regional processes, mobility partnerships, and readmission agreements. The incentives for partner countries are almost always financial, in the form of humanitarian or development aid, or expertise and capacity building, rather than offering avenues of legal migration. Incentives in terms of mobility of the partner country's citizens – in the form of labour schemes, visa facilitation, or avenues of legal migration – remain secondary, despite being promoted by the EU as the main means to encourage partners to curb irregular migration.

EU-TURKEY DEAL

THE VITAL STATISTICS



3 MILLION

SYRIAN REFUGEES IN TURKEY



1 FOR 1 DEAL

FOR EACH SYRIAN RETURNED TO TURKEY FROM GREECE, ANOTHER WILL BE RESETTLED IN THE EU UP TO A CAP OF

72,000



€3 BILLION

IN EU AID FOR TURKEY TO HELP REFUGEES

UP TO €3 BILLION EXTRA BY 2018



4TH APRIL

RETURNS FROM GREECE TO TURKEY BEGIN



856,723

ARRIVALS BY SEA FROM TURKEY TO GREECE IN 2015

143,000

ARRIVALS SO FAR IN 2016

467

DEAD OR MISSING SO FAR IN 2016



1 NEW

EU MEMBERSHIP CHAPTER OPENED FOR TURKEY, AND 5 MORE PLANNED, OF A TOTAL OF 20 UNOPENED



14 DAYS

THE TIME LIMIT FOR PROCESSING ASYLUM APPLICATIONS UNDER THE DEAL



€280

MILLION ALLOCATED FOR FIRST SIX MONTHS OF THE PLAN



2,300

EXPERTS TO ARRIVE IN GREECE TO HELP ENFORCE THE DEAL

Sources: "Migrant crisis: EU-Turkey deal comes into effect", BBC News, 20 March 2016, available at <http://www.bbc.co.uk/news/world-europe-35854413>; "EU-Turkey statement, 18 March 2016", European Council, 16 March 2016, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>; "EU and Turkey agree European response to refugee crisis", European Commission, 19 March 2016, available at http://ec.europa.eu/news/2016/03/20160319_en.htm; "Refugees/Migrants Emergency Response – Mediterranean", UNHCR, available at <http://data.unhcr.org/mediterranean/regional.php>.

Regional processes

In the past few years, informal regional processes have been central to Europe's foreign policy on migration. These are intergovernmental policy dialogues that establish a framework for consultation with non-EU countries within which concrete initiatives can be implemented. They have been successful – particularly in Africa – in enabling the development of a long-term strategy to deal with the root causes of migration and to combat smuggling.

The most critical processes for migration flows into Europe are the dialogues with countries along the western migratory route, the Rabat Process, and the eastern migratory route, the Khartoum Process. Not all regional processes have the same aims. For example, providing pathways for legal migration to Europe was explicitly included as a goal in the Rabat Process, while the Khartoum Process is oriented more towards financial assistance and policy dialogue than concrete commitments on mobility. Though information on these partnerships is usually extremely limited, it was reported that three projects were agreed in the framework of the Khartoum Process: training Sudanese officials in migration management, improving border management in South Sudan, and establishing a training centre at the Cairo Police Academy.¹

Regional processes alone are not sufficient to address irregular migration to Europe. But they do give the EU an opportunity to address push-pull factors in countries of origin and transit through financial assistance and capacity building. The overwhelming majority of African and Asian migrants and refugees are in third countries – having left their home country but not travelled to Europe – and movements by these populations tend to be intra-regional rather than inter-regional. Though eventually some will opt to move to Europe, a strong regional process enables cooperation between countries in the region to address the immediate needs of these populations and reduce the likelihood of inter-regional movement.

On the other hand, the absence of legal mobility projects in some regional processes means that the incentives to control migration – based on financial cooperation alone – may not be sufficient. This particularly applies to the Khartoum Process, which does not offer Eritrea and Sudan strong incentives to control migrant flows across their borders. Restricting cooperation to the financial level means that partner countries do not receive international attention and recognition, which these agreements rely on. This limits the efficacy of regional projects.

¹ "EU will bei Fluchtursachen intensiv mit afrikanischen Diktaturen kooperieren", *Das Erste*, 23 July 2015, available at <http://www1.wdr.de/daserste/monitor/extras/monitorpresse-fluechtlinge-100.html>; Maximilian Stern, "The Khartoum Process: Critical Assessment and Policy Recommendations", Istituto Affari Internazionali, Working Paper 15 | 49, December 2015, available at <http://www.iai.it/sites/default/files/iaiw1549.pdf>.

Mobility partnerships

By contrast, mobility partnerships – agreements with countries in the EU's neighbourhood on migration and border security (not legally binding) – are based around the idea of offering legal migration avenues to partner countries. As a result, they are the EU's most sophisticated migration policy tool towards non-EU countries.

Mobility partnerships were designed as a long-term bilateral framework to facilitate policy dialogue and cooperation to manage migration. Usually, they pave the way for negotiations to start on readmission agreements. Under these partnerships, the partner country tackles irregular migration to the EU, cooperates with the EU border agency Frontex, and improves border security. In exchange, participating EU member states provide opportunities for legal migration from the partner country, including both labour migration and migration for study and training purposes; foster the reintegration of migrants returning to the partner country and reduce the cost of sending remittances; and support circular migration schemes to avoid brain drain. The fourth and perhaps most critical incentive – along with legal avenues of migration – is visa facilitation.

Mobility partnerships have had only limited success, despite their potential. Member states have yet to demonstrate any real engagement in them, showing reluctance to present concrete offers on legal migration, and making a limited financial contribution to implementation.

For mobility partnerships to work, effective legal migration channels must be on offer. This is the only incentive that will keep partner countries at the table, and it is the main tool that can use migration to drive economic development of the source country. Facilitating remittances helps with this, as does running circular migration schemes and study schemes, to encourage the education of people who can then return and contribute to the development of their home country. There must also be trust that both sides will implement the agreed terms, but EU member states often block implementation due to concerns about opening up legal migration channels (especially due to high unemployment in some member states).

In addition, EU members should differentiate between partner countries, offering different incentives to different countries in line with their objectives, rather than imposing a "one-size-fits-all" package. The policy objectives of both sides are often unclear, and partner countries have a variety of interests that aren't always taken into account by EU members. For example, in negotiations, Moldova was mainly interested in development assistance, whereas Cape Verde's main interest was to achieve greater mobility for its citizens, especially through visa facilitation.

Case study: Niger

Niger provides an example of how a more tailored partnership could work. Highly dependent on aid and funding from the EU, it is a willing partner in combating irregular migration. In the framework of the Sahel Regional Action Plan – which focuses on the link between migration and development, as well as combating human smuggling – the EU engages in Niger both through direct aid and through EU-level military and security missions against trafficking, smuggling, and terrorism. It is a regional migrant-smuggling hub, but has become one of the EU's most important partners in the fight against smuggling and irregular migration. The EU is set to provide €596 million to Niger through the European Development Fund between 2014 and 2020.

The country is one of Africa's main transit hubs, and an estimated 90 percent of all West African migrants pass through it on their way to Italy. The city of Agadez, a trading point since the fifteenth century, has trans-

formed into the main hub for the central Mediterranean migrant corridor.

It is in Niger, specifically in Agadez, that the EU's first outsourced processing centre is being set up. The aim of the centre is twofold. With assistance from the International Organization for Migration (IOM), the centre will offer Africans humanitarian visas to Europe. Its more immediate goal is to provide assistance to migrants in transit, raise awareness of the dangers of travelling to Europe, register and screen them, and facilitate return to countries of origin for those who are refused entry to the EU. Much remains to be determined – it is unclear what will happen to those who are granted humanitarian visas, how they will be relocated, where, and in what time frame. In the absence of a common EU asylum policy, there is no centralised common process for the determination, eligibility, and processing of claims. But an effective working relationship with Niger at least enables the EU to begin to address flows at their source.

Readmission agreements

Similar problems, with broader implications, face EU Readmission Agreements (EURAs). These enable the return of non-EU nationals to their country of origin – and, crucially, to countries they have transited through.

Readmission agreements are one of the key elements of migration foreign policy, because they make it easier for EU member states to remove those who do not qualify for asylum or other legal status. Partner countries are asked to provide assistance to improve border management, launch awareness campaigns to deter irregular migration, implement surveillance measures at borders crossed by irregular migrants, and eventually sign an agreement that will allow EU countries to transfer third-country nationals back to them.

In exchange, the EU funds small-scale projects such as the training of police officials, which are often of limited duration (making it difficult to assess their long-term impact). It may also create circular migration schemes, recognise vocational and academic qualifications from the partner country; and in rare cases offer visa liberalisation (usually only for specific groups). In theory, the more a partner country does, the more it will receive.

However, in practice, while partner countries are expected to meet their end of the bargain, their prospects of benefitting are severely limited by the goodwill of member states. Labour migration for partner country nationals – one of the main incentives of these partnerships – depends on member states volunteering.² Absence of interest and/or willingness on the

part of member states means that implementation relies on the limited pilot schemes funded by the European Commission. Similarly, visa liberalisation schemes are voluntary and needs-based, depending on the participating member states and the circumstances of their labour markets. In addition, readmission agreements often progress very slowly.

The critical problem is the inclusion of the third-country national clause in readmission agreements, which requires partner countries to take back not only their own nationals but also nationals that have transited through their territory. This is a major concern for partner countries, as it could impose significant burdens on them in terms of receiving and returning third-country nationals.

One of the main stumbling blocks to a long-delayed readmission agreement with Morocco, for example, is EU member states' insistence on a third-country national clause. The Commission has already been forced to offer a mobility partnership (signed in 2013), but Morocco has continued to negotiate over the readmission agreement, and talks are currently in their 15th round.

In practice, these clauses have so far been very weakly implemented. A 2011 European Commission evaluation of all 12 readmission agreements in force found that, aside from Ukraine, only 91 applications for the return of third-country nationals had been filed in total. The study concluded that the clause “is actually rarely used by member states, even with transit countries like the Western Balkans”.³ This is partly due to the complexity of readmission, but also because

² Sergio Carrera, Leonhard den Hertog, and Joanna Parkin, “EU Migration Policy in the Wake of the Arab Spring: What prospects for EU–Southern Mediterranean Relations?”, MEDPRO Technical Report No. 15/August 2012, available at <https://www.ceps.eu/publications/eu-migration-policy-wake-arab-spring-what-prospects-eu-southern-mediterranean-relations>.

³ “Communication from the Commission to the European Parliament and the Council, Evaluation of EU Readmission Agreements”, European Commission, Brussels, 23 February 2011, p. 9, available at http://ec.europa.eu/dgs/home-affairs/news/intro/docs/comm_pdf_com_2011_0076_f_en_communication.pdf.

some countries fail to return irregular migrants to their countries of origin and/or transit, for reasons including high absconding rates, bureaucracy, absence of travel documents, and limited cooperation with certain countries.

The persistence of the third-country national clause in readmission agreements, despite its lack of effectiveness and the reluctance of partners to accept it, can be traced back to the domestic orientation of migration policy. If member states accepted the removal of this clause, they would have to accept that a number of migrants who could not be returned to their countries of origin would remain in the EU under some form of legal status. However, there is deep reluctance to agree to this, particularly on the part of domestic agencies. The firm control of DG Home (the Commission's migration and home affairs department) over the foreign policy aspect of migration shapes the terms that can be offered to partner countries. As a result the third-country national clause has stayed put – even to the detriment of making important agreements.

A shifting power balance

The dealings between the EU and Turkey provide a good lens through which to examine the EU's use of diplomatic tools to manage migration. This began as an imbalanced partnership structured around the concerns of EU member states, yet Turkey managed to negotiate not only the timeline and implementation of the readmission agreement, but also an entirely separate agreement to manage the present refugee situation, maximising its gains.

The talks between the EU and Turkey have a long history. Negotiations on a readmission agreement began in 2005, but were put on hold until 2009. Turkey's request for visa liberalisation resulted in a battle that pitted DG Home (and often DG Enlargement), which consistently backed the agreement, against the Justice and Home Affairs Council, as well as the objections of individual member states such as Germany and France.

For Turkey, visa liberalisation was critical domestically in order to balance the readmission agreement, which was widely viewed as an imbalanced deal that would turn Turkey into "Europe's warehouse for migrants". For the Council, visa liberalisation was a domestically contentious concession that – if granted – would leave the EU without leverage.

Visa liberalisation talks began in 2012, and the readmission agreement was signed in 2013, with two caveats. The visa liberalisation roadmap would be based on performance, and the readmission agreement that came into force in October 2014 covered only the return of Turkish nationals, with the third-country national clause expected to apply from October 2017.⁴ Progress had stalled once more on the roadmap for visa liberalisation, until the Syrian refugee crisis brought both sides back to the table. This time, however, the EU is the side with the more urgent needs. Turkey is hosting significant

numbers of Syrians, but many have been there for three years, giving them time to diffuse in the country and into the informal labour market. In addition, Turkey's asylum system does not obligate it to provide these refugees with the same benefits that the EU would have to.

Following the EU–Turkey summit of November 2015, Turkey offered limited access to the labour market for the Syrians in exchange for €3 billion from the EU. Under the March 2016 agreement, the EU reaffirmed its commitment to release €3 billion to improve the situation of Syrians in Turkey, with the potential for another €3 billion by the end of 2018. Visa liberalisation for Turkish nationals could be in place by June 2016, on the condition that Turkey meets all 72 benchmarks. Turkey will readmit all new migrants and asylum seekers who either opt out of the asylum process in Greece or whose asylum application is judged inadmissible by virtue of Turkey being declared a "safe third country".

The agreement is valid as of 20 March for those apprehended on the Greek islands or in Turkish maritime waters. For every Syrian returned, another will be relocated to Europe, up to a limit of 72,000 places. After this point, the mechanism will be discontinued and the agreement revisited. Importantly, readmissions will not take place under the existing readmission agreement. Instead, the returns of all refugees and migrants will take place in the framework of the Greece–Turkey readmission agreement, signed in 2002. This places the legal responsibility for returns in the hands of Greece.

There are two main obstacles to the deal. The first pertains to the legal framework, the second to its implementation.

First, the deal explicitly prohibits mass expulsions and requires individualised processing of asylum claims before return to Turkey, which means that Greece would have to process every asylum application and decide on its merits. The resources and time this would take make this a truly Herculean task. The only way this could take place in a realistic timeframe would be if Turkey was declared to be a safe third country or a country of first asylum, enabling the asylum authorities of Greece to judge most cases as inadmissible.

However, Turkey does not qualify for either of these designations, because its legal framework for migration and asylum gives refugee status only to European citizens, under the geographical limitations of the 1951 Geneva Convention. Instead, it has placed Syrian refugees under a temporary protection regime since October 2014. In theory, this offers Syrians a framework of protection, but excludes other nationalities.

Furthermore, the Commission's evaluation on progress for the visa roadmap found that Turkey was unwilling to grant international protection status, even to those who merit it, and stated that "the fact that so many thousands of persons are left without a clear indication about their fate hampers their capacity to normally settle down in Turkey, and contributes to pushing them to searching alternative countries of

⁴ The EU–Turkey Readmission Agreement, art. 24.

asylum”.⁵ The legal aspects have proven so complex that the draft bill submitted to the Greek Parliament on 30 March makes no mention of Turkey as a safe third country. This means, in practice, that all claims will have to be individually decided on merit. In theory, this means that a significant percentage of arrivals (at present, the main nationalities are Syrians, Afghans, and Iraqis) will likely receive international protection in Greece, making the deal irrelevant.

The second problem for the deal is its implementation. The agreement assumes that both sides have the capacity to register and host refugees and migrants: Greece during processing, and Turkey for returnees. Member states have committed to providing Greece with additional personnel, from judges to trained asylum officers. But if the past year has shown anything, it is that pledged assistance tends to materialise very slowly, particularly when it comes to human resources. The agreement also assumes that Turkey will accept all returns and respect the principles of international law. However, it is unclear how implementation will be monitored considering that the EU has little sway over Turkish ministries. What will happen to those returned who are non-Syrians? This question remains largely unanswered.

Realistically, the agreement was not a huge success for either side. The EU has agreed to pay €8 billion in the hope that arrivals will reduce, but knows that the deal rests on shaky legal grounds and sets a bad precedent. For Turkey, the 72,000 places for relocation will make almost no difference in a country already hosting roughly 3 million Syrians, and visa liberalisation is not guaranteed.

Turkey’s two “wins” are getting the red-carpet treatment that it has long sought from the EU, and, more importantly, a reference in the deal to “safe areas” in Syria, which are a long-held goal of Ankara’s. The agreement states that the EU will “work with Turkey in any joint endeavour to improve humanitarian conditions inside Syria ... which would allow for the local population and refugees to live in areas which will be more safe”. No indication has been offered as to how this will be implemented, what safeguards will be put in place to avoid mass returns of Syrians to these “safe areas”, or how their safety will actually be guaranteed.

The case of Turkey – and that of Morocco – shows that, although readmission agreements were originally designed as a way for the EU to impose its own priorities on partner countries, they have now evolved into genuine negotiations, where the EU’s partners increasingly realise that they can demand more. If a partner country can remain resilient in the face of pressure, it has the opportunity to exert significant power over what the EU offers.

⁵ “Commission Staff Working Document, Accompanying the document, Second Report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap”, European Commission, Brussels, 4 March 2016, p. 21, available at http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/turkey_second_progress_report_commission_staff_working_en.pdf.

Security tools

Diplomatic policy tools have been effective in creating spaces for dialogue, limited cooperation, and exchange of information. But they are not nearly enough. Irregular migration into Europe has not abated – indeed, it has grown dramatically. As the Mediterranean, especially the central route, transformed into one of the world’s most lethal border crossings over the last five years, the EU has supplemented these diplomatic tools by adding a military element to its migration foreign policy, focused on securing the external borders of the Schengen area.

Schengen’s external boundaries consist of 8,000 km of external land borders and 43,000 km of sea borders. The geographical size means that control cannot be absolute. Prior to the creation of Frontex in 2004, there was no collective European force to guard these borders. In fact, from the 1990s until the Arab uprisings of 2011, there was very little collective or common EU policy on the management of the external borders and the non-EU countries that share them. Instead, the frontline states were largely left to fend for themselves.

As a consequence, border management was broadly limited to bilateral cooperation and partnerships – particularly between Spain and Morocco, Italy and Libya, and, to a lesser extent, Greece and Turkey. Although these bilateral initiatives were often successful in temporarily reducing arrivals to the states concerned, they failed to address the broader issue of irregular migration into Europe. In most cases, as one border closed, flows merely shifted to another. The Schengen border is shared, and pressure on one point affects it all.

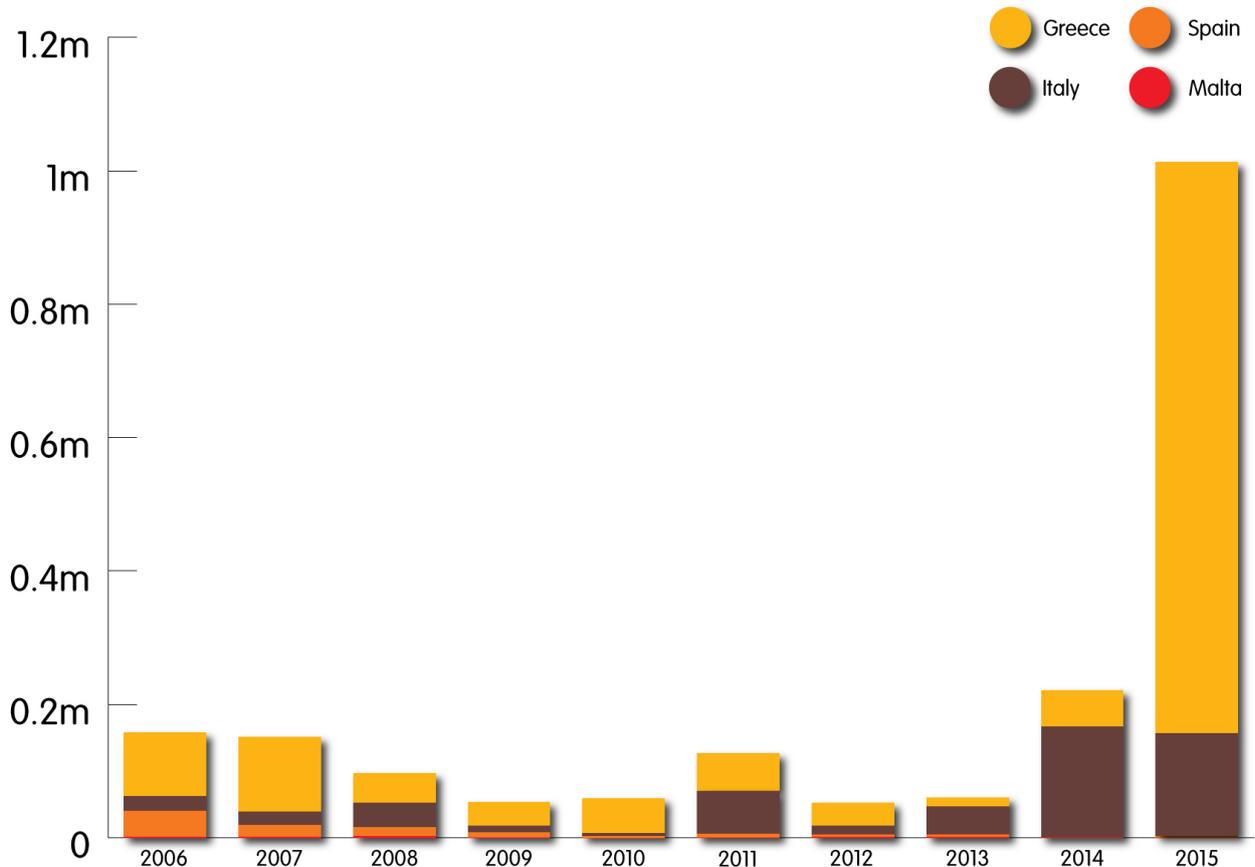
The turning point was the Arab uprisings. The fast-changing circumstances prompted a change in migrant flows, highlighting the unsustainability of deterrence measures in the long run, the importance of cooperation with non-EU countries, and the unpreparedness of European member states in reacting to crises. When the social revolt took place in Tunisia, then-Italian Interior Minister Roberto Maroni spoke of a “biblical exodus”.⁶ Italy was overwhelmed not only by the numbers but also by the speed of their arrival. In the first few months of 2011, Lampedusa received roughly 45,000 migrants and asylum seekers from Tunisia and then Libya.

The aftermath saw some critical changes. First, member states renegotiated the Schengen Governance legislative package (October 2013) to include a clause enabling member states to temporarily reintroduce internal border controls in the face of a large number of third-country nationals crossing the external borders. This was a direct response to Italy’s unilateral move to provide travel documents to Tunisians on the unstated assumption that they would continue onwards to France. In hindsight, the Franco-Italian rift that followed provided a much-needed excuse for EU member states to come to the table and renegotiate.⁷

⁶ Anna Triandafyllidou and Angeliki Dimitriadi, “Deterrence and Protection in the EU’s Migration Policy”, *The International Spectator*, 49: 4, 2014, pp. 146–162.

⁷ Hugo Brady, “The Schengen Crisis in the Framework of the Arab Spring”, European Institute of the Mediterranean, 19 December 2012, available at http://www.cer.org.uk/sites/default/files/schengen_arab_Spring_Dec12_IEMED.pdf.

Migrant apprehensions at land and sea borders



Source: Author's compilation based on data provided by national authorities, Frontex, and UNHCR.

Second, member states realised that the periphery of the EU was no longer stable, and that crises could erupt and directly affect them. This resulted in several changes in migration management. The EU pushed for further securitisation of migration internally, increasing reliance on technology, surveillance systems, and border controls, in an effort to “stem the flow”.

In parallel, the EU sought to export the Integrated Border Management (IBM) concept, currently implemented in the EU, to non-EU countries. The initial focus was the Western Balkans, due to its geographical position, but efforts also centred on the Mediterranean region – due not only to its proximity to Schengen’s external borders, but also because two main corridors (the central and eastern Mediterranean) produced the overwhelming number of irregular arrivals to the EU. However, there has been slow progress on exporting the IBM concept, particularly to countries grappling with security problems, poor governance, and corruption.

The escalation of arrivals in 2014 and 2015 in the central Mediterranean motivated EU leaders to address the Libya–Lampedusa crossing. But rather than exploring ways of enabling legal access to the EU and access to safety for those in need on its periphery, Europe’s leaders tasked the EU

high representative with proposing military operations to tackle migrant smugglers. The result, in June 2015, was EU Naval Force Mediterranean (EUNAVFOR MED, or Operation Sophia), the first concrete EU-wide security initiative against smuggling. The initiative was intended to disrupt the business model of human smuggling networks in the southern-central Mediterranean through the identification, capture, and destruction of their vessels. It also sought to discourage migrants from undertaking the dangerous crossing, to reduce loss of life and the number of arrivals to Italy.

This was particularly significant because all previous initiatives against irregular migration and people smuggling had been taken by individual member states alone. Countries such as Italy and Spain had undertaken initiatives in conjunction with non-EU countries on border controls, but these were always limited in scope and length. The Union had not taken direct military action on this issue, although it had deployed civilian missions (e.g. in the Sahel). Its security initiatives on migration were largely dependent on partner countries for implementation, with the EU offering assistance (financial and know-how) to improve border controls, surveillance systems, and deterrence measures.

EUNAVFOR MED has a number of shortcomings. Irregular flows have indeed reduced, but the argument can be made that this was a result of a shift by Syrian refugees, in particular, to use the safer and easier route over the Greek-Turkish maritime border. As regards smuggling, identifying and targeting smugglers' vessels is neither simple nor straightforward, and this approach has had dubious results so far. The operation has saved 8,500 people until February 2016, while 46 suspected smugglers have been reported to the Italian authorities, and 68 boats have been seized from smuggling organisations. The search-and-rescue aspect is of course a positive outcome, but the limited results in terms of catching smugglers raise questions on the usefulness of the operation.

Smuggling has simply adapted. The operation's six-month progress report acknowledges that although the presence of EUNAVFOR MED has made it harder for smugglers to recover their wooden boats after the migrants have been rescued, they are increasingly using alternatives, including inflatable boats and now rubber boats imported from China.⁸ Furthermore, the idea of sinking smuggling vessels before they are deployed in the Mediterranean is not practical. Mission personnel must identify the boats, which are often indistinguishable from fishing vessels, ensure that no passengers are on board, and, since these boats are rarely openly docked in wharfs or shipping docks, soldiers will have to be deployed to destroy them.

The legal framework further complicates the operation. The UN Security Council decision authorising EUNAVFOR MED requires either the consent of the coastal state (which is implied, though not stated, to be Libya) to directly deploy in its maritime and land territory, or a further Security Council resolution. The brokering of a political agreement in Libya in January 2016 could pave the way for EU deployment in Libyan territorial waters, but that remains to be seen.

The operation treats smuggling not only as a criminal activity but also as a push factor, with a role in driving migratory flows. However, smuggling of asylum seekers and migrants does not exist in a vacuum; rather it is demand that results in supply, as a direct result of the absence of legal avenues of entry. Libya has been an important migrant-smuggling route since the early 1990s, and has been the main transit point funnelling migrants and refugees to Italy since 2000, but what was a semi-organised smuggling business evolved into a disorganised free-for-all following the collapse of the Muammar Gaddafi regime.

If EUNAVFOR MED's goal is the short-term disruption of smuggling networks, then it will likely be a success, since while military vessels are patrolling the maritime border, smugglers will shift their operations or limit their activities. If, however, the aim is long-term disruption, it is unlikely to succeed. Eventually smugglers will adapt. It runs the risk of simply shifting the routes further east, enabling the growth of alternative smuggling methods and avenues. The only way to deprive smugglers of their source of income in the long term is

⁸ "EUNAVFOR MED-Operation Sofia, Six Monthly Report: June 22nd to December 31st 2015", Operation Commander Op SOPHIA (EEAS), 29 January 2016.

to provide legal channels for migration and alternative sources of income to the local economies that live off smuggling, which may seem unrealistic at present in Libya.

To cripple smuggling operations in the long term will require political, social, economic, and legal measures in the partner country to make it sustainable. For security instruments to be effective, they need to be combined in parallel with the soft policies and tools that remain at the core of any potential solution. However, EUNAVFOR MED will likely be the model for operations to come. NATO's patrols in the Aegean Sea are a recent attempt to use military instruments to deter irregular migration, though it remains unclear how the operation will unfold and what role NATO will play in returning migrant vessels to Greece and Turkey. It will be the second operation at the external borders of the Union focusing on deterrence rather than search-and-rescue as a response to irregular migration.

Recommendations

The recent EU-Turkey agreement brings to the foreground a longstanding problem of EU migration policy; member states are hesitant and often unwilling to take responsibility for the management of irregular migration within and beyond the EU, relying on partner countries for solutions. The recognition that the foreign policy dimension is as crucial as the domestic dimension (if not more so) is now embedded in the mechanisms of the system, such as the inclusion of the high representative in the development of migration policy. Member states are taking a security-oriented approach, seeking to recreate the impermeable bloc sealed off from the instability of their neighbours, by raising fences (virtual and real) at the external borders of the Union. This is not a sufficient or even a practical response.

Taking into account the variety of root causes, their complexity, and the different roles countries play along the migratory path should lead to the creation of tailor-made cooperation partnerships between the EU and non-EU countries. There is a gradual realisation among European policymakers that this is lacking in the EU's migration foreign policy, but it is still a long way from being fully put into place. In some cases, regional frameworks can be bolstered to enable countries in the region to identify and propose solutions. In other cases, partner countries' dependencies on Europe can be leveraged, while some partnerships will require the EU to offer serious incentives (labour mobility, visa schemes, etc.) to attract the partner country.

Short term

- Offer legal migration channels for refugees: To undercut migrant smugglers and limit the pressure at the external borders, European member states should establish legal channels for asylum seekers to apply from outside the Union. European embassies (using also the European External Action Service) abroad could carry out preliminary screening of those seeking international protection, and

issue humanitarian visas to enable legal and safe entry to Europe for asylum seekers. Combined with a mechanism for resettling refugees in Europe from countries currently under strain, such as Lebanon and Jordan, this would alleviate some pressure on transit countries in the short term, encouraging people to remain in the camps with the prospect of reaching Europe safely, and significantly reducing smugglers' profits. It would also enable member states to regulate arrivals.

- **Early warning systems:** The EU could set up early warning systems that trigger alerts on conflicts and population movements from migrants' origin and transit countries, making use of existing regional processes and the European External Action Service. This would enable the EU to prepare and develop strategies to address potential migratory and refugee flows before they reach the external borders of the Union. Early warnings could allow the use of EU civilian instruments to provide assistance on the ground and bring stakeholders to the table before local factors trigger regional crises. This is especially imperative now, as crises erupt around the EU's neighbourhood with the potential to create new refugee exoduses.

Long term

- **Offer legal migration channels for economic migrants:** European countries should provide improved means for migrants to seek legal status. This would relieve some of the pressure in regions where a high level of internal migration has taken place. It would allow for the growth of diasporas that are critical for sustaining the country of origin. And it would encourage diplomatic processes between partner countries that are far more sustainable for the future. A framework for such channels exists, and indeed it is at the core of the mobility partnerships. But member states should strengthen this feature of the partnerships, offering more labour schemes to partner countries, student visas, and circular migration programmes. Visa facilitation schemes would boost circular and temporary migration, and attract medium- and highly-skilled migrants who provide remittances that boost national economies.

- **Develop mobility partnerships:** These are a fairly new tool and have significant potential to enable balanced partnerships between the EU and external countries. However, this requires (as proposed in the GAMM) that European countries should offer mobility, through visa facilitation and mobility schemes. If member states and partner countries came to the table with a clear idea of what they would like to support, for how long, and with what budget, it would enable better matching between EU and non-EU countries, and facilitate implementation.

- **Differentiate between partners and offer flexible incentives:** As the EU's dependency on external countries grows, it is gradually accepting the need to vary its approach and try to meet the needs of partner countries, rather than vice versa. Not every partner country can be motivated in

the same way, and not every partner country has the same needs or level of dependency on Europe. This has been evident during negotiations on readmission agreements. Morocco sought a mobility partnership that includes mobility for its citizens, while Turkey's main focus has been visa liberalisation. In particular, transit countries (such as Turkey, Russia, the Baltic states, the Western Balkans, and Iran) are increasingly using migration to achieve financial, political, and strategic gains. This reflects a different power dynamic, where it is often insufficient or redundant to try to woo these countries through mobility partnerships or readmission agreements. Instead, the EU may need to place a broader range of incentives on the table, such as more labour opportunities – including for the less highly skilled.

- **Differentiate readmission agreements:** In some cases, the third-country national clause is imperative for countries with a critical geographic location; for example, Turkey functions as a major transit country for refugees en route to Europe. However, as the assessment by the Commission showed, in most cases the clause is rarely used in practice by member states. It would be worth exploring the option of scrapping the clause altogether for most readmission agreements and up the incentives for those countries where the clause is retained.

- **Strengthen regional processes:** These processes enable the EU to adjust its policies to local and regional needs. They also have the added value of empowering participants to become agents of change, which in this case is important because it means that partner countries come to the negotiating table on equal terms. Regional processes continue, but should be strengthened – particularly the Khartoum Process that includes Eritrea and Egypt – because they provide the framework for discussions between countries that are otherwise difficult to engage.

Europe's tendency to outsource the management of migration, combined with its hesitancy and failure to act early on in the current crisis, has led it to the deal with Turkey as a last resort. The deal is an inadequate solution, which will likely do little more than push migratory flows back full circle to the Libyan-Italian corridor.

Instead, what Europe needs is a mixed bag of instruments to look to the neighbourhood and beyond, address crises in their infancy, and prevent others from emerging. The key lesson to be learnt from the events of the past year and half is the importance of building partnerships between the EU and non-EU countries that are flexible, mutually beneficial, and realistic. For these to yield results, Europe should engage partner countries early on, offer them fair treatment, and shoulder a share of the burden – and not only in financial terms. This remains the biggest challenge for a Union that increasingly seeks to fence itself off from its periphery – the very area that it most urgently needs to engage with.

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