The EU and the Refugees: The Way Forward

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INTRODUCTION

The EU has always existed in the dual world of strongly professed universal values and its ability to accommodate the mundane interests of its member states. However, this – at times fruitful – tension has recently come under so much strain that it threatens to bring down not only the EU’s always fragile foreign policy consensus, but even the most fundamental freedoms on which the EU has been built, such as the free movement of people, and which it has come to stand for in the eyes of its populations. The first blow came with the Eurozone crisis, and the second with the still growing migration malaise. But while the crumbling solidarity during the economic crisis and the negotiations with Greece could still be explained away as a result of rational economic calculus, the current crisis does not offer any such comforts. The two fundamental tenets of the integration ethos – universal values and particular state interests – seem to be at odds as never before. The ultimate question which is so often posed today is whether the EU should comply with the still powerful state-centric push and simply build up the barriers again or whether the time has come for the EU to fulfil its higher calling and take action based on its broader humanitarian obligations.

And yet this question, as pertinent as it may seem, is misleading. Undoubtedly, contradictions between values and interests have not disappeared. Nor is the current situation one offering easy solutions and simple answers that would fully accommodate both the pragmatists and the idealists. However, the conviction that we will serve our interests by discarding the very values on which European integration is based is fundamentally flawed. The illusion that we can solve “the refugee problem” by isolating the EU from its neighbourhood has to be decisively rejected. The EU cannot become a closed club. Such a path would not only harm it economically, but it would also damage its positive image – an accomplishment of which the Europeans should be proud. But most importantly, building fences or adopting various versions of non-entrée policies does not solve the problem in any way; it only – temporarily – moves the burden to other countries, in the best traditions of the ultimately self-defeating beggar-thy-neighbour policies of the 1930s. The entire history of the EU and its success in overcoming conflicts in Europe is based precisely on rejecting these approaches, and it would be foolish to forget this essential lesson.

Let us put the refugee crisis in a broader perspective. If we look at Syria as the major source of the refugee population in both Europe and the Middle East, there are around eight million internally displaced Syrians and more than four million Syrian refugees abroad. Out of these four million, 1.9 million have found shelter in Turkey, at least 11 million live in tiny Lebanon, and Jordan hosts around 630,000 refugees at the moment. This compares to around 109,000 Syrian refugees in Germany, 69,000 in Sweden and substantially lower numbers of them in the other EU member states – for the period April-August 2015 (UNHCR, 2015). As President Juncker rightly mentioned in his State of the Union address, the share of refugees in the overall population of the EU is 0.11%, compared to about 25% in Lebanon (European Commission, 2015b). It is equally important to note that although the current refugee arrivals to Europe are the highest in recent history, the influx of refugees has been a cyclical development. For instance, the EU registered 425,000 applications in 2001 and about 336,000 in 2012 (European Commission, 2015a).

In other words, without downplaying the extent of the crisis, we have to realize that the numbers of refugees are still relatively modest compared to the situation in many much less economically developed countries in the EU’s neighbourhood. Paradoxically, the fact that in Europe the refugee numbers are relatively lower than elsewhere is often misused by European populists who argue that friendly gestures by European leaders (such as the recent German open-door policy regarding the refugees from Syria) will set in motion another huge wave of refugees to Europe.

But the ‘pull effect’ of the EU’s greater openness is largely exaggerated. First, the Syrian refugees are not economic migrants; they are war refugees, and the main motivation is not primarily financial, but existential. Second, the additional restrictions introduced to curb the ‘pull effect’ often do not work. We can simply compare the results of the relatively comprehensive Mare Nostrum operation and the more restrictive early phase of Triton, which limited the search and rescue (SAR) operations in the Libyan waters exactly because it aimed at reducing the pull effect. During the first three months of the operation Triton, the migrant inflow increased by 160 % compared to the previous year. Meanwhile, the number of dead refugees in the Mediterranean has increased thirty times in early 2015 compared to early 2014 (Akkoc, Winch, & Squires, 2015). In other words, there was no decrease in the
number of refugees, but a huge jump in the number of drowned people - this is the real result of the switch to more restriction.

Additionally, the problems on the sea routes caused the reorientation of the migration to the overland route from Greece via Hungary to Germany. Rather than being an indication of a pull factor, this is testament to the strength of the push factor – people in terrible circumstance will always strive to find a way to safety. But we should be blunt here: even if the offer to help the refugees does increase the motivation of the Syrians to flee the war-torn country, it is still a fair price to pay for keeping our humanitarian principles and fundamental values intact.

I. EU-wide solidarity and the end of negative securitization

Two fundamental principles should guide our discussions about the solutions to the crisis.

1. The EU-wide approach

Under normal circumstances, the claim that the crisis has to be overcome jointly by all EU member states would sound like a simplistic truism. However, the rise of economic nationalism and populism all across the EU means that we should stress more than ever the need for a unified approach. We must be tough on both protecting the refugees and on protecting the EU and the Schengen Area. We should recognize the threat that is posed to the Schengen Zone and to the EU itself by the unwillingness of some of its members to meaningfully contribute to sharing the burdens as well as the benefits of membership. Solidarity must permeate all dimensions of our migration and asylum policies – a reshaped common asylum policy and the distribution of refugees across the EU as well as joint support for FRONTEX activities on the EU’s external borders, including increased financial contributions to its operations.3

The most pressing aspect of burden-sharing is a fair and equitable distribution of refugees over the member states. Obligatory quotas would not be necessary if member states were willing to voluntarily accept sufficient numbers of refugees – as Ireland did. Unfortunately, many countries, including Central European ones, reject quotas, but do not offer any other meaningful solutions to the problem. While it is true that we must focus on the stabilization of Syria, Libya and Afghanistan, this is a long-term strategy with unpredictable results. Even if it is successful, it does not solve the short-term problem of refugees in the EU and on its borders. The absorption capacity of the most exposed member states such as Italy or Greece, as well as recipient countries such as Germany and Sweden is at its limits, and so far the only viable solution short of permanently shutting down the Schengen system as such is the voluntary or obligatory transfer of refugees to other EU countries.

2. Securing Schengen without securitizing refugees

What is most sorely needed in the EU’s approach to refugees is a re-orientation from depicting the refugees as a security threat to Europe, as a flood or as a plague. Indeed, we should not underemphasize the security aspects of migration, but we should reframe the refugee crisis as a humanitarian disaster and take the security of the refugees more seriously. The refugees are not coming to Europe because they want to destroy its values or because they hate the European way of life, but because they are fleeing from persecution, torture, rape and death or the hopelessness of their life in the overcrowded refugee camps or elsewhere in the countries in the neighbourhood.

This principle has two facets. One is the work with the European publics, as it is the public trust in our asylum and migration policies that has to be renewed, and as it is the public fears of the foreign ‘other’ that have to be alleviated. There is much to be improved in our public debates: The starting point is the careful distinction between refugees and economic migrants since the two categories are often conflated. As difficult as such a distinction may be, media often ignore the legal obligation of states under the Convention Relating to the Status of Refugees of 1951 not to expel and return refugees. Hence, what is needed is a shift in political discourse towards a focus on the low level of threat that the refugees might pose, but also towards more emphasis on the resilience of European value structures and societal frameworks in the face of difference.

3 More concrete proposals follow below.
The second facet is more specifically related to our policies. The overall aim of our actions should not be primarily defined negatively (such as destroying smugglers’ boats or erecting walls along our external border). As the recent Swedish ten-point proposal to reform EU refugee policy suggests, the European Commission should also come up with proposals for opening better legal routes to the EU for those refugees who need them (Government Offices of Sweden, 2015). As long as we insist on the danger of the ‘pull factors’ and focus exclusively on their reduction, we are missing the target. A change in the domestic treatment of migrants is due in a number of EU countries as well. The criminalization and unlawful detentions of refugees contradict the basic international obligations of these countries, further poisoning the public image of refugees by, in effect, labelling them as criminals who have to be treated as such.

II. Adapting our asylum and immigration policies

The distribution of the refugees across the EU and the parallel fight against the public fears of migration are the two pillars on which any medium-term solution to the crisis must be built. There are, however, a number of further changes in the EU’s asylum and immigration policies that need to be addressed. The Dublin System has by now become obsolescent due to both its flawed institutional design and the ever growing gap between the legal provisions and the inability or unwillingness of the member states to comply with these rules. What follows are the six most important points which can substantially contribute to a more effective as well as more humane EU asylum policy.

1. The transformation of FRONTEX and its operations

First of all, FRONTEX has to be substantially strengthened and endowed with more competences and a correspondingly higher budget. Special attention needs to be dedicated to the SAR operations, which are currently attacked as contributing to the ‘pull effect’. The TRITON mission should be not simply extended beyond 2015, but also made more robust. The strength of the new TRITON Plus must not be based solely on putting more financial means at its disposal. It must work with more naval units, and its technical and logistical equipment must also be upgraded. Even more importantly, its geographic scope should be extended and made more flexible so that it could react to unexpected developments in the whole Mediterranean Sea.

While FRONTEX should retain its responsibility for coordination of external border management, some elements, most notably the SAR operations, would profit from a renewed participation of the military (including the use of CSDP instruments). The Mare Nostrum operation worked relatively well in part because it was a dedicated military mission. Triton has not worked well in part because it requires border guards to continue their border management duties and add the very demanding SAR operations on top of it.

What is also doubtful is the current strong repressive focus on deterring the smugglers. While we certainly should not encourage anyone to prey upon the hapless refugees and their plight, the attempts to destroy the smugglers’ boats (not to speak of firing warning shots at the refugees) are a futile activity. As evidence from the Greek islands shows, it is very easy to replace lost boats or their engines. The only visible result so far is a further rise in the already exorbitant prices the refugees have to pay. The repressive elements should be more than matched by carrying out SAR operations and providing more safe legal routes to the EU. In the future, these activities should be complemented by closer cooperation with the civil authorities of the countries on the southern shores of the Mediterranean Sea.

2. The creation of the Common European Asylum Service

While FRONTEX and TRITON are the most visible elements of the migration problematique, it is the entire CEAS, including the Dublin Regulation, that needs to be reorganized. The need to substantially reform the Dublin System shows itself very clearly in the bizarre effects it has on the refugee flows: instead of directly applying for asylum in Germany or the other countries they are aiming to arrive at, the refugees are forced to apply for it in Greece and then leave the EU’s territory and travel through Macedonia and Serbia to Hungary, which then faces the same exact problems as Greece does. This then leads countries like Hungary to try to stem the refugee flow on their borders,
thus leaving the refugees stranded in the territory between two EU member states (Greece and Hungary) without the possibility to move either way. But there is more to the Dublin predicament. Dublin stipulates that the asylum application must be processed by the first country an asylum-seeker enters. However, the idea that the countries on the EU’s external border will be capable of processing hundreds of thousands of refugees with the relatively modest help of FRONTEX has become untenable. What we need is a transformation of the European Asylum Support Office into a full-fledged Common European Asylum Service, with the corresponding shift from support to member states to a pro-active approach. The financial needs of the new institution should preferably not be paid directly by member states’ contributions, but from the EU budget, thus securing its greater independence and space for autonomous action (cf. the proposal by Centre for European Policy Studies, 2015).

3. The creation of an EU Immigration Code

Although the EU has already taken some initial steps to create more resilient common migration and asylum policies, we are still missing a universally applicable ‘Immigration Code’. The European Commission has been talking about the Code for at least four years, originally expecting its adoption by 2013, but its preparations were halted. While the Immigration Code does not look like a breakthrough in terms of policy innovation, its existence and application would substantially help both the migrants and the EU-wide and national authorities since a streamlining and simplification of the very complex EU rules regarding asylum and migration are greatly needed.

In particular, the asylum procedures as well as the asylum criteria should be applied in the same way. The unification of the asylum criteria is the only long-term solution to the problem of ‘asylum-shopping’ refugees who travel from one EU country to another in search of a more favourable asylum procedure. Also, it prevents any kind of race to the bottom in terms of asylum provisions that would deliberately make a country less attractive so that others have to bear the burden. This point becomes very clear if we look at the asylum rejection rates, which are much higher in some EU countries than in others even when the countries are dealing with the same refugee populations. Clearly, the interpretations of the asylum provisions by national authorities substantially differ.

The Immigration Code should also clarify the list of safe countries. Countries in the EU neighbourhood should not be used to dump refugees and dodge responsibility but they can play a crucial role in the triage for asylum processing. Generally, all candidate countries should qualify for the safe country status, and all the Balkan countries should be added to it, in particular FYROM, Bosnia and Herzegovina, Albania, Serbia and Kosovo. However, the European Commission should be careful about not extending the list excessively. For instance, the currently discussed proposal of including Turkey in the list is questionable, given the long-term problems in the Eastern part of the country. Also, a point for future discussion is the extension of the quota system to the EU candidate countries in the Western Balkans.

Finally, the Immigration Code should also contain a list of practices which are contrary to EU law or which are otherwise not conducive to the good functioning of the policy. These prohibited practices should include, among other things, the existence of detention centres with limited movement or with limited access to information for the refugees, obligatory payments for the stay of refugees in detention centres, and the absence of easily accessible legal support for the refugees.

4. Motivation for asylum seekers to respect EU asylum procedures

The current system dissuades asylum seekers from respecting its rules. Refugees heading for Germany or Sweden have a strong incentive not to register as refugees in any other EU country because under the Dublin Regulation, they are forced to stay in the country where they applied for the refugee status. As a result, the EU has to deal with thousands of unregistered refugees moving in the EU territory. Additionally, under current conditions, refugees are motivated to travel without their travel documents as many of them believe it is harder to extradite undocumented migrants in case of a refusal of the migrant’s asylum application.

The place of the migrant’s application for the refugee status (whether it is Germany, Italy or Greece) should thus not determine in which country she/he will receive the refugee status. The EU should also provide incentives for those who register early and travel with their documents. For instance, the EU could introduce a system which would allow refugees to pre-register (via embassies and an on-line pre-registration system) as asylum seekers. Those refugees
who pre-register and travel with their documents would benefit from a faster asylum procedure.

It is also absolutely essential that the new rules ensure that the asylum seekers are allowed to enter the labour market while their application is being processed. The current practice of keeping the refugees isolated and without access to jobs – often for months (which is, unfortunately, a very widespread practice) is both morally questionable and economically unwise. The refugees and asylum seekers surely want to make a contribution to the society they are in but they also want to live with dignity, and being allowed to work is an essential part of this. But even in practical terms, preventing refugees from working ensures they will be more of a drain on resources than they would be otherwise.

5. A fair and equitable system of distributing asylum seekers

Any system of refugee redistribution within the EU should be transparent, fair and equitable. The system needs to be based on a permanent mechanism, and not on defining exact numbers of refugees who will be accepted by individual states - the numbers that are proposed by the European Commission at the moment are outdated and are only drops in the ocean. Refugees seeking shelter in the EU come from various ethnic, religious and cultural backgrounds. Some of them are educated middle class urbanites, while others originate from less developed rural areas. While some refugees can easily adapt to life in European societies, the integration of others can be more difficult in terms of initial expenditures (education and requalification) and cultural adaptation. The best way to motivate refugees to become integrated and respect the quota system is to enable their access to the labour market as soon as possible, but also bind their working and residence permits to a specific country – at least for a transitional period.

In this context, it would not be fair if any one country cherry-picked asylum seekers. Nor does the universal right of asylum entail the right of the refugees to choose their country of destination. The refugees' decisions to leave their homeland were not voluntary and therefore the EU should provide shelter to those fleeing war, violence and political repressions. But the EU should retain the right to decide whether (and when) they are entitled to free movement within the EU.

The migrant’s choice of asylum country must be respected in cases of family re-unification. Other asylum seekers can specify their preferred country of residence in their asylum application, but it will remain the prerogative of the EU to assess the eligibility of the applicant (whether she/he is entitled to the refugee status) and decide in which country the refugee will receive residence and working permits and access to public services (including social security and education). Since the limitation of the refugees’ right of free movement will be temporary (it will be lifted after the successful completion of the transitional period or upon their receiving of the citizenship of the host country), refugees will be motivated to comply with the rules and respect the quota system. While creating incentives for the refugees to comply with the EU’s rules is of utmost importance, enforcement mechanisms for making asylum seekers follow the rules should also be considered.

6. The Mobility Ombudsman (MO) & opportunity analysis.

A Mobility Ombudsman should be introduced at the EU level to ensure that mobility as well as security concerns are incorporated into decision making on migration, border management and neighbourhood and foreign relations. The Ombudsman should develop an ‘opportunity analysis’ to act as a positive counterpart to ‘risk analysis’ and countervail the latter’s dominance in the production of knowledge about mobility and migration. It would be useful in this regard to examine the ways that such an ‘opportunity analysis’ could calculate and assess the full potential benefits of different kinds of migration and mobility rather than simply looking at economic aspects, as existing studies have tended to do. The opportunity analysis could also include assessments of the benefits to third country nationals and their home states as well as the benefits for the EU’s relations with them in addition to the direct benefits to labour markets and migrants.

What role for the Visegrad Four?

At the outset of the refugee crisis, concerns were raised about the division between the Southern and the
Northern tier of EU member states. However, at the moment we are witnessing an even more fundamental cognitive gap between the Western and the Eastern part of the EU, in particular the Visegrad Four. In their battle to keep alive the status quo of the EU’s migration and asylum policies, they have been increasingly isolated, losing the support of one member state after another. Their position, which sharply rejected the quota system advocated by the European Commission, has become untenable. In the end, not even the unity of the four countries could be maintained, however, as Poland realized that by refusing to accept the quotas, it would seriously damage its diplomatic reputation.

We believe it would be a wise move for the remaining three countries to also thoroughly change their attitude towards the distribution of refugees. The arguments in favour of such a change are plentiful.

1. Most importantly, by insisting on national solutions to the crisis, these countries find themselves in a paradoxical situation: while strongly defending the free movement of people across the EU, they risk the collapse of the Schengen System – and ultimately the EU – by refusing to accept the EC’s solution. The unfortunate corollary of their position is that the Visegrad countries align themselves with those nationalistic policy-makers in the West who are most critical towards migration in general, which includes migration from Syria but also from the Visegrad Four.

2. Secondly, in case of another outburst of violence in Eastern Ukraine, the V4 countries could find themselves overwhelmed by high numbers of refugees. This pertains to both the three countries which directly border on Ukraine, and the Czech Republic, which has a large Ukrainian minority. The V4 might thus suddenly be in need of the exact policy measures they now so sharply oppose.

3. While it is laudable that there is a strong coordination of foreign policy positions in the Visegrad framework, it is unfortunate that the V4 constructed the consensus in a negative sense and failed to come up with an alternative solution. While it is clear that the current asylum system does not work, the V4 offered very few ideas beyond the call for strengthening the external borders. The focus on external factors (such as the civil war in Syria or signing a readmission agreement with Turkey and – hopefully – functioning Libyan authorities) is important, but does not help with the current crisis. First, long-term goals such as ending the civil war do not give an answer to what the EU should do with the refugees in Italy, Greece and – for that matter – Hungary. Second, by focussing on securing the EU’s external borders and the factors outside the EU (such as ending the war in Syria), the V4 countries miss the point that it is the EU’s asylum policy that is in need of reform. As the current crisis crudely illustrates, it does not make sense to have one external border (no matter how high the fences are) and more than two dozen separate asylum policies.

4. Finally, the efforts to continue the fight against the quotas was destined to end up with a fragmentation of the Visegrad countries’ positions. In the end, the fragmentation will be – and already is – used as a negative example by those who (wrongly, in our view) consider the Visegrad framework obsolete. That such a fragmentation was to come was virtually inevitable. Let us not forget that the four countries are in very different positions: some of them are sheltered from the main migration flows (in particular, the Czech Republic and Slovakia), and others are highly exposed to them (Hungary); some have sizeable migrant populations abroad (such as Poland) while other do not (the Czech Republic).

The answer to the conundrum of what the V4 should do is rather simple. As the Czech President Miloš Zeman recently suggested, the decision about the permanent quota system is of such importance that it should be adopted by the European Council (Prague Daily Monitor, 2015). At the next such opportunity, the leaders of the four countries should demonstrate their unity and their solidarity with the rest of the EU by accepting the quota system, while constructively addressing its weaknesses. Although the – rather improbable – decision of the V4 to voluntarily accept more refugees than the numbers the quotas indicate would also make sense in the short term, it would not solve the long-term problem, i.e. the need to find a mechanism of refugee distribution for the future.

The fear of populism which some EU policy makers cite as the reason for their uneasiness regarding the quota system is certainly to some extent substantiated. However, combating populism by inaction is a losing strategy. Sitting idly will directly lead to the electoral victory of the xenophobic parties whose leaders already now portray themselves as men and women of action. The only viable way forward is to actively counter the xenophobic tendencies and allay the public fears by bold actions. The EU-wide agreement on the refugee distribution is certainly not all that needs to be done, but by joining the rest of the Union, Central Europeans would show that they want to belong to the club even at times when it is not them who is in need of help.
CONCLUSION

The refugee crisis can become – in spite of the underlying tragedy – a moment of glory for the European Union. Suffering from crises of both identity and confidence, the EU can find itself again by drawing inspiration from its history and values and renew its purpose at home and abroad. If the EU manages to reform its outdated migration and asylum policies, offering the war refugees a friendly welcome, it will prove that the fears of its weakness are exaggerated and the rumours about its erosion are unfounded. If decisive action is taken by European leaders, the result will be of benefit for both the refugees and the societies as well as economies of the recipient countries. War refugees – and even economic migrants – are not a threat; they are an opportunity for the EU to prove that it still stands firm on the principles of peace, solidarity and openness, on which it had been originally built.
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