Holding the borders, holding the centre: the EU and the refugee crisis

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Summary

What has come to be called the 'refugee crisis' is the latest in a series of crises bedevilling the European Union – the four-fold monetary, budgetary, economic and financial 'Euro-crisis'; a geopolitical security challenge posed by Russia's invasion of Ukraine, the war in Syria and incursions into NATO airspace, and a looming Brexit, combined with the possible fragmentation of old EU member states like the United Kingdom and Spain. The 'refugee crisis' is the most serious of all. It encapsulates the EU's failings and failures that other crises laid bare: the lack of long-term prevision and strategy, an overburdened decision-making system, and an outmoded conception of sovereignty. It goes to the very heart of the EU, for three reasons: Firstly, the cleavages it creates between member states add to those that have been dividing the EU since the early days of the Euro-crisis; secondly, the massive displacement of populations gives rise to complex problems, sparking controversies that weaken the social and political fabric of individual member states and feed into populism and xenophobia; and, thirdly, the German Chancellor, who has played a crucial role in alleviating, if not solving, other crises, is facing domestic and European rebellions for her handling of the refugee issue. Will the agreement that the EU and Turkey concluded on 18 March 2016 manage to limit the influx of refugees, patch up differences, and re-establish Angela Merkel's authority in Germany and in the Union?

Introduction

The agreement reached by the EU and Turkey on Friday 18 March is aimed at limiting and controlling the arrival of migrants on the European continent, re-establishing order at the EU's external and internal borders, and alleviating social and political tensions in individual member states, while preserving the unity of the Union. Migrants crossing the Aegean will be sent back to Turkey; for each migrant returned, a Syrian refugee will be re-settled to one of countries of the European Union, though the total number of re-settled individuals will be capped at 72,000. Legal mechanisms of re-settlement are intended to dry up the Aegean and Balkan routes, and limit what has been seen as massive, disorderly arrivals of refugees in the EU.

However, the agreement gives rise to as many questions as it purports to solve. For implementation it relies heavily on the willingness of a neighbour, Turkey, and does not differ from previous EU migration and border policies that have entailed outsourcing control and security to the European periphery. It does not address the issue of non-Syrian refugees who, desperate for new routes, will fall prey to more dangerous smugglers; and it raises questions as to whether capping the number of re-settled refugees will deter others from sneaking into the EU.

This Policy Brief examines the causes of the current 'Euro-refugee crisis', debunking some common misconceptions, and underlining the weaknesses of the EU's policies and decision-making system. In particular, it points at the EU's failure to foresee and prevent the crisis, due to the misconceived policy of outsourcing border and migration controls. Finally, it enquires into the resilience of the EU and of the German Chancellor.

Causes: A bundle of micro- and macro-decisions

The EU cannot be held responsible for the massive arrival of refugees on its territory in 2015 and 2016, nor can Chancellor Merkel. Actually, the current wave of arrivals dates back to 2011, with rebellion, repression and descent into war in Libya and Syria, and chaos in failed states from Afghanistan to Africa. In 2010, 100,000 undocumented migrants (the term refers to both 'economic migrants' and individuals who are persecuted or fleeing from war zones) crossed the external borders of the EU. According to Frontex, there were 140,000 in 2011, and 280,000 in 2014. Their numbers kept rising as chaos spread and took root. Certainly, it may be argued that Western countries withdrew too quickly from Libya after the military intervention in 2011, and failed to pacify Afghanistan and Iraq. Yet these criticisms gloss over complex domestic and regional dynamics, the lack of national cohesion, the instrumentalization of religion, and the prevalence of secu-

rity apparatuses over civil administrations, particularly in Arab states. In 2015 came a drastic increase in the number of departures, from Syria and Iraq or from refugee camps in neighboring countries, as ISIS consolidated its foothold there and, as of September Russia started bombing moderates and civilians, or from Eritrea, Sudan or Somalia. Barred from returning home, refugees looked to the next harbour: the European Union.

Nor is it correct to attribute to Chancellor Merkel the decision to fling wide open the doors to refugees in August 2016. Certainly, she raised her voice to welcome refugees, mainly Syrians. On 31 August, while conceding that some confusion reigned, she made a forceful statement that she would often repeat in the following months: 'We can do it' (Wir schaffen das). A few days later, Germany and Austria embraced the refugees who had remained behind when Hungary closed its borders. We can only hazard guesses at the reasons that motivated the Chancellor's decision. Those who recalled the removal of barbed wire along the Hungarian–Austrian border in May 1989, leading to the liberation of Eastern Europe and the reunification of Germany and indeed of the continent, were shocked to see another Hungarian government erecting a fence. The Chancellor referred to a 'humanitarian imperative', an expression coined by her close confidante Peter Altmaier, head of Chancellery and Minister for Special Affairs. She also recognized that those EU member states where refugees first set foot, Greece essentially, could not be left alone to deal with a massive influx of newcomers. The decision was also part of an attempt to refurbish Germany's image that had been tarnished by the government's pro-austerity policy towards Athens. The widely circulated and influential newspaper Bild started a campaign, '#welcomerefugees', to rebuild Germany's credit among EU members. Other reasons stemmed from longer-term calculations. In 2014, the Chancellor had hailed Germany as Einwanderungsland, a country of immigration and diversity, to counter adverse demographic trends and the declining workforce there.

Chancellor Merkel gave Europe a voice, the voice that the Arab rebels should have heard early on in 2011. But she did not alter the course of events that had taken shape before. Many actors – not only individuals who decided to head for Europe, but also administrations and governments – contributed to the rising tide of refugees. At the beginning of 2015, the German Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF), an agency of the Ministry of the Interior, decided to streamline the procedures for asylum-seekers from Syria, Iraq and Eritrea. On 21 August, it ultimately stopped enforcing the deportation of Syrian refugees to the first country of arrival. From then on, Germany opened its door to refugees without having them first registered in the country of first arrival, and made it much easier for Syrians, Iraqis and Eritreans to obtain asylum. Here again, various reasons came into play. BAMF had been hurt by austerity measures, and, because of its limited capacities, a considerable backlog in the treatment of claims had built up over the years. With the dramatic deterioration of the situation in their countries, the case of Syrians, Iraqis and Eritreans seemed relatively clear. Finally, the cost, inefficiency, and often illegality of deportation ruled out any other policy. BAMF merely made official what had become reality over the previous few years. As early as August 2016, the Minister of the Interior, Thomas de Maizière, predicted that 800,000 migrants would reach Germany by the end of the year. Others already spoke of a million.

The EU's mistakes: Outsourcing

The European Union made several serious mistakes. First, even though EU agencies and institutions, like Frontex and the DG Home Affairs, were aware of the growing number of arrivals well before 2015, no strategy was devised. Over the years, the European Council has increasingly become the strategic centre of EU decision-making, for several reasons: not least because member states have come to discard the Monnet Method for the sake of sovereignty, including Berlin since the latter part of the 1990s. Angela Merkel came also to believe that locating decision-making in the European Council would promote speed and efficiency. The converse actually happened. As crises emerged, the European Council met with increasing frequency, organizing ordinary or extraordinary meetings that pre-empted or bypassed the Council of Ministers. It became overburdened. When asked why the EU had not foreseen the upcoming crisis, a German minister retorted that he could not 'multi-task'.

Taken off guard, the European Council could not quickly and efficiently elaborate a strategy, which had for years been piecemeal at best, devised for a time when the influx of migrants was less heavy. The abolition of internal borders just before and after the fall of the Berlin Wall, the necessity of guarding the EU's external borders, the onslaught of wars in the former Yugoslavia, the greying of the continent, and the plight of refugees, many of whom died at sea trying to reach the shores of Europe, should have prompted the EU to adopt common migratory, refugee and border policies. For years, international organizations like the High Commission for Refugees, or NGOs like Amnesty International or Human Rights Watch had been urging the EU to create and implement a policy that would allow safe passage for refugees who 'have the right to have rights' (Hannah Arendt). Instead, the Europeans stuck to national policies that limited economic migration, avoided establishing common external border controls worthy of the name, and cobbled together a policy towards migrants which they essentially outsourced to the EU's internal and external peripheries – with fatal consequences.

The Dublin Convention and Regulations require the countries of first arrival in the EU – essentially Greece, Italy and Spain – to register migrants and examine their claims, in order to prevent asylum-seekers from filing requests in several member states simultaneously. The outer periphery was also drawn in to filter transit and arrivals. Re-admission agreements were signed between the EU or individual member states and neighbouring countries – or countries farther away – requiring the

latter to readmit nationals or third-countries nationals who enter the EU illegally through their territory, in exchange for financial and technical help. The EU seemed well protected by a twin frontier – as long as the governments of the internal and external periphery were able and willing to play the game.

However, the EU member states that are the main countries of first arrival are economically poor, and administratively understaffed. A European Refugee Fund (ERR) was created to improve accommodation infrastructure, and legal assistance to refugees, and Frontex helped register asylum-seekers at points of entry. However, both had limited funding and scope of action. Furthermore, Greece is currently in breach of international law. After the European Court of Human Rights ruled, in 2011, that the country did not respect the rights of refugees, other EU courts stopped returning migrants to Greece. Led by Alexis Tsipras, the coalition of the left-wing party Syriza and national conservative and populist ANEL, which came to power in Greece in January 2015, decided to abide by certain international commitments, and to stop deporting to their countries of origin those refugees who had not applied for asylum but who belonged to categories that needed protection. More surprisingly, Athens refrained from requesting EU emergency support. It might have wanted to obtain revision of a policy that places on Greece – and a few other states – the onus of guarding the EU's borders. Building up capacity and facilities, and detaining economic migrants and asylum-seekers in pre-removal centres, as the previous government had, would have been tantamount to supporting the 'common refugee policy' – besides disregarding principles. The government also probably used the crisis as a bargaining chip to obtain more help from the EU to meet the heavy financial and societal costs of the migrant influx, and to widen its room for manoeuvre in negotiating with international and European institutions the financial and economic terms of a settlement in the Eurozone.

Europe's quandary

Meanwhile, outsourcing has played into the hands of countries of the external periphery, some of which are governed by authoritarian regimes whose main concern is certainly not the welfare of their own populations, let alone of migrants. In the past, Colonel Qaddafi obtained funding and recognition in return for keeping migrants at bay, but the EU was hardly in a position to verify the conditions under which they lived. While hosting more than two million refugees on its soil, most of them in dire straits, Turkey also exploits the current crisis to embarrass the EU and exact concessions. The Turkish authorities are said to have turned a blind eye to smugglers who exploit refugee vulnerabilities. Between September 2015 and March 2016, when the EU–Turkey agreement was struck, the Turkish government also used strong-arm tactics to try to wrench concessions from the EU in return for guarding European coasts and re-admitting migrants crossing the Aegean. EU membership negotiations that had come to a standstill because of the blockade over Cyprus, the opposition of President Sarkozy, and Ankara's turn towards illiberalism, were to be re-invigorated – while, at the same time, President Erdoğan derided the European Union, and railed against democracy. Yet the agreement struck on 18 March does not grant the Turkish government everything it asked for in return for readmitting all migrants crossing the Aegean, heeding their rights according to international law, and ensuring decent conditions thanks to funds allocated by the Commission. At present, Turkey does not meet all the conditions necessary to open up new chapters but one on budgetary matters, or to allow visa liberation. Moreover, the disbursement of twice €3 billion must be traceable. In this regard, the Commission and the Council are not flouting requirements. Given these circumstances, it seems far from certain that the Turkish government will abide by its commitments and keep refugees on its soil, let alone under acceptable conditions.

Further, while the EU has imposed conditionality in certain areas, it disregards the dire state of democracy, human and minority rights in Turkey, as well as the rights of migrants. It has entered into an agreement with a government that has become increasingly authoritarian, that has imprisoned liberals, dismissed them from their jobs, and that has restarted a bloody war against its Kurdish minority. The EU is also turning against refugees. While in theory asylum-seekers may file claims in Greece and enjoy the right of appeal, which would prevent Turkish or Turkish-Kurdish asylum seekers from being returned to Turkey, the capacities of the Greek authorities to examine claims remain limited despite the help that the EU is slowly providing. It is also doubtful that a government that sets aside the rights of parts of its own population would respect the rights of refugees. Since Ankara has not signed the New York Protocol granting rights to non-Europeans refugees, but gives them only temporary protection according to a regulation it adopted in 2014, it may return then to their home countries. For EU member states, in this case Greece, to declare Turkey a 'safe third country' is simply one bridge too far.

Conclusion: Will Merkel survive?

The EU contravened its own principles in agreeing to send refugees back to Turkey. Criticism has not spared Angela Merkel, who hammered out the agreement with the Turkish Prime Minister and capped the number of Syrian refugees who can be re-settled to the EU, though she has repeatedly rejected the notion of Obergrenze (upper limit) in her own country. Merkel cannot escape the dilemma that states face: According to international law, refugees have the right to seek protection, also by illegally crossing borders. Yet states have to control their borders, maintain order and ensure the security of their citizenry – although the definition of order and security is political and varies according to governments and majorities. The German Chancellor has lost her moral compass. But can she consolidate her position and salvage the Union?

Beyond its disregard for the rights of Turkish democrats and refugees, the March 2016 agreement does not offer a proper solution to Europe's 'refugee question'. Most probably, the Aegean/Balkan route will dry up. With the announcement of new and stricter measures, refugees will stop seeking salvation through the Eastern Mediterranean. However, as always, other routes will open up – and one is particularly frightening, not only for migrants but also for EU citizens and governments: the Libyan route, where Daesh can make profits from trafficking. Once more, we see that the Europeans have chosen a short-term fix in lieu of a long-term strategy.

The EU 28 managed to reach a compromise, as they did during the Yugoslav wars, to preserve a semblance of unity. They rallied behind Germany's Chancellor Merkel, after having watered down some of her concessions towards Turkey. However, the rifts that divide EU member states – and the states of the Balkans, some of which are candidate countries – concerning refugee policies have not disappeared. Indeed, they serve to reinforce cleavages which have emerged over the years: between pro-austerity governments, and countries that suffer from the Euro-crisis; and between governments that oppose Russia's energy dominance in Europe and those that favour closer ties. In this crisis, Angela Merkel has lost some of her aura and influence for having imposed policies or solutions repugnant to many, and Berlin has stood rather isolated, though the summit of 18 March may have helped to disguise this.

In Germany itself, however, Angela Merkel has recouped some of her power, not only because so many stand behind her, but also because opposition to her policies and even her chancellorship has gone too far. In particular, the campaign that Germans of Russian background, supported by the Russian Minister of Foreign Affairs, orchestrated at the beginning of this year, protesting against the alleged abduction of a Russian-German girl by refugees, and the dissolution of law and order in Germany, created a backlash in the media and the broader public. Even if the right-wing Alternative für Deutschland gained seats in regional parliaments in March, it is not certain that it will become more than a protest party. At present, the centre still holds in Germany.

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