

13th EUROPEAN SEMINAR
30 June -03 July 2016, Hydra, Greece

*Union, Disunion or Time
for a Paradigm Shift?*

POLICY PAPER

Divided we stand, united we fall? European migration & asylum policies post crisis

Angeliki Dimitriadi

Research Fellow, Hellenic Foundation for
European and Foreign Policy (ELIAMEP)

A Conference
organised by:

ΕΛΙΑΜΕΠ  **ELIAMEP**

ΕΛΛΗΝΙΚΟ ΙΔΡΥΜΑ ΕΥΡΩΠΑΪΚΗΣ & ΕΞΩΤΕΡΙΚΗΣ ΠΟΛΙΤΙΚΗΣ
HELLENIC FOUNDATION FOR EUROPEAN & FOREIGN POLICY

In cooperation
with:

EPC 
EUROPEAN POLICY CENTRE

With the support
of the LLP
programme of the
European Union



Education and Culture DG
Lifelong Learning Programme

Copyright © 2016

Hellenic Foundation for European & Foreign Policy (ELIAMEP)¹

49, Vas. Sofias Ave, 106 76 Athens, Greece

Tel.: +30 210 7257 110 | Fax: +30 210 7257 114 | www.eliamep.gr | eliamep@eliamep.gr

All Rights Reserved

Divided we stand, united we fall? European migration and asylum policies post crisis

by Angeliki Dimitriadi

Research Fellow, Hellenic Foundation for European and Foreign Policy (ELIAMEP)

¹ ELIAMEP offers a forum for debate on international and European issues. Its non-partisan character supports the right to free and well documented discourse. ELIAMEP publications aim to contribute to scholarly knowledge and to provide policy relevant analyses. As such, they solely represent the views of the author(s) and not necessarily those of the Foundation..

Divided we stand, united we fall? European migration and asylum policies post crisis

Angeliki Dimitriadi

Research Fellow, Hellenic Foundation for European and Foreign Policy (ELIAMEP)

Introduction

The notion of ‘crisis’ pervaded the policy responses of the past year and a half, from the German ‘*Willkommen*’ to the relocation measures, the hotspot system and the *coup de grace*, the EU-Turkey agreement. Is it ‘Europe’s migration crisis due to size of arrivals? In a continent of 500 million the advent of one million should have been manageable. However, it has been a political crisis revealing a deep schism in the EU, founded on geography and perpetuated through EU 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, 2,859 have died in the first six months of 2016 in the Mediterranean. These ongoing tragedies are poignant reminders that today’s migration flows require **policy responses** that address the domestic context within the EU but also look outside its borders to migrants’ countries of transit and origin.

The root causes of migration and refugeeism have multiplied and expanded across the globe. From Ukraine to Syria, and from Afghanistan to sub-Saharan Africa, Europe is currently surrounded by upheavals. For the first time, since Second World War, 65.3 million were forcibly displaced, one in every 113 people on the planet, as a result of persecution, conflict and human rights violations.

European responses, however, from the beginning until now appear divided between the desire for ‘Fortress Europe’ and the moral (as well as legal) responsibilities deeply embedded in the political fabric of the continent. Polar opposite ideas, they have nonetheless been the foundation of the European attempts to manage migration and asylum.

There is an inherent imbalance in the design of both migration and asylum management that draws heavily from geography. The Schengen area of free movement is ‘protected’ by the external borders and primarily Greece, Italy, Spain. By virtue of geographical location, they receive the overwhelming majority of irregular arrivals. Though burden sharing is an underlying principle of the European Union, the reality has been for a long time that of the 28 member states of the EU, a very limited number was actually

affected by irregular migratory flows. The asylum system drew from this geographical imbalance and perpetuated it. The Common European Asylum System (CEAS) and particularly the Dublin Regulation shifts the burden even more on the frontline states by requiring asylum applications to be processed in the first country of arrival. An official evaluation of the Dublin system found that 24% of applicants in 2014 had already sought asylum in another member state than the designated one. Moreover, the regulation has limited impact on the distribution of applicants within the EU, given that net transfers in Dublin procedures are very few. The need for restructuring both has become glaringly obvious already since 2012 yet to this day EU leaders cling to the Dublin revival and persist attempting to revive one of the most ineffective mechanisms in place.

Of relocation, hotspots and Schengen: internally divided

The European response unfolded following a series of events: the pictures of the body of Ayhlan Kurdi, the continuous media calls in Germany for the German Chancellor to act in the face of the refugee exodus, the pictures of thousands arriving daily on the Greek islands and then once more after the terrorist attacks in Paris on November 2015 and the events on New Year's in Cologne. As Greece started crumbling under the weight of arrivals that require screening, processing, first reception facilities, assistance, interpretation, and medical care, a series of policy measures were adopted, with various degrees of efficacy: from the hotspots to relocation, the European Border Guard (EBG), the infamous EU Turkey deal and recently the new Partnership Framework with third countries under the European Agenda on Migration.

Neither hotspots nor relocation have been successful.

Relocation has thus far been extremely slow to take off, partly due to the inability of Greek asylum service to process the asylum claims, partly due to the limited number of places made available by member states and partly due to the refusal of refugees to accept random placement in a member state. Despite efforts to bring the Visegrad states into the fold, their refusal to accept the relocation decision is reminiscent of an older division, between southern and northern member states regarding the Dublin Regulation. Recent Commission data (13 May 2016) show that the total number of persons relocated reached 1,500 (909 from Greece and 591 from Italy). This figure sharply contrasts with the original target of 160,000 asylum applicants due to be relocated.

The hotspots, originally designed as one stop service for migrants (registration, screening, and registration doc), were transformed overnight and without the appropriate capacity into detention facilities for the EU Turkey deal. It is worth noting that the hotspots were designed for maximum 3-day stay. While the claim is pending, applicants are detained, with maximum time (Greek Law 4357/2016) of 25 days. Perhaps more crucially, the hotspots can function due to the reduction in arrivals. But current capability indicates they will be unable to perform in a large influx.

Nonetheless, there are areas of common ground. Everyone agrees on the European Border Guard (and updated version of Frontex), and the need to shift the focus on third countries. In fact, it seems that though member states cannot agree on actual burden sharing and true solidarity with each other, they are quick to agree on maintaining a problematic asylum system and in shifting the burden to third countries. To date, because priorities have rarely converged and member states have been wary about over-committing, partnerships on migration have simply taken too long to negotiate, and yielded too little. They are often grossly unequal, leveraging partner countries' dependency on the EU, and placing undue burden and responsibility on them (examples include Libya, Niger, Senegal).

The EU Turkey deal is also an imbalanced partnership, born out of the 'crisis mode' Europeans entered in 2015. The deal is a testament to Turkey's ability to instrumentalise migration and its position as a transit country. More crucially, it has enabled Turkey to become Schengen's gatekeeper, since the external borders are intrinsically linked with the protection of Schengen. It has also shown how far Europe is willing to drift from the international protection regime that is the cornerstone of national and European refugee law.

Recalibrating asylum?

The most worrisome outcome of the 'crisis' of 2015 is the gradual recalibration of asylum and what it encompasses. The proposal up for negotiation on the revised Common European Asylum System (CEAS) was meant to first and foremost address some of the weaknesses in Dublin. It is highly unlikely this will happen. The introduction of a corrective mechanism is an acknowledgment of the failure of the system in place, but also of the unwillingness of EU leaders to truly share the burden unless there is an emergency. However, what is of concern are the punitive steps to address secondary movement. Asylum seekers in Europe to this day largely choose their destination. Even when they apply for the asylum to the entry points, a significant number will undertake secondary movement and reapply in another member state. They do so for a variety of reasons but first and foremost because the country of arrival is usually not in a position to offer them a holistic protection; not just from deportation and physical harm but also support and assistance to integration. This is the crux of secondary movement. Rather than addressing the deficiencies of front line states, the current proposal is punitive in nature. Those who move to another member state would have their status examined through accelerated status determination procedures. Reception services (other than emergency healthcare) would be withheld by any Member States in which the applicant is not entitled to be present, and Member States would continue with the Refugee Status Determination (Proposal Article 5) even during the absence of the applicant.

The way forward:

Security and protection to those in need are not incompatible even though at present the balance shifts more towards security, smuggling networks, prevention of entry and returns rather than protection. The normalisation of the suspension of Schengen regulations to prevent refugees' free circulation, the Hungarian barbed-wiring along the border with Croatia to block migrants' access to its territory, the Swedish deportation schemes to replace those of reception, are some of the ways EU member states are moving forward and apart.

- The establishment of the *European Border Guard* (EBG) is a positive step in the right direction. If the external borders are indeed everyone's borders, then a European force is a true mechanism of burden sharing and solidarity between member states. It is also a small step towards further integration, in a Union that in 2015 appeared more divided than ever before. How quickly and how effective it will be, will depend once more on Member States, their contribution and their willingness to utilize the EBG in an efficient manner. The current proposal significantly changes the role of the Agency and makes imperative the need for an independent authority to process allegations of fundamental rights and /or human rights violations; an authority like the European Ombudsman.
- *Capacity, capacity, capacity*: Unless front line States acquire sufficient reception and integration capacity- which they do not have at the moment, and unless they are supported financially with a mechanism outside the AMIF (Asylum, Migration and Integration Fund) to ensure regular inflow of cash to cover salaries and services, secondary movement will not stop within Schengen. It will become harder, costlier and deadlier, profiting smugglers. It will not deter people though from 'asylum shopping' precisely because not all member states offer the same asylum standards.
- *Offer legal migration channels for refugees*: the EU (re)focused on fortifying the external borders of the Schengen area so as to seal Fortress Europe off from the instability of their neighbours. Military tools will ultimately only displace migratory flows to other routes because they fail to tackle one of the root causes of irregular mobility: the absence of legal migration channels. 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 and utilize existing legal pathways (e.g. Humanitarian visas, family reunification). 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 stay the camps with the prospect of reaching Europe safely, and significantly reducing smugglers' profits. It would also enable member states to regulate arrivals.
- *Offer legal migration channels for economic migrants*: The Mobility Partnerships were an innovative approach that offered very little mobility in the end to third

country nationals. Nonetheless it is time to acknowledge that Europe needs a boost in its labour force and offering more labour schemes to partner countries, student visas and circular migration programs can be mutually beneficial.

Partnerships with third countries: not to outsource the responsibility and management of migration but to boost the capacity of countries of origin and transit to address some of the push-pull factors in place. Partnerships are crucial also in facilitating returns of rejected asylum seekers and irregular migrants. Their success rests on balance, a give and take. There is implicit recognition in the working document recently issued by the Commission on the need to go back to the drawing board on partnerships with third countries but it remains to be seen whether this will be used once more as a way for the EU to outsource its responsibilities in exchange for financial assistance or to try and share the burden.

