Border Security, Camps, Quotas:
The Future of European Refugee Policy?

Steffen Angenendt, David Kipp and Anne Koch

On 18 March 2016, the EU member states and Turkey concluded an agreement on the return of persons having arrived in Greece irregularly – in the hope of reducing the number of irregular migrants coming into the EU. After months of member states being unable to find a common response to the rising numbers of new arrivals, the agreement is considered a breakthrough by many observers. In fact, the agreement stands for a broader shift in EU refugee policy, which now focuses on the themes of border security, camps and quotas. This goes along with a reorientation from the previously prevalent individual asylum application towards a system where groups of refugees are accepted voluntarily (resettlement). This trend carries serious risks for refugee protection globally. At the same time, however, new forms of cooperation are taking shape that could strengthen the EU asylum system.

The sharp rise in the number of asylum seekers in late summer 2015 triggered centrifugal processes within the EU. The Dublin Regulation – under which asylum-seekers must be registered in the country through which they first enter the European Union – was effectively suspended. EU member states have failed to implement the EU Council of Ministers' decision to resettle a limited number of refugees from Italy and Greece, and have resisted the introduction of a permanent relocation scheme. Instead, the reintroduction of (temporary) border controls at several internal EU borders casts doubt over a core achievement of European integration, and indicates a worrying tendency towards

renationalisation. The roots of these developments are not limited to the rapidly rising number of Syrian refugees. They also result from well-known deficiencies in the EU asylum system and are thus an expression of a structural crisis in European politics.

Shortcomings of the current policy framework

In the past two decades the EU has extended the contractual foundations for harmonising national asylum systems step by step. The Common European Asylum System (CEAS) has been considered complete since June 2013. It consists of five core elements: the Reception Conditions Directive, Asylum

Dr. Steffen Angenendt is Head of SWP's Global Issues Division.
David Kipp and Dr. Anne Koch are Associates in SWP's Global Issues Division.

Procedures Directive, Qualification Directive, Dublin Regulation and Eurodac Regulation. The three directives define legally binding minimum standards for the reception and care of asylum seekers, the processing of their asylum applications and the granting of refugee status. On paper these legal instruments guarantee uniform procedures and a uniform protection status across the EU. In practice, however, member states' procedural standards and recognition rate for asylum seekers diverge as much as ever. In addition, the approval of an asylum application – unlike its rejection – is not initially valid across the whole of the EU. Choosing the EU member state in which to make their first application for asylum therefore continues to be of decisive importance to asylum seekers.

Against that backdrop, the Dublin System has two serious weaknesses. First, it saddles the EU member states with external borders with a disproportionately large share of responsibility. Second, it is continuously being undermined by asylum seekers who try to avoid being registered until they have reached a destination country within the EU that is attractive for them.

These structural deficits have long been evident. For years, EU member states neglected to develop fundamental alternatives to the Dublin System, except for gradual reforms. Only since the dramatic rise in the number of asylum applications have heads of state and government made room on their agendas for a model using quotas for the fair allocation of asylum seekers.

Political reactions

To remedy these weaknesses, the EU Commission has proposed far-reaching reforms to its asylum and migration policy. In May 2015, in response to two devastating boat accidents in the Mediterranean, it issued the "European Agenda on Migration". This agenda entails measures aimed at protecting external borders and reducing irregular migration alongside a reform of the Dublin System and the expansion of legal means of migration.

As one step towards fulfilling this comprehensive agenda, EU member states agreed in autumn 2015 to relocate 160,000 asylum seekers located in Italy and Greece. However, the implementation of this emergency relocation scheme foundered because of the resistance of several EU member states, including Slovakia, Hungary and the Czech Republic. Moving forward on measures aimed at reducing the number of new arrivals has proved to be easier. Due to this, three key themes have dominated the European debate on asylum and refugee policy over the past few months: border security, camps and quotas.

Border security

Attempts to impose stricter controls on the EU's external borders are far from new. They have always constituted the counterpart to the EU's internal freedom of movement. These two aspects are also linked in the current crisis: the growing restriction of free movement within the EU – through the reintroduction of controls at internal borders and the temporary closures of some of those borders – went along with demands for an improved protection of the EU's external borders. Over the past few years, the EU border control agency Frontex, established on 1 May 2005, has been continuously expanded. Since its inception, the number of staff it employs has grown more than tenfold, and its annual budget has risen from six to 254 million euros.

In the context of the current refugee crisis, Frontex has been equipped with additional resources, and its mandate has been broadened. Frontex is now authorised to initiate returns without having to wait for member state initiatives. The "EU Action Plan on Return", adopted in September 2015, stipulates the creation of an independent Frontex Return Office and a series of Rapid Return Intervention Teams under Frontex leadership.

On the whole, member states are in favour of expanding the agency into a "European border and coast guard agency" with even greater independence. This may, however, fall short of the EU Commission's far-reaching proposal to allow for deployment of the agency without the agreement of the respective member state when necessary.

Stepping up border security is often justified by the need to put a stop to migrant smugglers. The main purpose of Operation Sophia (formerly EU NAVFOR Med) is to fight people-smuggling in the Mediterranean. Since February 2016, a NATO deployment in the Aegean Sea – in which Turkey and Greece cooperate with each other – has been pursuing the same goal. Efforts are also being made to improve border surveillance technology. The EU Commission has demanded a better implementation of the border surveillance system EUROSUR that was introduced in 2013. This system is intended to support border security through the use of drones, high-resolution cameras and satellite tracking systems, and to simplify the exchange of information between member states. Finally, a Commission proposal aims at reforming the Schengen Borders Code so as to improve and facilitate the exchange and matching of biometric data collected at the EU's external borders.

Camps

Along with the reinforced security on external borders, centralised forms of refugee accommodation play an ever greater role in the EU's refugee policy. The various facets of the debate can be grouped together under the keyword "camps", although the respective forms and objectives diverge sharply depending on context.

First, many member states are setting up city-level or municipal reception centres for refugees. EU member states faced with large numbers of new asylum seekers have created centralised reception facilities so as to be able to register, provide for and look after a large number of individuals in a short time. Some member states have residence requirements that compel refugees to remain in such reception facilities. These requirements are often linked to debates about the advantages and disadvantages of centralised versus decentralised accommodation and the repercussions they have on refugees being accepted and integrated in society.

A second type of camp is located inside EU member states and close to their borders. Some member states with high refugee numbers have set up reception camps to speed up identification of those who do not need protection – and to speed up their returns as well. The German government, for instance, has created two so-called reception and return centres in Bavaria for asylum seekers whose prospects of being accepted are slim.

A third type of camp is used for directing and ordering the migration flows within Europe. Whilst the so-called EU hotspots are intended to facilitate the agreed re-allocation of 160,000 asylum seekers currently stranded in Italy and Greece, the "transit centres" established in November 2015 along the Balkan route will be used to direct migrants' onward journey north into more orderly channels.

A fourth type of camp is located outside of the EU. Here, two aspects must be taken into account. First, EU member states have a long history of supporting refugee camps operated by the United Nations High Commissioner for Refugees or by national actors in states bordering on the crisis areas – in the case of the Syrian war, in Lebanon, Jordan and Turkey. Despite countless appeals by international aid organisations, the EU did not realise how insufficient this support was until the drastic rise in onward migration by Syrian and other refugees from Turkey. Now, appeals tend to be listened to more: at a big international donor conference for supporting Syria's neighbouring countries in February 2016, the states involved pledged a total of 11 billion US dollars' worth of aid. This sum is also meant to improve conditions in the camps.

The second aspect concerns extra-territorial refugee camps. Those in favour of such camps argue that decisions on asylum applications ought to be taken outside of the EU – for instance, along the African transit routes or in North African states. They hope that using such camps will make it easier to direct migration flows. There is also currently a debate about establishing extraterritorial camps in a pacified zone in Syria – a proposal that raises far-reaching questions of foreign and security policy.

These conceptions and discussions of the role that camps play in EU refugee policy differ greatly both conceptually and in the degree to which they have been realised. To summarise and simplify, the picture that emerges is one of concentric circles. The innermost circle consists of the camps located in member state towns and municipalities; the second circle of the new facilities in member states' border regions. The third circle is made up of the hotspots and transit centres in EU states with external borders and along the Balkan route; and the fourth circle consists of the existing and planned refugee camps outside the EU, the latter for instance in North Africa and Syria.

How one evaluates the various types of camp depends on fundamental questions. Are they open or closed facilities? For how long are refugees expected to stay there? Is this where (preliminary) decisions regarding asylum seekers' need for protection are taken? Who has the authority to take such decisions, and what guarantees are there that they will respect the legal avenues as stipulated? And finally: are the camps used to arrange returns?

What one needs to bear in mind is that camps can easily become detention centres. One example is the hotspots in Greece, which had originally been conceived as open camps. However, they are now meant to ensure that the EU-Turkey agreement is implemented and have thus been repurposed as closed facilities.

Quotas

Quotas are the third major theme in current European refugee policy. In recent months, several member states have called for clearly defined upper limits to the number of refugees being received. The German government has declined to set such limits on ground of international law, constitutional law and practicality. In February 2016, the Austrian government defined an upper limit for refugee reception, and linked this to daily quotas for processing asylum applications. While the legal experts tasked with evaluating these upper limits declared the measure to be unconstitutional, the foray quickly had an impact. As many observers had predicted, there was a domino effect of border closures along the Balkan route. This has created a backlog of asylum seekers at the Greece-Macedonia border.

Simultaneously, a discussion unfolded on the resettlement of Syrian refugees from Turkey. While the US, Canada and Australia have a tradition of accepting refugees as part of the UNHCR resettlement programme, European states used not to participate in the programme at all or only very hesitantly.

However, Germany has gained experience outside the UNHCR resettlement process, in the context of humanitarian admission programmes for refugees from Iraq in 2008 and in recent years from Syria. Since 2013, almost 42,000 Syrians who had fled the civil war to neighbouring countries have been received in Germany through three federal and fifteen state-level programmes. The Federal Government, however, has not launched any further reception programmes because other EU member states lacked the willingness to follow this approach, and because in 2015 refugee numbers rose sharply.

In view of the many casualties in the Mediterranean Sea, and the inability of EU member states to agree on the relocation of refugees within the EU, the ordered resettlement of refugees now seems an attractive alternative to uncontrolled migration across the Mediterranean. Turkey, currently

the main transit country for refugees travelling to the EU, is the EU's most important partner in this.

The EU-Turkey agreement of 18 March 2016 marks the highpoint of these developments so far. From a European perspective the crux of the agreement is the quick return of rejected asylum seekers and irregular immigrants from Greece into Turkey. In return for every Syrian refugee sent back to Turkey, one vulnerable person is supposed to be resettled from a Turkish refugee camp to an EU member state. However, this "one in, one out" rule only applies up to a limit of 72,000 people, and the participation of individual EU member states in the resettlement process is voluntary. In addition, the agreement with Turkey also secures quick progress on visa liberalisation, a revival of Turkey's EU accession negotations and extensive financial aid for providing support to refugees.

Since the agreement came into effect on 20 March 2016, newly arriving refugees in Greece have been detained in the "hotspots". Since information spreads rapidly among refugees, these deterrent measures are having their first effect: the number of new arrivals on the Greek Islands has dropped by 80% in the first three weeks of the agreement being in force. Where previously an average of 1,676 refugees had arrived in Greece every day since the beginning of the year, the post-agreement average was only 337. While this solution reduces the political pressure on decision-makers, there are doubts over its sustainability in the long run. As the cooperation between the EU and Turkey shows, the dynamics of reinforced borders, camps and quotas will shape EU refugee policy in the future. However, there are serious risks associated with such policies.

Risks

In recent months, strong political pressure has been brought to use the EU-Turkey agreement as a lever to help generate European consensus on the way forward in the refugee crisis. Progress in cooperating with Turkey was particularly important for the German government, which had argued vehemently against national unilateralism and for a European solution, so as to reduce the number of refugees reaching Europe. The pressure to act and the high hopes for an effective agreement have created a situation in which no critical analysis of the risks in terms of human rights, international law and foreign policy has yet been carried out.

The detention of asylum seekers in Greece raises human rights concerns. It is not clear whether asylum seekers in the closed facilities are granted sufficient legal assistance or the possibility of appealing against negative decisions. It is equally unclear how long they will be detained. Greece adopted a law on 1 April 2016 that reconciles the return of refugees to Turkey with its obligations under international and EU law. Under the Greek law, asylum seekers may be returned to Turkey if they can be guaranteed sufficient protection there. Whether or not Turkey meets the conditions for this is a highly controversial point. Some legal analyses have based themselves on the Turkish asylum law in force since 2013 to declare the planned returns legal. However, they focus exclusively on the legal position and pay no attention to the inadequate implementation of the law. UNHCR continues to rate Turkey's capacities in asylum policy as insufficient. While there is broad consensus that Syrian war refugees are given an appropriate level of protection in Turkey, reports by critical human-rights organisations document many illegal expulsions of Afghan nationals. In recent months, there have also been increasing reports of illegal push-backs at the Turkish-Syrian border.

The EU has made far-reaching concessions to Turkey in the current agreement, revealing the relationship of dependency that has been created by the de-facto outsourcing of border controls and responsibility for asylum seekers to third states. When the EU gives top priority to keeping away

larger refugee movements, this weakens its negotiating position vis-à-vis third states. In particular, the EU's neighbours to the south are quite capable of allowing refugees to cross the Mediterranean or else preventing them from doing so. This gives them substantial negotiating power. Furthermore, a reduction in the number of refugees reaching the EU does not per se lead to an actual reduction in refugee movements. Rather, it results in a displacement of refugees to other states and thus inevitably places a greater burden on those states. This can lead to conflicts – for instance, between refugees and locals over scarce resources – and affects the security of host countries. The lack of prospects in the camps can then lead to radicalisation or to the camps being misused for recruiting fighters.

What emerges is a turn away from individual asylum applications on European territory and towards the reception of "pre-sorted" refugees as part of resettlement quotas. This generates internal EU consequences as well as foreign-policy and security-policy risks. On the one hand, a regulated resettlement system with transparent selection criteria can strengthen the public's acceptance of refugees. On the other hand, the distinction between "legitimate" and "illegitimate" refugees may be re-emphasized. There is already greater understanding for Syrian civil-war refugees than for most other groups of asylum seekers, even if they are fleeing from political persecution. Such a one-sided focus on situations of acute civil war risks upstaging the protection needs of individuals from other countries, who suffer political persecution.

Moreover, solutions based on quotas facilitate the de-facto introduction of upper limits for receiving refugees. The more the focus shifts from individual entries to resettlement quotas, the easier it becomes to enforce upper limits. That would suit advocates of a restrictive refugee policy.

In the final analysis, evaluating the risks associated with fortified borders, camps and reception quotas depends on their respective design. The example of resettlement programmes makes this particularly clear. Does the state concerned commit itself to receiving additional refugees? Or is it a case – as in the EU-Turkey agreement – of offsetting direct irregular arrivals against refugees being resettled in a controlled manner? How many places are being offered? And what is the relationship between that number, the number of resettlement places required and the capacities of the reception country? What are the criteria for selecting refugees? Will EU member states have to commit themselves to permanently providing a certain number of resettlement places, or will quotas be expanded or reduced according to the political situation? The answers to these questions will decide whether resettlement plays a major part in refugee protection, or whether the states involved misuse limited resettlement quotas as a means of freeing themselves from any further humanitarian responsibility.

Ultimately, the emerging shift in focus in the EU's refugee policy also contains risks for refugee protection at a global level. The design of the global refugee system, which is based on international law and protected by the UNHCR, depends not only on the contents of the Geneva Convention on Refugees but also on state practice. European states used to be important role models in this regard, which served as a basis of their credibility in promoting refugee protection in other countries. If that status is lost, the implications will reach beyond Europe. Potentially, they could even trigger onward migration of refugees from their country of first reception into the EU.

The building blocks of a sustainable EU refugee policy

Despite the risks, the current policy also offers opportunities. First, the EU-Turkey agreement has reduced refugee numbers for the moment, which lessens internal political pressure towards national unilateralism, at least temporarily. This could create a new window of opportunity at the European level. Second, in recent months

new forms of technical cooperation have developed between EU member states that would have been hard to imagine some time ago. For instance, not only do border protection officers already cooperate on-site, but judges and asylum decision-makers from other EU states are also expected to be deployed to facilities in Greece to ensure that asylum applications can be made in accordance with European and international law. These approaches are necessary to support Greece in the current situation. They will also help to strengthen the Greek asylum system in the long run. Last but not least, they have a confidence-building role and could play an important part in creating joint EU asylum procedures.

The EU Commission pursued this approach in its communication of 6 April 2016, in which it proposed upgrading the European Asylum Support Office (EASO) to a decision-making authority responsible for asylum procedures. By combining asylum-policy capacities, so the Commission argued, asylum procedures could be improved and their costs reduced. The EU Commission also aims at a comprehensive reform of the Dublin Regulation, so as to establish a mechanism for relocating asylum seekers in times of crisis. Should efforts to get all EU states to agree fail, then initially a "coalition of the willing" could commit to such a relocation scheme.

In any case, building sustainable support structures requires a political dialogue about the social conditions for receiving refugees that exist in different EU member states. Such a dialogue should form the basis for developing flexible steps towards integration, so that towns and municipalities with a greater readiness for taking in refugees can notify the EU of any spare capacity. To encourage the relocation of refugees within member states, the EU Commission should launch a pilot project that offers municipalities receiving additional refugees financial incentives which noticeably exceed the costs that actually incur.

The substantial commitment shown by citizens in some member states should also be taken into account more, for instance by following the Canadian example and offering private individuals and charities the opportunity of financing the reception of additional refugees.

Finally, the relationship between forced displacement and migration must be examined more closely. If options for legal migration are expanded, this could prevent migrants whose primary motives are economic from being an additional burden on asylum systems. It would also make sense to extend the opportunities for safe passage for refugees, so as to discourage them from engaging in dangerous irregular migration. Resettlement must play a central role in this, along with reuniting families, arranging vocational training or jobs, and the option of applying for asylum in EU embassies abroad. Existing resettlement programmes should therefore be extended and consolidated, but they can only ever be a building block in a more comprehensive EU refugee policy.

Even though these measures can strengthen refugee protection in the EU, external cooperation will also be needed, considering the refugee movements that can be expected in the future. Europe's neighbouring countries, as well as its partner countries in development cooperation in other parts of the world, must be supported in hosting refugees. This includes using classic development-cooperation tools, but also purposefully establishing asylum systems that offer protection in accordance with the provisions of the Geneva Convention on Refugees.