What's After the "Crisis"? Scenarios for EU Refugee Policy Post-2016

Takeaways from a Transnational European Discussion

By JULIAN LEHMANN

On June 19, 2016, the Global Public Policy Institute (GPPi), together with Stiftung Mercator, convened a group of policy analysts, researchers and activists working in different European countries to debate determinants and possible developments of EU refugee policy within the next 10 years. Current events foreshadow two future scenarios: one in which the European Union cooperates to collectively limit refugee admission, and another in which some EU states maintain a more solidary admission policy than others. This report reflects on the commonalities, differences, and key challenges of these potential outcomes.

Why Talk About Scenarios?

Growing numbers of asylum seekers have made short-term crisis management the focus of refugee policy in the European Union.[1] How asylum policy might develop in the medium and long term, however, has been largely overlooked. And yet that question remains as relevant as ever before. While the prospective "Brexit" and ongoing terrorism threats have shifted attention away from the "refugee crisis," the EU institutional framework for refugee protection has not significantly changed. What is more, it remains highly uncertain how the overall numbers of asylum seekers will develop in the near and medium term.

Meanwhile, the European debate about refugee policy has changed. What was once a niche topic discussed by immigration lawyers has become a mainstream foreign policy concern, interwoven with questions of European cohesion and political stability. However, diverse groups of stakeholders and EU member states – non-governmental organizations, "think-tankers" and academics – often talk side by side rather than with each other.[2]

In order to bridge this gap, the Global Public Policy Institute (GPPi) and Stiftung Mercator convened a group of policy analysts, researchers and activists from different European countries to discuss future directions of refugee policy among different stakeholders. Using elements of scenario analysis, participants identified determinants of EU refugee policy and how they may play out in the next ten years. This paper summarizes key takeaways. It describes two scenarios, that is, consistent descriptions of future situations (which are not predictions of likelihood). First, individual EU states will unilaterally maintain a significantly more open refugee policy than others, which will be sustainable only by acquiescing curbing spontaneous arrivals and 'handpicking' refugees. Second, EU states will collectively become more closed, by externalizing initial refugee reception and accepting refugees primarily through legal admission channels from external camps.

Determinants of EU Refugee Policy

Refugee Agency

Numbers: Individuals who seek protection move across borders despite legal, physical and financial obstacles. Growing numbers of refugees, meanwhile, exacerbate the flaws of the current European asylum system, which is not designed for high numbers: for example, large numbers of asylum applications make it impossible to comply with regulations on the maximum duration of asylum procedures.

Forward and backward movement: Quality of protection, living conditions in neighboring and EU countries, social ties, economic and social integration and (mis-)information all determine whether and how long refugees stay at any given place. Forward and backward movement influences the numbers of arrivals and the distribution of asylum seekers across countries.

[1] The term "refugee" is used in a non-legal way to comprise all individuals seeking protection from human rights harm. Individuals with pending asylum applications are included in the term.

[2] Julian Lehmann, *#Refugeecrisis: Who's Talking, and About What?*

Electorate Agency

"Project Fear": Immigration is a rallying point for campaigns built on mobilizing the economically disenfranchised, and an easy target of discussions on national and cultural identity. The rise of extremist sentiments and concerns about cultural identity poses a challenge to rational discourse on opportunities and risks of migration.

National elections: National governments retain considerable leeway in their immigration policies, even trumping the application of EU rules. Academic research indicates that the government's particular political orientation determines its immigration policy (although the effect seems less significant in the EU than in other parts of the world).

Civil society: The success of integrating large numbers of refugees hinges to a large extent on civil society actors' investment in refugee reception: Thriving civil society activity in support of refugees unwittingly contributes to a perception of policy makers being "on top." And civil society actors – both those in favor and those against liberal refugee admission – can challenge governmental policy by driving social mobilization and raising court cases.

Institutional Robustness

State control: Governmental actors seek to remain in control: any loss of control – real or perceived – becomes a challenge to political power. For that reason, governments seek to determine the number of arrivals as much as possible. The capacity of institutions for registration and reception, as well as for returning those who do not qualify for protection, contributes to the perception of state control.

Rule of law: Decisions by the European Court of Human Rights and the Court of Justice of the EU have in the past prompted important policy shifts. In particular, the human and fundamental rights obligations under international and EU law restrict return to a risk of inhuman or degrading treatment.

Checks and balances: Constitutional makeup, strength of the political opposition and of judicial review can decide how states balance human rights obligations with desires to curb migration, in particular the migration of refugees.

Border guard: While physical and legal borders are not an airtight measure of migration control, they do curb the number of arrivals and voluntary departures. Amidst the Greek-Macedonian border closure, onward refugee movement from Greece shrunk dramatically. Steps to reform the EU agency Frontex into a real border police, border checks within the EU and unilateral action to fortify external borders will impact the location and scope of irregular crossings. By influencing the number of arrivals, border type and location also affects the actual and perceived state control.

EU (Dis-)Integration

EU cohesion and coherence: Brexit negotiations will absorb resources and attention. The role immigration played in the referendum makes refugee policy an even more toxic topic. Fearing Brexit spillover to other countries, European member states may

seek to move at different speeds to assure EU cohesion or engage in a "Brussels blame game" because it is politically opportune.

Power-sharing: Further integration could actually harmonize EU refugee policy in practice, rather than in principle as is currently the case. However, ceding competences to EU institutions could make these institutions susceptible to criticism for refugee reception, so this option may not be politically sustainable when numbers are high.

Burden- and responsibility-sharing: Large numbers of asylum seekers in the EU pose a greater burden for some countries than they do for others. From a state's perspective, a lack of inter-state "fairness" contributes to a refugee reception blame game or facilitates a group approach that projects refugee policy onto third countries.

(Inter)national Security and Cooperation

Terrorism: Terrorist acts, whether or not carried out by asylum seekers, invariably influence the debate on potential security threats of refugee reception.

MENA and Turkey: Europe's neighbors – the Middle East and North Africa (MENA) and Turkey –are key places for origin, transit and settlement of refugees. Their democratic stability is likely to have an impact on cooperation between the EU and third countries and the ability to project immigration policy goals on neighbor states, even acting as a buffer zone for the EU. A further swing towards authoritarianism in Turkey could herald a shift to Turkey becoming a refugee producing country.

Resources and Economy

Responsiveness of the humanitarian system: The humanitarian system is bigger than ever before, yet still remains severely underfunded. Lessons from Lebanon and Jordan indicate that an inadequate humanitarian response sparks onward movement.

Labor market integration: Few EU countries have a large demand for short-term, unskilled labor. For refugees with higher education levels, labor market integration often takes time and is costly. Pending language training, recognition of foreign degrees and labor market integration, asylum seekers may rely on public benefits, thereby exposing them to criticism by parts of the electorate. Weak economies that do not work for existing populations will spark debates on distribution of resources. In these debates, the acceptance for migration is likely to decrease among large parts of the population. Both in EU and non-EU states, the health of the economy and the possibility of job market-integration define the scope of refugees' forward and backward movement.

Scenarios for EU Refugee Policy

Scenarios are consistent descriptions of different futures. They do not foretell the future, nor assess degrees of likelihood, but depict possibilities in order to better deal with uncertainty of important policy determinants. To describe possibilities in EU refugee policy, two factors are particularly important and uncertain:

- How closely or loosely do EU member states work together (cooperation)?
- How hospitable are EU member states towards asylum seekers (openness)?

Relating these two factors to each other creates three plausible situations for future EU refugee policy:

- Single EU states have a more open refugee admission policy than others ("unilateral openness").
- The EU collectively pulls up the drawbridge ("Fortress").
- The EU collectively opens up to refugees ("Continent of asylum").

The response to the 2015/2016 "refugee crisis" foreshadows the first two situations as the more realistic scenarios, therefore they will be further explored below. Neither scenario needs to remain fixed over time; instead, there could be movement back and forth from one to the other. This is particularly true for the first scenario, which is not sustainable in the long run. The second scenario, meanwhile, could imply a near-permanent tightening of refugee policy, since significant and systemic shifts to more openness are less likely once non-entrée policies are further institutionalized. Both scenarios are predicated on continuously high levels of displacement at the current level or above.

Scenario 1: Single EU States Have a More Liberal Refugee Admission Policy than Others ("Unilateral Openness")

In this scenario, single EU states will have a more liberal refugee admission policy than others, driven by more favorable electorates and a desire to balance out the acquiescence of restrictive non-entrée policies at the external borders and outside the EU. The EU asylum system will allow for divergences rather than opting for complete harmonization. In particular, deciding the merits of asylum applications will remain a competence of EU member states. The Dublin Regulation will feature an optional quota relocation system to handle large influxes. Several EU states situated at the geographic core will relocate refugees from frontline states. Border states, in turn, will have no choice as to whether or not they will be more receptive, because of their geographic exposure.

The scope and duration of a comparatively open refugee admission policy by single EU state will depend on their ability to handle domestic political pressures and convey to EU partners that the policy does not function as a pull-factor. A unilateral,

comparatively solidary refugee policy will remain politically tenable only as long as the respective government successfully conveys control over the number of admissions, strong security and labor market capacity to integrate refugees.

Because of political pressure on unilateral refugee admission, such a policy will seek to avoid the admission of applicants who arrive spontaneously, instead favoring a more proactive selection of applicants by the state. The more open states will make use of family reunification, private sponsorship and regular resettlement; they will strike a balance between economic and vulnerability considerations when "handpicking" refugees, and tighten security-vetting. Moreover, they will seek to apply existing procedural rules domestically, sending individuals back to other countries where they could find protection. On an EU level, they will, in the quietest possible manner, support the tightening of such procedural rules in order to prevent legal challenges against arrangements with Turkey and other neighbor states. EU states will continue to depend on Turkey, but will not accept any conditionality imposed by the Turkish government: as the Turkish government is becoming more authoritarian, its economic situation will continue to deteriorate, making EU funds vital to the Turkish government.

Furthermore, the more open states will not actively challenge the building of tighter physical external borders. They will compensate for the fallout on asylum access with relocation and resettlement, and will increase investments in the external dimension of asylum policy – including capacity building, technical and financial support of the asylum and humanitarian systems, and cooperation on economic development in non-EU-neighboring countries.

At least one EU state, the UK, will attempt to detach asylum policies as much as possible from EU cooperative framework by leaving the EU. While the UK will apply the 1951 Geneva Refugee Convention, independent of EU rules, it will remain part of the Dublin system, much like Norway, Iceland, and Switzerland. As the Refugee Convention will continue to bind the UK just as before, when it was an EU member, the separation's effect on refugee policy will be mainly symbolic. On its own, that symbolism will not motivate other EU states to follow the UK's example .

Refugees themselves will be further restricted in their ability to decide where to flee. Individual preferences, if considered at all, will be shaped by the relocation schemes of a recast Dublin Regulation. For refugees who do receive access to asylum and stay on in EU territory, the quality of protection will remain unchanged.

The EU's collective, global credibility in promoting refugee protection will weaken. On the other hand, individual member states that pursue a more open admissions policy will gain credibility.

Scenario 2: EU Member States Collectively Become More Closed ("Fortress")

EU member states will increase cooperation to deter spontaneous arrivals as much as legally and physically possible. For that reason, they will adopt a refugee deal negotiated with Turkey as a blueprint for negotiation with other countries, in particular Egypt and Tunisia Resettlement quotas will be instituted as a means of maintaining legitimacy of measures that restrict access to asylum. The EU will fund refugee reception in North

Africa via the UN High Commissioner for Refugees. Numbers of those accommodated in North Africa will grow over time, creating congestion problems, and prompting irregular onward movement. Growing numbers in North Africa will increasingly alienate host states' governments and raise the price tag of a more-closed EU refugee policy: EU states will have to invest more resources to stave off concerns about compromised democratic reform and protection quality. In Libya, there will be calls for EU member states' armies to run reception facilities. States will try to establish reception conditions in a way that is bad enough to be a deterrent, but just barely good enough to be considered lawful under extraterritorial human rights obligations. Elsewhere, the external dimension of EU asylum policy will gain importance, in particular through cooperative border control. Frontex will become independent full-fledged European coast guard and border agency.

Within the EU, member states will attempt to tighten EU procedural law, making basic safety rather than full-fledged protection in accordance with the 1951 Convention sufficient to be considered a safe third country. If they can ensure safety and formal assessment of refugee status in a third country, EU border guards will interdict and return individuals before they reach EU territory.

EU treaties will be changed so that the European Asylum Support Office has the competence to decide the permissibility and the merits of asylum applications on EU territory. EU processing centers in all member states will accommodate asylum seekers who arrive spontaneously at southern EU borders during the time of the asylum procedures. Amidst lower numbers of permissible asylum applications within the EU, there will be an EU-wide distribution quota for emergencies in which all EU states will participate.

The UK will remain outside of a mandatory quota system, but will voluntarily participate in resettlement schemes from neighboring countries. Both the UK and the remaining EU states will tighten security vetting and strike a balance between economic and vulnerability considerations in "handpicking" refugees.

In political discourse, discussions about efficiency of refugee protection and the fairness of legal pathways will push aside arguments for the EU's duty to act as a normative power and share responsibility: Refugees who arrive spontaneously and by irregular means will be branded as having a lower need than those (few) accepted through resettlement. Domestically, governments will be challenged to cap spontaneous arrivals at a specific number. While non-return obligations under international law will avert numerical ceilings, such demands will take a toll on the numbers of those admitted via resettlement.

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Similarities, Consequences and Mitigation

There are a number of points that stand out as commonalities in the two scenarios. The high number of arrivals visible in 2015 and 2016 may well be the new normal for EU refugee policy. EU states will be able to find common ground for larger reform only in respect to border protection and the external dimension of the EU asylum and migration policy, which may lead to a reduction in irregular migration, but with a human cost, particularly outside EU territory. Domestically, the EU may develop more technical capacity (manpower and equipment) on issues such as registration and return, but the internal laws (in particular the Dublin Regulation) will only see incremental changes. In both scenarios, there will be more "handpicking" of refugees and the EU's global credibility in promoting refugee protection will weaken. In both scenarios, refugee policy may also affect the core freedoms of the EU. The tightening of external border control is likely to lead to a revision of the Schengen border code, so as to allow systematic and targeted border checks of EU nationals at EU external borders.

The shift to a more externally focused refugee policy is fraught with political risk. Although it is the least contested response among EU states, it is also the least controllable. The EU may sooner or later be confronted again with a sudden spark in arrivals when external partners become less cooperative or legal constraints induce a policy change similar to the suspension of returns to Greece under the Dublin Regulation. Yet, if the EU is internally unprepared to deal with such a spike, the ensuing perception of a loss of control is likely to again put pressure on the political center and lead to a further hardening of refugee policy. What is more, intra-EU migration of EU nationals could suffer a blow, given that refugee arrivals tend to be linked to debates about migration in general. Developing the intra-EU framework to foster sharing burdens (sharing resources) and to sharing responsibility (sharing people), is not just the most politically contested aspect of common policy, but also the most vital.

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EU-Turkey

Neighbours

ECONOMIC CRISIS

"FINANCIALLY BROKE"
UN AGENCIES
Gaznes

n. bottlenecks

Court decisions

(human rights)

State interest
EU member sts
security + econ

EU-
Turkey
deal

EU institutions)/
Administration

UK Referendum
/EU

ALLOWING A EUROPE
IN DIFFERENT SPEEDS
TO MAINTAIN COHERENCE

EU policy frame
humanitarian?
economic ?
security ?

Economy

#realpolitik

fair cost sharing between
member states & capacity
& economy

LINKAGE BETWEEN
IMIGRATION &
RVICES/"WELFARE
STATE"

REDISTRIBUTION
= burden-sharing

future of European integration
- extreme voting
- populism
- right wing nationalism

"race to the bottom"

lack of institutional funding

Frames

Absorbing capaci
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A RISE IN
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