

**Mare Nostrum or Solidarity of Inaction?
European Union's Responses to the Unfolding Refugee and Burden-Sharing Crisis**

Emek M. Uçarer
Department of International Relations
Bucknell University
Lewisburg, PA 17837

Phone: 570-577-1498
ucarer@bucknell.edu

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Abstract

When European Commission President Jean-Claude Juncker took stock of 2015, he noted that “[c]ollectively, Europe looked into the abyss.” He was speaking of the financial crisis but also the dramatic increase in the arrivals of people seeking protection in Europe, displaced by war and persecution, turning the Mediterranean into the deadliest migration route worldwide. Juncker observed that European Union members displayed solidarity with each other during these difficult times and urged them to also deliver in 2016. Empirical developments on the ground point instead to the politics of shirking or shifting responsibility for refugees, undermining the potential for internal and external solidarity: solidarity with member states, solidarity with non-member states facing pronounced refugee flows and, ultimately, refugees themselves. This paper demonstrates the politics and policies of displacing responsibility across the European Union to a handful of member states who have taken on the lion’s share of arrivals and/or applications, and out to neighboring non-member states by employing conditionality or incentives. This governance by avoidance is indicative of the shortcomings of EU’s institutional capacities, and collective will, and in addition to causing significant shortfalls in compliance with international legal obligations, also exposes and widens cracks in the Schengen system.

Introduction

“There has never been a time when the need for a common European response to refugee arrivals has been more urgent.”
(Guild, Costello et al. 2015)

“The Member States’ expected loyalty in implementing EU policy appears not to be sufficient; if solidarity is needed, then Union action may be required.”
(European Parliament 2011)

2015 was a bad year in the Mediterranean; 2016 was no better. In fact, over the last five years, the Mediterranean has progressively become the most dangerous and deadliest migration routes worldwide (European Parliament, 2015a). In 2015, it accounted for 71.9% of all deaths at sea globally (International Organization for Migration, b). In 2014, it was estimated that, since 2000, over 22,000 migrants had lost their lives trying to cross the Mediterranean while trying to reach Europe (Brian, Laczko 2014: 12). The numbers now stand well over 25,000. In 2015 alone, the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) reported that 3,771 were dead or missing in the Mediterranean, roughly 2,892 in the so-called Central Mediterranean route and 805 further east. During the same year, there has also been a remarkable spike in arrivals. By December 31, 2015, 851,319 had arrived in Greece and 153,600 in Italy (International Organization for Migration, a). 84% of the arrivals in Europe were from top-10 refugee producing countries in the world (UNHCR 2016). 2016 would fare worse, when the number of persons dead or missing hit an all-time high with 5,096, a 35% increase from bleak 2015. The current situation has been described many as the worst refugee crisis in Europe since the one after the end of World War II.

When European Commission President Jean-Claude Juncker took stock of 2015 in his State of the Union address, he noted that “[c]ollectively, Europe looked into the abyss” (Juncker 2015). He was speaking of the financial crisis and the dramatic increase in the arrivals of people seeking protection in Europe, displaced by war and persecution, turning the Mediterranean into the deadliest migration route worldwide. Juncker observed that European Union members displayed solidarity with each other during these difficult times and urged them to also deliver in 2016. In January 2016, he observed “[a]t the end of 2015, the EU could look back on a year when European solidarity withstood what may have been the greatest trials it has faced since the end of World War II. European solidarity will prevail in 2016 as well, so long as member states’

leaders follow through on meeting their commitments” (Juncker 2016). This was, at best, a rather charitable depiction of developments in the EU or an attempt at reverse psychology, both in response to the financial crisis and, more to our point, the refugee crisis.

The events of 2015 present very serious logistical and governance challenges for the countries who are receiving asylum seekers as well as the European Union (EU) as a whole. Since immigration, asylum, police and judicial cooperation, a portfolio that comprises the European Union’s Area of Freedom Security and Justice (AFSJ), was brought into the mandate of the EU, the organization has the authority to develop policy on undocumented migration into the EU territory. Migrants attempting to traverse the Mediterranean (East, Central, and West) in hopes of reaching the shores of the EU, while not a recent phenomenon, now demand urgent policy responses, especially in the aftermath of the Arab Spring, various civil wars prompting human movement, and the dramatic increase in deaths and rescue at sea. Predictably, opinions differ between member states and EU institutions on the best course of action. Building on the literature on European migration governance, this paper explores and evaluates policy responses developed by the European Union to stem the flow of what is perceived as undesirable migration. It investigates these responses in the context of an ongoing humanitarian crisis, potentially at the expense of due regard for the human rights of the attempted migrants. Ultimately, it argues that the slow and haphazard EU response underscores serious problems with multilateral migration governance in Europe and points to problems with sharing risk and responsibility in the EU. The solidarity deficit is twofold: internally, risk and responsibility is distributed unevenly and inequitably across member states; externally, efforts center on avoiding risk and responsibility as much as possible.

Solidarity and the Governance of Asylum in the European Union

The notion of solidarity, though not explicitly defined, is one of the foundational principles on which the European Union rests. And it is not a new notion. In fact, the Preamble to the Treaty Establishing the European Coal and Steel Community Treaty (1951) acknowledged that “Europe can be built only by concrete actions which create a real *solidarity* and through the establishment of common bases for economic development.” At its core, solidarity is a willingness to share risk and responsibility. The 2007 Treaty on the Functioning of the European Union (TFEU), in Art.

80 observes: “the policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.” In fact, this wording can be traced back to the draft Treaty Establishing a Constitution for Europe and was itself subject to rather spirited conversations. A European Parliament report observes that there was no particular consensus on what was to be subject to solidarity: some noted that solidarity implied financial mechanisms where appropriate, others advocated for the removal of the phrase “including its financial implications” lest this should be interpreted as revising EU budget procedures. Yet others argued that solidarity should be limited specifically to financial matters and, when it came to migration issues, that it should explicitly exclude relocation. And finally, while some argued for a broader definition of solidarity, others (unsuccessfully) argued for the omission of the term altogether (European Parliament 2011: 31-36).

Despite the political differences of opinion, the principle is supported by the Court of Justice of the European Union (CJEU) which “recognizes solidarity, based on mutual trust between the Member States, as a general principle inferred from the nature of the Communities and the principle of loyal cooperation between the EC institutions and the Member States”(European Parliament 2011: 6). These commitments have frequently been invoked by the EU in the context of the refugee crisis. For example, in 2015, the European Council declared: “We all recognized that there are no easy solutions and that we can only manage this challenge by working together, in a spirit of solidarity and responsibility” (European Council, 2015a). At the same time, neither solidarity nor “fair sharing of responsibilities” are well defined terms, especially in terms of setting standards to meet them. Thus, rhetorical commitments notwithstanding, the responses of various EU member states and, indeed, even the EU as a whole, smack of “beggar thy neighbor” maneuvers intended not to share the risk but to evade and pass it along instead, either to other EU members, or further afield (Münchau 2016).

Redistribution of resources or assistance to support member states that are less wealthy or have strained capacities is also not new in the EU. Its social and regional policies are built specifically on an understanding of solidarity informed by a desire to level the playing field to which mutual cooperation is central. While the aforementioned policies characteristically involve *financial redistribution*, in the field of refugees and asylum seekers, mutual cooperation can additionally require redistribution of human resources and/or *relocation* of people from areas that

are highly impacted by influx to areas of lower density. Transfer of resources or people alone, however, is unlikely to ensure fair and effective sharing of risk and responsibility. Another consideration for solidarity ought to be to assist countries and areas that are geographically more likely to encounter a disproportionate impact by flows and are thus structurally disadvantaged. I will call this locational solidarity. Typically, these would be countries that are on the outer perimeter of the EU territory. In the event of mass arrivals, which occur at land and sea borders instead of airports, perimeter countries that are closest to the locus of departures are likely to be impacted first and most heavily. In the following, I will review EU's efforts to deal with the most recent refugee crisis by exploring the potential and performance of solidarity, internally and externally, taking into account resources, relocation, and location.

Burden-Sharing and the Governance of Asylum in the European Union

The literature on how the EU, starting with the Maastricht Treaty, developed a mandate for immigration and asylum (the latter being the primary focus of this paper), is by now quite robust (Geddes, Boswell 2011, Monar 2001, Geddes 2003, Trauner, Ripoll Servent 2015, Ripoll Servent, Kaunert 2010, Uçarer 2016). Starting in the mid-1980s, a handful of the then-members of the European Communities embarked on a project to complete the internal market by way of eliminating border controls among themselves. This eventually necessitated comparable rules to apply to external borders, paving the way first to the Schengen system and then to the Dublin Convention which began the process of multilaterally harmonizing asylum policies. The right to seek asylum is furthermore an internationally protected human right so EU policy developments should be measured against international yardsticks as well as Art. 18 of the Charter of Fundamental Rights which likewise guarantees the right to seek asylum (European Union, 2012: 399).

While these steps were first taken outside the European Communities, they were eventually absorbed into the European Union after the Maastricht and Amsterdam Treaties. At the 1999 Tampere summit, the EU committed to a creating a Common European Asylum System (CEAS) and eventually put into place a series of instruments binding the (now expanded)

membership of the European Union to common procedures and policies.¹ Between 1999 and 2005, the policy instruments that would become CEAS were fleshed out. The second phase of the implementations CEAS saw the reworking of these instruments and was deemed complete with the completion of the recasts of the initial instruments. A third phase of CEAS is now in the works as recast instruments are again being worked out. Furthermore, Schengen was not only absorbed into the European Union, but, by 2013 included 26 countries (including 22 of the 28 EU member states), providing for a stretch of 4,000 km. without border controls from Lisbon to Tallinn, 42,673km of external sea (“blue”) borders and 7,721km of land (“green”) borders (UN Special Rapporteur, 2013).

While the development of these common policies were met with observations that the European Union was maturing in functional directions that were impressive—after all migration policy is not only highly politicized but at the heart of state sovereignty and therefore resistant to transfer of decision-making power—there was no shortage of criticisms about both how such policy was being made (prompting accusations of democratic deficit) as well as the content of the agreed upon policy. Specifically, critics (academics and practitioners) observed that the governance efforts smacked of the securitization of immigration and asylum issues (Bigo, Carrera et al. 2010, Huysmans 2006, Chebel d'Appollonia, Reich 2008), that the European Union was embarking on a project to externalize (Lavenex, Uçarer 2002, Lavenex, Uçarer 2004) the burden of reviewing asylum claims (Thielemann 2005) by enacting policies that targeted restricting access to its territory (Uçarer 2001, Lavenex 1999, Lavenex 2001). Specifically in the Mediterranean context, this has also meant that the European Union flexed its policy muscle not only to try to export its migration measures into North Africa and its European neighborhood, but also made conversations on migration a cornerstone of trade, development, and membership talks with sending countries in its neighborhood (Pastore 2002, Jileva 2002), thereby attempting to extend the effect of its policies beyond its own territory.

The Mediterranean challenges that now seem to vex the European Union therefore needs to be seen in the context of a piecemeal and generally restrictionist EU governance setting riddled with institutional compromises. As Sarah Wolff compellingly argues, migration governance in the Mediterranean has historically been “EU-driven and risk-averse, with the

¹ The Common European Asylum System rests on four instruments, each of which has been revised since the mid-2000s: Asylum Procedures Directive, Asylum Reception Conditions Directive, Qualifications Directive, and the Dublin Regulation.

prioritization of the fight against irregular migration and the externalization of border controls” (Wolff 2015: 168).

EU’s internal burden-sharing resolve (Thielemann 2003, Thielemann 2005), which was never particularly well-defined or very strong to begin with, has contributed to the challenges it is currently facing. In some ways, Schengen’s asylum provisions, solidified with Dublin, were redistributive mechanisms driven by the notion of responsibility (nominally amounting to relocation) but unencumbered by significant burden sharing (Uçarer 2006: 223-224). The EU has put into place financial instruments that provide a measure of financial burden and risk sharing, however inadequate these might be in the face of mass arrivals. Its efforts to share people are much less robust and, in practice, likely to exacerbate geographic vulnerabilities in perimeter countries with green borders. Member states’ commitment to sharing external burdens has fared even worse, with the acceptable costs of refugee protection typically driving political decisions (Noll 2003). These serious institutional shortcomings, coupled with a weak will, and unusually pronounced refugee crisis on the heels of the financial crisis, hamper EU’s ability to respond effectively to the current crisis. It is to that story that we now turn.

EU’s Migration/Asylum Governance and Problems with External Solidarity

Even before story of the infamous 2013 migrant shipwreck which killed 366 Eritrean and Somali nationals a mere 800 meters from the Italian island of Lampedusa and caught the attention of the public, the Mediterranean, or Mare Nostrum as it was called in Roman times, was already becoming a deadly place for migrants. The current developments are frequently placed in the context of the Arab Spring of late-2010 to mid-2012, although individuals trying to reach Europe to seek asylum also come from farther afield. The destabilization caused by the early years of the Arab spring were initially felt in the so-called Central Mediterranean route from North Africa to Italy but later, with the acceleration of civil war in Syria, the magnitude of the flows shifted to the Eastern Mediterranean route (from the Middle East, Cyprus, and Turkey to Greece) and then onward through the Balkan route overland.

Only 10 countries account for 96% of sea arrivals in the Mediterranean: Syria (46%), Afghanistan (25%), Iraq (16%), Pakistan (3%), Nigeria (1%), Gambia (1%), Guinea, Morocco, and Senegal (all <1%) (RW.ERROR - Unable to find reference:73). The top three countries (Syria, Iraq, and Afghanistan) account for 87% of all sea arrivals. There can be little doubt that

these countries are in the throes of conflict-induced migration, resulting in the swelling of sea arrivals from 70,000 in 2011 to 216,054 and 1,015,078 in 2014 and 2015 respectively (RW.ERROR - Unable to find reference:73). Deaths at sea increased from 1,500 to 3,500 during the same time and exceeded 5,000 in 2016. The vast majority of these arrivals of the last two years have come in through Greece and Italy, two perimeter countries with blue and green borders in close proximity to access routes.

It is fairly clear what is causing the increase in the numbers of people willing and desperate to make this hazardous journey. In addition to the upheaval in Northern Africa and the difficult political processes that plagued many of the post-Arab Spring countries there, the main driver of the refugee crisis is the war in Syria which does not show signs of slowing down and for which a solution is not on the immediate horizon. Populations who have sought refuge in neighboring and neighborhood countries such as Turkey, Jordan, Lebanon, Iraq, and Egypt have taken in the lion's share of Syrian displaced people. In April 2017, UNHCR had 2,973,980 registered Syrians in Turkey, 1,011,366 in Lebanon, 658,015 in Jordan, 236,772 in Iraq, and 120,154 in Egypt (UNHCR 2017b). During 2015, many Syrians left Turkey via the Aegean, or the Eastern Mediterranean blue border, for Greece, precipitating the current political crisis in the European Union. The fact that the UNHCR puts the number of Internally Displaced Persons (IDPs) in Syria at 6.5 million would suggest that the challenge for the EU is quite possibly at its beginning, not its end (UNHCR 2017a).

But why would individuals take such risk to get to Europe by boat and possibly pay smugglers hefty fees? United Nations Office of Drugs and Crime estimates that smuggling fees can be between \$2,000-\$10,000 to Europe (UNODC, 2016), well above the average price for most first class airplane tickets for the relevant air routes. And although the perceived success rate of arrival remains high and the return rate comparatively low,² one would think that the rapid and well-publicized increase in deaths in the Mediterranean would dissuade people from making the perilous journey. Restrictive EU policies, owing their genesis to the creation of Schengen and the eventual mandate for the EU and rooted in concerns of security and administrative efficiency, are at least partly to blame (Guild, Costello et al. 2015: 4). Such

² The European Commission seems to place the blame at the feet of individual states: "In 2014 **less than 40%** of the irregular migrants that were ordered to leave the EU departed effectively" (European Commission 2015a), p.2, emphasis original, effectively arguing that there is little reason not to try one's luck given the relatively high odds of being allowed to stay.

policies include EU-wide visa requirements, carrier sanctions, and a problematic asylum burden-sharing mechanism brought to life by the Dublin Convention.

The efforts to minimize external burdens are reflected in policies that deflect access into EU territory. EU Visa Regulation 539/2001 subjects nationals of migrant and refugee producing countries to visa requirement. While requiring visas for entry is not an anomaly in itself, it has particular consequences for would-be asylum seekers. Specifically, one criterion for being issued a visa is willingness to return to country of origin or provenance (Art. 21). Asylum seekers in pursuit of refugee status, however, are by definition unable or unwilling to return to their countries of origin (1951 Geneva Convention refugee definition, and also Art. 2 EU Qualification Directive). This creates a significant barrier to legal entry and puts the asylum seeker in the position of either lying on their visa application (by promising to return to their country of origin) or attempt entry without a visa. A recent European Union Agency for Fundamental Rights (FRA) report observed that Schengen visa approvals to Syrians dropped dramatically from 25,000 in 2011 to less than 3,000 in 2012, and less than 1,000 in 2013 (European Union Agency for Fundamental Rights (FRA), 2015: 3). Put differently, as the civil war was picking up speed in Syria, visa approvals plummeted for its nationals, a seemingly counterintuitive but well established trend that makes it difficult if not impossible to secure legal entry (Thielemann, Hobolth 2016).

That said, absence of a visa does not, in and of itself, prevent someone from arriving at the sea and airports of their destination countries. To hinder that occurrence, and to push the screening further from EU territory, the Schengen regime implemented carrier sanctions that present further challenges with transportation commensurate with safety. According to the carrier sanctions provisions, commercial airlines and shipping companies are under an obligation, with penalty of sanctions, to assure that passengers are documented. Carrier sanctions have become an example of the privatization of border controls, resulting in a delegation of state authority to (often not particularly well-trained) private actors (Kritzman-Amir 2011). The option was taken up again in the Directive adopted by the European Council on 28 June 2001, which provides for penalties of up to €500,000 and the requirement for carriers to take charge of the passengers and bear the costs of their return. The current Directive removes the obligation to fine carriers if the person is seeking international protection but still leaves room for interpretation at the national level. Given these circumstance, a European Parliament report observe that the measure was:

therefore not without risks for asylum-seekers, who are quite likely to be refused ticket sales because they do not meet the requirements laid down by the airlines or ferry companies, which are anxious not to be penalized by the country of destination, although their illegal arrival in the country in which they are requesting protection is not in principle a problem for those seeking to travel. This filtering technique is all the more problematic as no legal alternative is offered to those who need to flee their country urgently but do not meet the conditions laid down (European Parliament, 2006).

Consequently, it is not difficult to conclude that, absent a visa and/or travel documents and faced with impediments to access to airplane travel, individuals were forced to take irregular methods of entry. Furthermore, EU and national authorities accused of being unresponsive, increasing the likelihood of death. In a particularly egregious case, a boat carrying 72 people was left adrift in the Mediterranean for 16 days despite distress calls and both public and private vessels being in the vicinity. When the boat eventually washed ashore after 16 days, there were only nine survivors (Shencker 2011), occasioning a report to the Council of Europe on the so-called “left-to-die” boat and drawing deserving criticism in the process (Council of Europe, 2012: 24). The appearance of lack of due diligence in this and other cases led Human Rights Watch to observe that “[e]xposing boat migrants to the risk of drowning can never be an acceptable form of border control” (Human Rights Watch 2015).

There is also some evidence that EU’s governance ambitions in the field of immigration and asylum has bearing on the number of lives lost in the Mediterranean. Studies note that, in the 1990s prior to the implementation of a number of Schengen and EU initiatives on immigration and asylum, deaths at sea were far fewer than is currently the case (Last, Spijkerboer 2014: 88, European Parliament, 2015a: 19). It is possible to argue that the circumstances are made worse by the deflective strategies put into place by the European Union in the 1990s (inadequate or evasive external solidarity), including visa policies, carrier sanctions, externalization of responsibility and other nonarrival policies and exposes EU’s problems with demonstrating external solidarity. The next section surveys the EU’s response to sudden (though not entirely unpredictable) arrivals in the summer of 2015 in an effort to highlight prospects and challenges for internal solidarity.

Summer/Fall 2015 and Prospects for Internal Solidarity

The summer and fall of 2015 brought both a dramatic increase in arrivals (as well as deaths) and rather dramatic and politically charged responses. While the European Union attempted to steer the course, a process that will be illustrated below, member and non-member states with green borders took the matter into their own hands, some in rather questionable ways, to deal with onward movements from Greece. Between April 2011 and December 2015, 897,645 asylum applications were lodged in 37 European countries,³ Serbia, Kosovo, and Germany accounting for 59%. During this period, there was a significant acceleration in asylum applications, predominantly from Syrian nationals as in March 2015 sea crossings headed into the spring/summer season. This was a much more significant rise than was the case in comparable timeframes between 2011-2014. Alongside the arrivals was the increase in asylum applications, mainly from Syrians. Table 1 captures the rather dramatic rise in applications, with the most precipitous increase during April and December 2015.

Month	Monthly	Cumulative	Month	Monthly	Cumulative
January 2014	6,980	91,177	June 2015	30,032	320,377
February 2014	6,175	97,352	July 2015	51,949	372,326
March 2014	6,301	103,653	August 2015	77,828	450,154
April 2014	6,483	110,136	September 2015	96,218	546,372
May 2014	8,063	118,199	October 2015	159,288	705,660
June 2014	9,989	128,188	November 2015	123,450	829,110
July 2014	12,916	141,104	December 2015	68,535	897,465
August 2014	14,010	155,114	January 2016	33,223	635,422
September	18,300	173,414	February 2016	38,021	673,443
October 2014	18,045	191,459	March 2016	32,260	705,703
November 2014	15,699	207,158	April 2016	32,073	737,776
December 2014	14,926	222,084	May 2016	28,167	765,943
January 2015	13,382	235,466	June 2016	28,375	794,318
February 2015	10,089	245,555	July 2016	25,806	820,124
March 2015	12,544	258,099	August 2016	29,687	849,811
April 2015	13,888	271,987	September 2016	25,987	875,798
May 2015	18,358	290,345	October 2016	8,663	884,461

Table 1: Asylum Applications of Syrian Nationals in Europe, 2014-2016

Source: UNCHR, <http://data.unhcr.org/syrianrefugees/asylum.php>

³ The UNHCR estimates that some of these applications might not be first time applications as a result of self-reporting.

(last accessed February 12, 2017)

Although the cumulative numbers show a sharp increase in asylum applications (but still don't portray the even higher numbers of arrivals), they mask the uneven impact across Europe. Table 2 captures some of this unevenness. To capture the additional responsibility to care for populations present in a territory but who are not counted as asylum seekers, UNHCR's data on what it considers to be the total size of the populations of concern (TPC) is provided, alongside the proportion of the size of asylum seekers and TPC relative to the population of a country. To provide additional reference points, Table 2 also includes some non-EU countries. Overall the percentage of asylum seekers to EU population is 0.22% whereas the same for TPC is 0.56%. However, these percentages vary from practically nonexistent in Slovakia and Poland for asylum seekers to 1.33% and 0.97% in Sweden and Austria respectively for the same. TPCs range from 0.02% in Latvia to 3.54% in Sweden. In some of the countries neighboring Syria, where the bulk of the Syrian population is hosted, the percentages can be as high as 17.6% (Lebanon).

	Asylum Seekers	Tot. Pop. Of Concern (TPC)	Population	% Asylum S.	% of TPC
Austria	83,229	166,375	8,569,633	0.971	1.941
Belgium	28,156	63,807	11,371,928	0.248	0.561
Bulgaria³	16,647	33,722	7,097,796	0.235	0.475
Croatia³	257	15,451	4,225,001	0.006	0.366
Cyprus³	2,225	16,165	1,176,598	0.189	1.374
Czech Rep.	582	6,031	10,548,058	0.006	0.057
Denmark¹	10,941	48,220	5,690,750	0.192	0.847
Estonia	59	285 ⁴	1,309,104	0.005	0.022
Finland	15,074	32,560	5,523,904	0.273	0.589
France	64,702	356,214	64,668,129	0.100	0.551
Germany	561,159	1,052,127	80,682,351	0.696	1.304
Greece	27,778	94,675	10,919,459	0.254	0.867
Hungary	9,665	14,448	9,821,318	0.098	0.147
Ireland¹	4,267	10,492	4,713,993	0.091	0.223
Italy	84,034	216,728	59,801,004	0.141	0.362
Latvia	143	396 ⁵	1,955,742	0.007	0.020
Lithuania	76	4,663	2,850,030	0.003	0.164
Luxembourg	2,529	4,151	576,243	0.439	0.720
Malta	442	8,126	419,615	0.105	1.937

⁴ Excludes stateless persons that UNHCR includes in TPC. These persons are typically Russian speakers. Including them would have brought the percentage of TPCs of population to 12% which is misleading.

⁵ The same exclusion applies here for the same reasons.

Netherlands	15,148	116,254	16,979,729	0.089	0.685
Poland	0	23,737	38,593,161	0.000	0.062
Portugal	751	1,820	10,304,434	0.007	0.018
Romania³	309	3,168	19,372,734	0.002	0.016
Slovakia	23	2,652	5,429,418	0.000	0.049
Slovenia	257	611	2,069,362	0.012	0.030
Spain	18,695	28,814	46,064,604	0.041	0.063
Sweden	131,073	348,539	9,851,852	1.330	3.538
United Kingdom¹	34,445	151,681	65,111,143	0.053	0.233
EU Total	1,112,666	2,821,912	505,697,093	0.220	0.558
Egypt	45,643	256,521	93,383,574	0.049	0.275
Iceland²	12	488	331,778	0.038	0.147
Iraq	7,420	4,736,216	37,547,686	0.020	12.614
Jordan	29,660	721,429	7,747,800	0.383	9.311
Lebanon	13,711	1,054,240	5,988,153	0.229	17.605
Norway	16,765	73,235	5,271,958	0.318	1.389
Montenegro	12	16,049	626,101	0.002	2.563
Serbia/Kosovo	321	254,065	8,812,705	0.004	2.883
Switzerland²	32,003	110,117	8,379,477	0.382	1.314
Turkey	231,694	3,006,301	79,622,062	0.291	3.776

Table 2: Asylum Seekers and Populations of Concern by Country, mid-2016

Source: compiled from UNHCR, <http://popstats.unhcr.org/en/overview> (Mid-year Statistics 2016), last accessed April 23, 2017 and United Nations Population division 2015 *World Population Prospects*

¹ Indicates EU member with AFSJ opt-outs

² Indicates non-EU Schengen members

³ Indicates EU non-Schengen members

Member State Responses

Summer 2015 got off to a chaotic start and precipitated both member state and European Union attempts at dealing with the situation during Fall 2015. Most of the responses to the asylum crisis have not come from the European Union, but rather from the affected countries. Without a doubt, Greece was the country most significant affected (even though the numbers captured in Table 2 do not quite do this justice as many of the initially arrivals subsequently moved westwards in 2015). Given its locational proximity, it has borne the brunt of the sea arrivals along its blue borders with Turkey. While it has received some financial assistance from the European Union, it has also been significantly impacted financially, made worse by the austerity measures it faces as a result of the Eurozone crisis. Greece, like Italy, has been requesting meaningful burden sharing from the European Union for quite some time (to no substantial avail) and has finally

activated the EU Civil Protection Mechanism⁶ (which can be triggered by member states and nonmember states if they are overwhelmed by a crisis) on 3 December 2015, asking for material support, also agreeing to a Frontex operation at its FYROM border.

As asylum seekers started to make their way westwards from Greece through green borders, member states started implementing a number of response measures during summer/fall of 2015. Austria announced that it would temporarily reintroduce controls at its borders with Hungary, Italy, Slovakia, and Slovenia and built a fence at its Slovenian border. Germany first said it expects to receive 800,000 asylum seekers (later revised to 1,000,000) but later reinstated checks at its border to Austria to slow down arrivals after a September 2015 weekend that brought 30,000 to the Munich central station. Belgium and Netherlands contemplated whether to reintroduce border controls in the event that there is a secondary influx from Germany but eventually refrained. Hungary completed a fence with neighboring Serbia and announced another one on its border with Romania. It declared a state of emergency in its two southern counties, ordering its law enforcement to arrest anyone crossing its borders without papers and began rejecting all asylum claims within hours (occasioning protests for doing an inadequate job) and arresting people. A domino effect occurred as France, Sweden, and Denmark followed others' lead to (temporarily) reinstate border checks, sometimes carried out by private security firms as was the case in Denmark in January 2016 (Kirk 2016).⁷ While these temporary and short-term suspensions of the Schengen border-free travel are legal and were implemented in a piecemeal manner by some of the member states, they occasioned very significant concerns about the future viability of Schengen system and occasioned a broader conversation about a systemic and two-year suspension of Schengen (see below). These developments have resulted in a great deal of finger pointing. Member states as well as the European Union were quick to blame Greece for its part in not hindering the onward movement of arrivals, or thwarting arrivals in the first place by doing a better job patrolling its maritime borders.

⁶ Emergency Response Coordination Centre (ERCC) is the operational heart of the EU Civil Protection Mechanism. It provides a full 24/7 capacity to monitor and coordinate response to emergencies. The ERCC collects real-time information on disasters, monitors hazards, prepares plans for the deployment of resources (experts, teams and equipment) from the voluntary pool, works with Member States to map available assets and coordinates EU's disaster response efforts. Most importantly, it has direct links to the civil protection and humanitarian aid authorities in the participating states, ensuring a coherent European response to disasters. European Commission fact sheet: http://ec.europa.eu/news/2015/docs/factsheet_the_eu_civil_protection_mechanism.pdf. Accessed January 6, 2016.

⁷ In the process, Denmark drew sharp criticism and comparisons to Nazi Germany after adopting legislation in January 2016 that would confiscate assets (including jewelry) of asylum applicants to offset the cost of caring for them.

Nonmember State Responses

In light of the developments, a number of EU non-member states along the land route also felt compelled to respond as asylum seekers attempted to sidestep border closures and fences by recharting their routes. Serbia, a non-EU, non-Schengen country directly on the EU border announced it would not take back people turned away from Hungary as it did not want to be the holding point for all incoming refugees who now could not move forward. Macedonia (FYROM), Serbia and Croatia (obligated to join Schengen as a result of EU membership) implemented new border controls in November 2015, leaving thousands of people stranded at the Greece-FYROM border (Amnesty International, 2015b). FYROM now refuses entry to all except those who have documents proving they are from Iraq, Syria, or Afghanistan. Highlighting the chain reaction that could be set off by any one country, Schengen and EU Greece now refuses to allow onward movement of anyone but these nationalities arguing non-Schengen, non-EU Macedonia would not let them in. Leaving aside the questions about the discriminatory effects of such screening by nationality, this set of events have left thousands of people highly exposed and vulnerable in winter weather being served by NGOs providing humanitarian assistance and meals to people sleeping outdoors (Amnesty International, 2015b).

Some patterns with significant legal implications for refugee protection emerge from these responses. There are increased instances of unlawful push-backs, especially in Central and Eastern Europe. *Push-backs* refer to the returning of arriving individuals to the country from which they just arrived, resulting in an inability to lodge an asylum claim in the country engaging in the push-back. The 1951 Geneva Convention as well as Protocol 4 of the European Convention on Human Rights (ECHR) requires parties to undertake individual reviews of arriving persons and allow them to challenge deportation decisions before lawful deportations can be carried out. As such, these push-backs, which amount to unlawful deportations, are prohibited under international and relevant regional law (Amnesty International, 2015a: 11). So are *collective expulsions*. Article 19 of the Charter of Fundamental Rights of the European Union prohibits collective expulsions, including the expulsion of individuals to countries where “there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.” (European Union, 2012).

Detention of arrivals is seen as a solution to suppress onward movement. While international law provides for detention of migrants and asylum seekers, it does so only as a last resort and to be implemented in individual cases, respecting the principles of necessity and proportionality. Art. 5 ECHR protects the “right to liberty and security” (European Court of Human Rights, 2010) and inappropriate detention under inappropriate conditions would constitute violations of the ECHR. Furthermore, human rights organizations have been reporting incidents of ill-treatment, inhuman and degrading conditions⁸ in non-member Macedonia, member Hungary, and elsewhere. At the same time, it is worth noting that non-EU, non-Schengen states are being expected to “deal with the consequences of EU migration policies, over which they have no influence” (Amnesty International, 2015a: 67). But what steps did the EU take?

European Union Responses to the Asylum Crisis

Existing Applicable EU Measures

Temporary Protection. As was mentioned earlier, the Common European Asylum System is tethered to four EU instruments. But a fifth instrument is also relevant. The Yugoslav crisis of the 1990s forced the European Union to think about appropriate responses at times of mass influx of displaced persons, resulting in the Temporary Protection Directive in 2001 (Council of the European Union 2001). This Directive was effectively an internal burden sharing instrument and sought to harmonize temporary protection, a procedure that can be put into action to provide generalized protection to large numbers of persons when individual refugee determination is not practicable, on the basis of solidarity with member states (Uçarer 2006: 230).⁹ The European Commission described temporary protection as a “procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from non-EU countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular there is also a risk that the asylum system will be unable to process

⁸ “Under international standards, detained persons should not be held in conditions which threaten their health or their lives, or which amount to cruel, inhuman or degrading treatment or punishment. Such conditions may include being deprived of adequate nutrition and medical care, and a lack of adequate sanitary conditions, resulting in a serious hazard to health. Detainees should be provided with adequate space to sleep and access to adequate light and ventilation.” (Amnesty International, 2015a: 20)

⁹ The Directive has come into force in 2002 but not apply to Denmark and Ireland given their opt-outs and opt-ins.

this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection” (European Commission, 2016b).

The Directive defines mass influx as “arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area” (Art 1.d). Considering that the current crisis is bigger than the Yugoslav crisis, one might wonder why the EU did not activate this Directive that seems to be tailored to the challenge very much like the current one. To activate the Directive, the Council would need to establish the existence of a massive influx by a decision adopted by a qualified majority on a proposal by the Commission. So why, then, has the Directive not been activated given that the dominant rhetoric is that this is the worst refugee crisis since the end of WWII and that the definition and purposes clearly apply in the current situation? The rationale for non-activation could very well lie in the protections afforded to beneficiaries and the perceived costs thereof. Temporary Protection beneficiaries are afforded residence permits for the duration of their stay (Art. 8), access to employment (Art. 12), suitable accommodation (Art. 13), education for minors (Art. 14) and the possibility of family reunification. The political climate in a number of EU member states was not suitable to confidently secure a qualified majority in the Council (55% of member states representing 65% of the EU population). This would have been the first time it had ever been activated.

Dublin Regulation. This leaves us with the Dublin Regulation and its provisions, itself an attempt at managing responsibility. The current Dublin Regulation is the third iteration of the Dublin Convention of 1990 (in conjunction with an agreement relating to the Schengen Convention) which was conceived to establish rules by which to identify the signatory country who had the responsibility to review an asylum claim. Dublin’s underlying assumption was that reception conditions were sufficient and comparable if not equal in all member states so that removal to any member state would not be met with reasonable legal challenges from the removed. And, it would predominantly assign responsibility to the first member country that either issued papers or into whose territory the applicant first arrived. For land arrivals, this meant the countries that were on the perimeter of EU territory. While initially concluded outside the EU, it was eventually transformed into an EU Regulation (known as Dublin II) in 2003. Dublin II maintained the main provisions of the Dublin Convention, while clarifying some of the criteria developed (ECRE 2016a). It was reviewed yet again (Dublin III) with a view towards increasing

the system's efficiency and entered into force in January 2014 at a time when arrivals of would-be asylum seekers was already beginning to accelerate (ECRE 2016a).

Since its beginnings, however, the Dublin system has been criticized by (national) practitioners, academics, and NGOs alike for creating circumstances that are detrimental to refugees including inappropriate detention, denial of opportunity to lodge an asylum claim, and failure to take into account wishes of applicants on destination (Ngalikpima, Hennesy 2013, Fratzke 2015, Carrera, Guild 2015). It was also criticized for effectively pushing the burden of reviewing asylum claims to the outer perimeter of the European Union as the member state of first entry (or the member state which issued an entry visa) is typically regarded as being responsible for processing the asylum claim (Fratzke 2015). As such, it was faulted for failing not only refugees, but also member states—a rather dubious achievement signaling significant problems.

As problems and critique mounted, court cases carried the conversation first to the halls of the European Court of Human Rights (ECtHR) and then to the Court of Justice of the European Union (CJEU). The 2011 ECtHR *M.S.S v Belgium and Greece* is a case in point. MSS, who fled Afghanistan and entered the EU in Greece, was later removed to Greece from Belgium in accordance with the Dublin rules. Protesting the conditions of his reception in Greece, he sued at the ECtHR, eventually winning the case as the court held that both Belgium and Greece were in violation of Art. 3 (inhuman or degrading treatment or punishment) and Art. 13 (effective remedy) of the European Convention of Human Rights. For its part, in *N.S. v United Kingdom and M.E. v Ireland* (2011), the CJEU held that Article 4 of the Charter of Fundamental Rights, laying down the prohibition on torture or inhuman or degrading treatment, precludes the transfer of an asylum seeker from one EU member to another within the purview of the Dublin Regulation in instances when there are systematic deficiencies in the reception conditions of the member state to which the asylum seeker is transferred. At issue here, again, was the regrettable reception conditions in Greece.¹⁰

Notably, these decisions well preceded the worsening circumstances in 2014 and 2015 during which time reception conditions deteriorated yet further, not only because of the rise in arrivals but because of the worsening toll of austerity measures on Greece's economy. Pursuant to these decisions, EU member states halted returns to Greece under the Dublin framework.

¹⁰ Joined cases C-411/10 and C-493/10.

Removals were similarly halted to Italy after the 2014 *Tarakhel v. Switzerland* verdict of the ECtHR in which the court opined that there could be no removals without specific guarantees of suitable reception conditions (Spalding 2016). As it thus became legally fraught to send asylum applicants back to Greece and Italy (a result that was heavily campaigned for by NGOs),¹¹ meaning a temporary suspension of Dublin rules for certain member states, the EU and its member states would need to find other alternatives to deal with the crisis. In other words, if the Dublin system were to work as intended, Greece would have been in even worse condition because the Dublin system would not pay attention to the volume of arrivals but rather the entry point. The system of assigning responsibility would thus have additional deleterious consequences for both the receiving country and the asylum seeker, a double failure of both internal and external solidarity.

There is a substantial need to rethink this system as it is fundamentally not designed for situations of mass arrival as was the case in 2015. A recast of Dublin (Dublin IV) is consequently in the works. In its 4 May 2016 recast of the Dublin Regulation (European Commission 2016), the Commission sought to take into account lessons learned from the refugee crisis to propose changes that would also address solidarity issues. But it seems that, the recast as it is currently proposed, misses the mark. Specifically, the introduction of a “pre-Dublin procedure” which obligates a recipient state to first check whether the applicant is from a safe country of origin or safe third country (Turkey is considered a safe third country), further contributing to the externalization of responsibility. The “corrective allocation mechanism,” which would be triggered if a country exceeded a 150% threshold of the quote of asylum applications it should receive according to a distribution key,¹² at first glance appears to be an attempt at internal solidarity that could relocate applicants to other member states that are below their threshold. While it is not clear why a country’s capacities would have to be exceeded by 50% to trigger this mechanism, it is clear that the formulation does not take into account geography which, as is clearly demonstrated by Greece’s plight in 2015, is significant. In other words, it is likely, in fact probable, that particular countries would be pushed to beyond their limits, possibly repeatedly before they can benefit from this new mechanism. And this assumes that other member states

¹¹ In its critique of the Dublin rules, Amnesty International observed that “[p]lacing the primary responsibility for processing asylum applications on the first EU country of entry and limiting safe and legal avenues of entry has put an unsustainable strain on the EU’s outer fringes and neighbouring states.” Amnesty had Greece in mind here (Amnesty International, 2016).

¹² This key would be calculated by taking into account the country’s population and GDP in equal measure.

will live up to their promise to relocate excess applicants, a prospect that does not seem particularly likely given the experience of the recent temporary relocation scheme (discussed below). Finally, Dublin IV seems to want to impose disincentives for countries that are below their thresholds but do not wish to take in applicants by specifying a €250,000/person fee for declining to receive applicants to be relocated. The arbitrariness of the number aside, a less charitable interpretation of this proposed rule would be to price a “pay to not play” scheme. If adopted in its present form, itself an unlikely scenario, Dublin IV would not improve the solidarity deficit, internal and external (COMECE 2016, ECRE 2016b, Peers 2016).

EU Response in 2014-2016

Institutional Developments and Priorities: Migration and asylum governance are priority items for Jean-Claude Juncker (President of the European Commission), Federica Mogherini (High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, HR/VP) and Donald Tusk (President of the European Council) who have all been installed in their positions in November/December 2014.

Leading up to his conformation, Juncker included migration governance in his priorities capture in “A New Start for Europe” (Juncker 2014). Under the leadership of Commissioner Avramopoulos, the Commission adopted the *European Agenda on Migration* in May 2015, arguing for the need for a comprehensive approach to migration management (European Commission 2015a). In turn, the Council took up the issue of migration and increasing asylum applications on a number of occasions. In March 2015 (right about the time there was a significant uptick in Syrian asylum claims), the Foreign Affairs Council met and discussed migration for the first time in 10 years, at which time an extraordinary joint meeting of Foreign and Interior Ministers was called into action to prepare the first special meeting of the European Council in the days that followed (Carrera, Blockmans et al. 2015: 3). This special meeting of the European Council took place on April 23 2015, just four days after the single-most deadly shipwreck claimed 800 lives off the coast of Lampedusa in Italy. At this meeting, EU Operations Triton and Poseidon were approved, tripling the financial resources for the purpose of patrolling the Mediterranean in 2015 and 2016 (European Council, 2015b) (see further discussion below). The Council boosted financial allocations to both programs, augmented their staff, and EU member state staff were earmarked for deployment to hotspots. European Council’s priorities

and concerns are reflected in the very first sentence of the conclusions of the next meeting which took place on 17-18 December 2015: “Over the past months, the European Council has developed a strategy aimed at *stemming* the unprecedented migratory flows Europe is facing. However, *implementation is insufficient* and has to be speeded up” (European Council, : 1).

For its part, the European Parliament weighed in by adopting a resolution on April 29 2015. Using the language of protection (rather than the Council’s containment) the Parliament observed “the need for the EU to base its response to the latest tragedies in the Mediterranean on *solidarity and fair sharing of responsibility*, as stated in Article 80 of the Treaty on the Functioning of the European Union (TFEU), and to take a comprehensive European approach” (European Parliament, 2015b: 3).

EU Initiatives and Policy Responses

Border Surveillance, Protection Measures, Militarization, and Externalization of Responsibility.

Even before the current crisis, the EU started putting into place a number of mechanisms meant to bolster the protection of its common borders. In 2007, it established the Rapid Border Intervention Teams mechanism (RABIT). RABIT offers rapid operational assistance for a limited period of time to an EU member state facing urgent and exceptional pressure at points of the external borders, with large numbers of third-country nationals trying to enter. The European Commission observed that the deployment of RABIT teams “stabilised the situation and brought down the number of arrivals” when, in 2010, the first such team was deployed, complete with IT and thermal-vision vehicles (European Commission 2015e: 1). This formulation suggests that the RABIT mechanism is at least partially intended to deflect arrivals into the EU’s territory. During Fall 2015, at the height of the crisis, this mechanism was activated for Hungary and Serbia in September 2015, Slovenia and Croatia in October 2015, followed by Greece again asked for the deployment of a RABIT (Rapid Border Intervention) team for border guard support at its borders with Aegean islands (European Commission 2015f).

Operations Poseidon and Triton patrol the Aegean and Central Mediterranean respectively. In 2015, after the deadly week in April that saw the death of 1,000, the European Union increased the operational budget and mandate of Triton to include patrolling of the high seas adjacent to Libyan territorial waters. Poseidon, patrolling an area that is much smaller than Triton but which currently accounts for the most arrivals, is much smaller than Triton. Triton

itself has its origins in an Italian operation, Mare Nostrum. Mare Nostrum was launched in October 2013 in the aftermath of the sinking of a migrant boat off the coast of the Italian island of Lampedusa. Italy maintained this operation until the end of 2014 when, after multiple calls for financial assistance from the European Union (a failed attempt to appeal to financial solidarity) and under sharp criticism from politicians arguing that Italy's search and rescue efforts were acting as pull factors, it decided that the operation was no longer feasible.¹³ After the suspension of Mare Nostrum, the EU replaced it with the above-mentioned Triton. The International Organization for Migration has since disputed claims that Mare Nostrum presented a pull factor, lauded Italy for its efforts, and noted that deaths at sea have risen nine times since the end of Mare Nostrum (International Organization for Migration 2014). That is probably because Triton, the EU operation that replaced Mare Nostrum, is cheaper but also roughly 1/3 of the previous operation, has 1/4 of the aircraft, and a much narrower mandate closer to the shores of Europe and as such, is much more of a border patrol operation than one focusing on humanitarian rescue.

Furthermore Operation Sophia (EU NAVFOR MED), a military operation to thwart migrant smuggling, was authorized in April 2015 and advanced to its second phase in October 2015 when it was allowed to conduct boarding, search, seizure and diversion, on the high seas, of vessels suspected of being used for human smuggling or trafficking. In December 2015, the European Commission announced that it would be pursuing the creation of a European Border and Coast Guard, which eventually launched in October 2016. The outfit takes on a monitoring role, has the right to intervene, engage in Coast Guard Surveillance, possesses a mandate to work in third countries, and takes on a stronger role in returns (European Commission 2015d, European Commission 2015b).

2016 recruited NATO into this mix. Germany and Turkey, both NATO members, made a joint plea to NATO in February to help police Turkey's shores. While EU's border agency Frontex does not have the authority to patrol the Turkish coast, NATO (with Turkey's permission) could possibly take on such a role. Soon after this request, a NATO official confirmed that "NATO's standing maritime group 2, which currently consists of five ships—from Germany, Canada, Italy, Greece, and Turkey—has already deployed in the international

¹³ Mare Nostrum cost Italy € million a month, over €100 million a year, of which the EU was paying less than € million.

waters of the Aegean Sea” to provide reconnaissance, monitoring, and surveillance (Agence France-Presse 2016).

EU-Turkey Deal and Burden Shifting. As most of the arrivals in Greece originate in Turkey, it became necessary for the EU to engage it. Since the start of the Syrian war in 2011, Turkey received more than 3,000,000 displaced persons and spent upwards of €7.5 billion to care for them (Gurses 2015). In an effort to obtain the cooperation of Turkey to be more diligent in preventing departures to Greece, the Commission proposed an action plan which, after some back and forth, was accepted by Turkey on 15 October 2015. According to this plan, Turkey would get €3b and, among other things, promised to upgrade the efforts of its coast guard to migrant boats, step up cooperation with their Greece and Bulgaria to prevent irregular migration across their land borders (European Commission 2015c). In keeping with this promise, Turkey started apprehending migrants soon thereafter, mostly from Syria and Iraq, as they were preparing to head to Lesbos and seized numerous migrant boats and detained suspected human smugglers in the process (Agence France-Presse, 2015).¹⁴

Negotiations continued with Turkey, accompanied by Turkish threats of allowing substantial numbers of people to cross into Greece, and on 18 March 2016, the European Union (EU) announced that it had reached a deal with Turkey. “In order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk,” reasoned the European Council, “the EU and Turkey today decided to end the irregular migration from Turkey to the EU” (European Council 2016). According to this agreement, Turkey would take back an individual who have illegally crossed into Greece and, in exchange, the EU would accept a prospective refugee still in Turkey, or the so-called one-out one-in (1:1) deal.¹⁵ The deal appeared to be quite effective in bringing down the number of people showing up in Greece. In the month after its conclusion, the numbers decreased by 90% (Frontex 2016). In fact, in early

¹⁴ A somewhat similar attempt was made at Valletta Summit on migration of 11-12 November 2015, a meeting that brought together 35 African heads of state and the EU. In this instance, the EU was interested in pursuing readmission agreements and stemming the migrant flow from Africa with the help of African countries, whereas Africa is interested in talking about legal migration into the EU. The summit resulted in the establishment of an Emergency Trust Fund to promote development in Africa in exchange for enhanced cooperation from Africa to help in the Mediterranean crisis. This was, in Council President Donald Tusk’s words at the conclusion of the summit seen by the EU as a “race against time” to save Schengen (Reuters 2015).

¹⁵ In addition to promising financial resources, the deal reached signaled a revitalization of the long-stalled EU membership talks with Turkey, along with the prospects of introducing visa-free travel to Turkish citizens.

2017, the EU put the reduction in arrivals in the Eastern Mediterranean route (Turkey to Greece) at 98% over the previous year (European Council 2017), now averaging a mere 47 persons a day (European Commission 2017c: 2). Despite tensions between the EU and Turkey over the fallout of the attempted coup July 2016 and the subsequent deterioration between the EU and Turkey in the run-up to the April 2017 referendum in Turkey, the deal held and arrivals were held largely at bay. By March 2017, 916 individuals were sent back to Turkey and 3,730 were resettled from it as part of the new resettlement quota allocated (European Commission 2017a).

The Temporary EU Relocation System and Internal Burden Sharing. Over the summer of 2015, when the magnitude of arrivals and the inadequate conditions of reception were becoming clear, the Commission took the lead in proposing a system of temporarily veering from the Dublin Regulation by relocating asylum seekers who had already arrived in EU member states (primarily Greece, Italy, and later Hungary) to other member states. This was achieved in two stages. On 22 July 2015, member states responded to a Commission initiative to relocate 40,000 persons, followed by a second (and divisive) decision by the Council on 3 September 2015 to relocate an additional 120,000 individuals from Greece and Italy, bringing the total to 160,000. As such, this would be an example of sharing of people. The decision was taken by qualified majority voting that overrode fierce opposition from the Visegrad 4 (V4) countries (Czech Republic, Hungary, Poland, and Slovakia). In the end, as revealed in a Tweet by the Czech interior minister, Czech Republic, Hungary, Slovakia, and Romania voted against the measure, while Finland abstained (Holehouse 2015). In December 2015, Hungary (Case C-657/15) and Slovakia (Case C-643/15) filed lawsuits with the CJEU to annul Council Decision 2015/1601 of 22 September 2015 (the relocation scheme, see curia.europa.eu). In its legal reasoning, Slovakia argued among other things that, “the contested decision is manifestly contrary to the principle of proportionality, since it is manifestly neither appropriate nor necessary for the aim pursued” (Slovakia 2015). The cases are set to be heard by the CJEU in May 2017.

What was agreed to, notwithstanding the fissure between member states about the appropriateness of the measure, and what actually then transpired were two separate things, however. By December 2015, there were only 3,346 offers of relocation EU-wide (or 2.09%) out of the 160,000. In March 2016, that number increased to 6,642 places (or 4.15%) in 17 member states. However, only 159 people had actually been relocated as of January 2016 (129 from Italy

and 30 from Greece), prompting the *New York Times* to quip: “[a]t the current pace, it would take more than 750 years to relocate the 160,000 asylum seekers covered by a now-expanded resettlement plan” (Higgins 2015).¹⁶ By March 2016, 660 (or 0.4% of the agreed upon 160,000 and 0.05% of all arrivals) had been relocated (Henley 2016).

By April 2017, the number had increased to 16,340 (European Commission 2017b), but still accounting for a small portion of the target five months before it is set to expire on 27 September 2017 (European Commission, 2016a). The Commission’s latest report also points out that the distribution of relocated individuals remains uneven, with Germany¹⁷ and France taking the lead in absolute numbers and only Malta and Finland being on track to meet their quota. Hungary and Poland are not participating, the Czech Republic has not relocated anyone since May 2016 and Bulgaria, Croatia, and Slovakia have met only 2% of their relocation target. It is also telling that, as arrivals from Turkey were dramatically reduced, thanks to the deal with Turkey and the refusal of Hungary to participate in the program even though it had 56,000 individuals who could have been relocated to other countries, the Commission first adjusted 160,000 down to 98,255 in September 2016 and then indicated in April 2017 that it would adjust the target further down to 33,000 by arguing that there were not sufficient numbers of individuals who would qualify for relocation. If this is the new benchmark, the percentage of relocations look much more respectable, at about 50%, but the fact that only 16,000 could be relocated in more than 18 months surely is not the high mark of internal solidarity (ECRE 2017). This is hardly the picture of meaningful burden-sharing and solidarity, internal or external. Worse yet, the inertia generated by such small numbers does not bode well for the Commission’s recognition for the need to propose a more permanent scheme that would need to address the much larger scale of the problem, making the analysis of an anonymous EU official apt: “Unless countries can escape their domestic political agendas, this scheme, which is already wholly inadequate, will continue to fail” (Henley 2016).

¹⁶ In July 2015, EU member states also resolved to *resettle* 22,000 qualified individuals from beyond EU’s border although it is not clear how many, if any, of those individuals have arrived.

¹⁷ While Germany is “in the lead,” it has met little more than 10% of its allocation so far. That said, it has already accepted the lion’s share of arrivals outside of the relocation scheme.

Conclusion

The ongoing crisis, wedged between the Eurozone crisis, Brexit, and the rise of populist nationalism, currently exceeds the will and ability of an adequate EU response. A number of observations can be made from the challenges posed by the refugee crisis to the European Union's migration and asylum governance. First, the crisis currently exceeds the will and ability of an adequate EU response in the absence of a solution in Syria, especially if the deal with Turkey should not hold. Considering Syrians are not the only people in need of international protection, there are further grounds for concern, both for the EU and for those needing protection. The European Union's collective efforts, represent a patchwork of mostly defensive maneuvering by EU member states and the organization itself. This is evident in measures that are meant to screen and deflect arrivals, point to the deficiencies of EU's *external* burden sharing and solidarity. Its inability to forge consensus on how to deal effectively and in a timely manner with the physical and financial challenges by individuals who have already arrived speaks to the weakness of EU's *internal* burden sharing and solidarity. The latter becomes more problematic as the EU only has limited prospects of shielding itself substantially from arrivals.

The interinstitutional dynamics play out in predictable ways. The Commission seeks compromise between member states but, given the climate of aversion, or a seeming tendency towards governance by avoidance, is forced to take a cautious and modest approach. The European Parliament adopts resolutions that bemoan the tragedy in the Mediterranean and participates in decision-making based on the modest proposals of the Commission. The Council Ministers is the arena where national preferences and differing opinions are played out with characteristically lowest common denominator outcomes. The contentious QMV process on the relocation scheme, even though the initiative was ultimately adopted, is indicative of the trouble to come. CJEU has weighed in in ways that are protective of refugees and obliquely critical of member states, but it does not have the mandate to weigh in on substantive burden-sharing matters other than probably striking down the annulment proceedings of Hungary and Slovakia. With the exception of Germany and Sweden, EU member states (both frontline and backline) seem to be following a beggar-thy-neighbor approach. The EU as an institution (led by the European Council) seems to be following suit, whether on purpose or by stalemate default, charging neighboring countries (and now also member ones) with a gatekeeping function. Especially in the aftermath of a number of terrorist attacks which have been linked to asylum

seekers in the media, the crisis has (re)activated a securitarian approach, providing domestic political fodder. It has intensified the militarization of border controls, domestically and regionally, either through the launching of a more muscular European Border and Coast Guard, or through recruiting NATO and its military assets to take on some of the patrol functions. Fissures between member states are also becoming visible: V4 and some Scandinavian countries vs. Germany and others, frontline recipient countries vs. backline ones, countries with green vs. blue borders and so on. It seems that even the prospect of (temporarily or permanently) undoing Schengen is not necessarily a sufficient deterrent. Unless the EU can make progress in engaging in genuine solidarity that deploys financial resources, implements effective relocation mechanisms, and pays attention to locational considerations, improving internal burden sharing and accepting that not all of the external burden can and should be deflected, a prospect that is not warranted by the preceding account, 2017 will likely top the previous years in challenges.

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