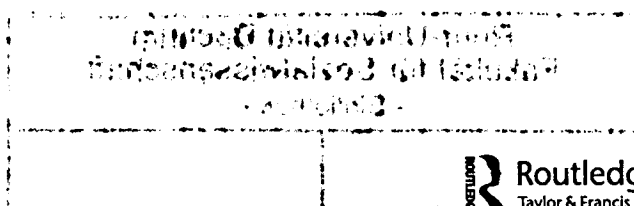

The Routledge Handbook of Critical European Studies

*Edited by Didier Bigo, Thomas Diez,
Evangelos Fanoulis, Ben Rosamond
and Yannis A. Stivachtis*



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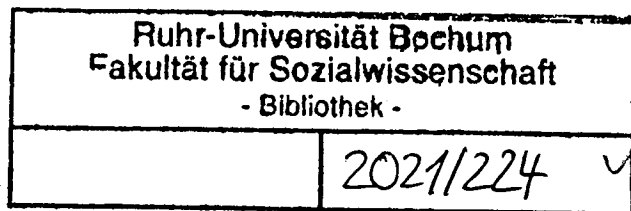
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The EU's so-called Mediterranean refugee crisis

A governmentality of unease in a teacup

Elsbeth Guild

Introduction

In 2015–2016 at the height of the Syrian civil war, approximately 2 million Syrian refugees (and others) crossed the Mediterranean from Turkey to Greece and walked north in search of durable protection. This led to a political crisis in the EU notwithstanding the fact that the numbers involved were very small in comparison with the Syrian refugees being hosted elsewhere in the region – in Turkey, Jordan and Lebanon. In the EU, the political unwillingness to provide reception to the new arrivals led to the exceptional closing of some border crossing points between Germany, Austria, Denmark, Sweden and Norway in an effort to deflect refugees from seeking asylum on their territory. This consequence was surprising, a shock to the Schengen system of no border controls at internal frontiers of these states, and to the Common European Asylum System, a political project which had been underway since 1999. Yet, the capacity of some political actors successfully to instrumentalise migration and asylum as sources of instability and potential threat is apparent in the political reaction to these events.

Migration and refugee protection are sources of political unease in the EU (Bigo 2008). They are also areas of extensive legislative activity at the EU and national level with no end in sight (Guild 2017). The use of law, in particular supra-national law, as a means of achieving governance among a fractious group of states, has been ramped up notwithstanding the marginal numbers involved. 2018 was a year of substantial disagreement among the EU Member States about migration and asylum policy (Guild 2019). They seem unable to agree on anything and yet everything seems to be interconnected. The movement of people seeking asylum in larger than expected numbers in 2015–2016 led to something of a political crisis in the EU the effects of which are still be felt. The attempt, pushed by some Member States and resisted by others, to organise a relocation scheme for the two Mediterranean countries which at that time were receiving the largest numbers of arrivals of asylum seekers, Greece and Italy, ended up before the Court of Justice, a case brought against the Council by the Slovak Republic and Hungary. It was decided (against the Slovak Republic and Hungary) in September 2017. But this has not dampened the sense of division among the Member States about both migration and asylum. The Commission, with a monopoly over the proposal of legislation in this area, has been working overtime to try to find common grounds for new measures, with little success. All

five relevant areas: Visas and extraterritorial controls, border procedures, migration and asylum/ refugee protection and expulsion are subject to proposals which are going no where. But the question is why?

The discord in EU Member States boiled over into the process of the adoption of the UN's Global Compact on Migration (GCM), the fate of which is a strong indicator of the difficulty in achieving a common European policy in this field. On 21 March 2018, the European Commission (which was charged with negotiating the GCM for the EU) presented a proposal for exceptional authorisation from the Council to approve, on behalf of the EU, the GCM at the end of the process.¹ This was a bold move as it would have meant that the Commission would finalise the negotiations, keeping the Council informed of developments but without the need to return to the Council for final approval before signing off at the UN. The Member States would effectively be excluded. The Commission's effort was unsuccessful, but it put the proverbial cat among the pigeons of EU states concerned about their state sovereignty in the field of borders and migration. While at the commencement of the intergovernmental negotiations in December 2017, the USA had formally withdrawn from the GCM stating that it was inconsistent with US state sovereignty, the international community was taken by surprise by a rash of state defections from the GCM from November 2018 onwards. The sudden anxiety of a number of states, mainly in Europe, about the consequences of the GCM for their state sovereignty followed fairly un-contentious negotiations of the contents of the GCM from January to July 2018 (mainly carried out by the Commission on behalf of the EU). At the final vote on 19 December 2018 at the UN General Assembly, out of 194 states only five voted against the GCM – the Czech Republic, Hungary, Israel, Poland and the USA (most noticeably the majority were EU states). Another seven abstained from the vote (Austria, Bulgaria, Chile, Dominican Republic, Italy, Latvia and Romania, again the majority are EU states). One government coalition fell as a result of the Prime Minister's insistence to sign the GCM (Belgium), though the largest party in Parliament continues to govern in a minority position.² Some EU Member States participated full-heartedly in disrupting the international community's efforts to achieve consensus on migration and borders in the GCM on the basis of protecting their state sovereignty. Their fears about their sovereignty had been fanned by the power struggle with the Commission over the GCM which they considered to be an attempt to change the competences of the EU to the disadvantage of the Member States. The rest of the world scratched its (collective) head at this disorderly display from Europe.

In this chapter I will examine the state of knowledge about migration and asylum in the EU from the perspective of the statistical information provided by the institutions. The capacity of political actors to incite public unease about a subject requires it to be presented as a real and important issue affecting 'ordinary' people. In the case of the EU, a region of 28 Member States of over 500 million inhabitants with a highly developed system of free movement of persons and the abolition of intra-Member State border controls, how is it possible to instrumentalise the arrival of a two million people who are obviously in need of durable solutions to the civil war occurring in their country, a state which is a neighbour of the EU?

How does the EU see migration and refugee protection?

But what is at stake in these debates? What is migration and refugee protection and how does the EU deal with them? Migration is a complex phenomenon which is comprised of a number of steps by which states seek to regulate and manage it. In order to understand this area, it is critical to disaggregate it. First, states seek to manage migration through visa requirements and extraterritorial policies to enforce them. The migration-related objective of this step is to

move management 'up-stream' into countries from which the potential destination state fears irregular migration. By subjecting all nationals of certain countries to visa requirements, which must be completed before those nationals depart towards the destination state, states intend to diminish the number of nationals coming from that country who are suspected of seeking to overstay their permission or otherwise harm the destination state. But visa obligations are generally unpopular with the public which must obtain them and state authorities often seek their abolition. A 2016 example of this pressure to abolish visa requirements in interstate negotiations is the EU Turkey Statement 2016 where EU member states undertook to remove mandatory visa requirements on Turkish nationals by June 2016 in return for new Turkish measures to deter Syrian refugees (and others) from leaving Turkey to go to the EU. While Turkey stopped the flow of Syrian refugees to the EU, the EU by 2019 had still not lifted the mandatory visa requirement on Turkish nationals coming to the EU (Zoetewij and Turhan 2017). A similar move towards liberalisation of movement is the African Union's 2018 initiative to abolish visa requirements for citizens of African countries travelling within the continent.

Border controls follow on from visa and extraterritorial measures as it is at border crossing points where most people arrive. Border controls generally divide people into three categories: Citizens who have a right to enter the state and so are subject to a very light control; foreigners who have a visa and so can be subject to a light control as they have already been vetted by the state and migrants who do not have (and do not need a visa) where the border is the first place where they are subject to a control. The purpose of border controls on persons is to ensure that migrants seeking to enter a state fulfil the conditions for entry and are not a security risk. Although substantial claims are made for the place of border controls in securing the safety of people within states, these claims must be taken with a grain of salt (Monar 2018). However, Frontex, the EU's external border agency, states that every EU border guard has only 12 seconds to make a decision on the admission.³

Border controls can be circumvented by people arriving at places where border guards are not present (Mainwaring 2016). Sometimes this is accidental – pleasure craft get blown off course, border crossing points are not staffed, etc. But other times it is intentional – people take unregulated boats under cover of darkness and seek to avoid border controls. Normally, this is because such people believe that they will be refused admission if they encounter a border control (Mountz and Lloyd 2016). These clandestine border movements are the subject of friction among states though they are usually of fairly limited scale.⁴ However, exceptions do occur such as in 2015 when Frontex counted almost 2 000 000 such border crossings, mainly from Turkey to the Aegean islands and mainly of people seeking international protection (refugees). This resulted in the EU Turkey Statement 2016 whereby the EU Member States put pressure on Turkey to prevent irregular departures from its shores (Cullberg 2016).

The third step is after entry into the host state. National law of the destination state determines what a migrant can and cannot do and how long he or she can stay in the state. This is a matter of state sovereignty. But it is only activated when the migrant is on the territory of the destination state. States are not generally entitled to apply their national laws to people who are living in other countries. Thus, the language of illegal (or irregular) migrants on their way to a state is simply wrong (Anderson 2017). No one can be illegal or irregular before they have arrived at the destination state. This is because the law of the state which determines whether they are regular or irregular, legal or illegal does not apply until the individuals arrive at the borders or, more commonly are within the state. Most people who are treated in the EU as irregularly present are so because their permission to be on the territory has lapsed. Whether state officials will actually treat such persons as irregular present depends on many factors not

least the capacity of the authorities responsible for expulsion in actually managing to expel people (Triandafillidou 2016).

As an exception to the rule of national sovereignty as regards admission and stay, anyone who has a well-founded fear of persecution, torture or enforced disappearance in the country they have come from must be permitted to remain in the host state (Goodwin-Gill 2011). These people are refugees and entitled to protection in international law. This means that they cannot be sent to a country where there is a risk of persecution, torture or enforced disappearance. If the state determines that the claim is well-founded, then it must normally give durable protection to the refugee (Goodwin-Gill 2014). If it determines that the person does not need international protection, then the person is not a refugee and can be treated as a migrant. A source of friction among states relates to refugees who have fled the state where they fear persecution, torture or enforced disappearance but have had an opportunity to seek protection in another state. However, instead of staying in that state they move on to another state and seek protection there. The legal question is whether these refugees would in fact be safe in the first state to which they fled. The political question is which state should be responsible for caring for these refugees (Garlick 2016; Gil-Bazo 2015).

The final step of migration management is what to do with migrants, who do not or no longer fulfil the conditions to remain in the country. A migrant only becomes irregularly present as a result of the law of the destination state (Dauvergne 2017). The doctrine of state sovereignty permits states to allow any migrant to stay on their territory should they wish to do so (Smit et al. 2016). But if a state does not wish to permit the migrant to remain, it will need to ensure the migrant's departure, usually to his or her country of origin but sometimes to a third country (if that third country is willing to receive the migrant). For states, the easiest and cheapest means of getting rid of migrants they do not want to order them to leave and for them to comply. But if they do not leave, the state must decide whether to expel them and if so to what country. The EU calls this procedure return, some other countries call it deportation, the UN uses the term 'expel' (for instance Article 14 of the International Covenant on Civil and Political Rights (ICCPR) (Neumann 2017)). In states where there are good statistics, it appears that most migrants who are expelled, arrived regularly in the state and then failed to comply with the state's conditions.⁵ This may mean that there has been a failure of visa, extraterritorial measures and/or border controls. But it also means that generally it was not a failure of border surveillance which resulted in the presence of unwanted migrants (this issue is developed elsewhere in this volume).

Expulsion is expensive and time consuming (Sciortino 2015). It is also a potential source of conflict among states. Without a specific agreement, most states will not accept migrants who are not their nationals to be expelled to their territory. The EU has been very active seeking agreements to permit this kind of expulsion and its financial participation in the expulsion of migrants of various nationalities from Libya to Niger in 2018 is an example of this approach (Rais 2016). The construction of migration as the problem can lead to most problematic outcomes. For example, in 2017, the French government announced action to free migrants held in slave-like conditions in Libya.⁶ This was strongly related to an EU policy objective to prevent these people from trying to cross the Mediterranean to Europe which policy makers in Europe suspected was their intention. So the objective was to move them 'back' to somewhere far from the Mediterranean where they would not have access to the sea. When the need arose to find a state in which to 'park' migrants from Libya, the EU and its Member States planned to engage with three states – Niger, Mauritania and Mali. The latter two states desisted quickly but the military leaders in Niger acquiesced to the requests in return for further financial contributions. This project resulted in some UN agencies becoming engaged in evacuating migrants from

Libya to Niger at the behest of the EU and some of its Member States.⁷ The outcomes have been fairly chequered with some resettlement to European states but some migrants abandoned in Niger.⁸ But why Niger? How did these states find one another? According to a researcher, the EU's engagement with Niger began in the 1980s when it began funding non-government organisations engaged in local rule of law issues. However, following the military Coup d'Etat in Niger in 2010⁹, the EU remained present but began funding state activities, in accordance with the new dictatorship's demands. Effectively, the EU and its Member States have been funding a dictatorship in pursuit of their border/migration concern.¹⁰

Some states, relying on their interpretation of international law, will only admit their nationals who are being expelled from another country if their citizen has expressed his or her wish to return home. This interpretation is a matter of frustration on the part of some states which have a different reading of international law, one which permits them to expel migrants to their country of nationality which is *obliged* to admit them. One of the ways around this friction is to negotiate readmission agreements which specifically recognise the right to expel an unwilling migrant to his or her state of nationality.

Reaching international agreement?

Developments at the international level reveal the degree of distrust and sovereignty anxiety within and among EU Member States regarding borders and migration. It is worth looking briefly at the (in)ability to reach agreement within the EU on measures in the field. A snapshot of the proposed legislation in the field which seems increasingly blocked in 2019 is as follows:

- Visa and extraterritorial controls: The EU has been moving towards a reduction of the number of countries on the EU visa black list. The latest to come off the list is Ukraine in May 2017. Turkey was to have come off the list in June 2016 but this has not occurred. The adopt of the ETIAS proposal,¹¹ the EU Travel Information and Authorisation System to be rolled out for all travellers to the EU by 2020, will require all non EU travellers to obtain a travel authorisation at a small fee before travelling to the EU (see elsewhere in this volume on ETIAS). The existing visa system (which is lengthy and expensive for individuals and states) may need to be reconsidered and revised in light of the new tool; on extraterritorial controls: The Council extended the mandate of Operation Sophia (a military sea operation) to 31 March 2019.¹² The operation's core mandate is to contribute to the EU's work to disrupt the business model of migrant smugglers and human traffickers in the Southern Central Mediterranean. To this end, it trains the Libyan Coastguard and Navy and monitors the long-term efficiency of the training. However, compliance of Libyan coastguard with the human right to leave Libya by pulling back people on boats has raised concerns. A case is currently pending at the European Court of Human Rights against Italy's contribution to these pull backs through cooperation with Libyan coastguards.¹³
- Border procedures: In 2016, Frontex became the European Border and Coast Guard Agency. Over the years since, the agency has cemented its position as one of the cornerstones of the EU's area of freedom, security and justice, becoming more and more operational on the ground at Europe's external borders. Yet, the mandate of Frontex, while now containing a duty to comply with EU fundamental rights, is not tied to the EU regulation on border control which means there is a legal lacuna between the duties of national border guards under the regulation and Frontex.¹⁴ The Commission president in his State of the Union address on 3 July 2018 stated that he wanted 'new standing corps of 10,000 operational staff with executive powers and their own equipment will ensure that the EU has the necessary

capabilities in place to intervene wherever and whenever needed — along the EU's external borders as well as in non-EU countries'.¹⁵ But how this is to fit with national sovereignty claims about border controls and migration remains to be seen; in the meantime, as a result of the 2015–16 shock to the political leaders of some Member States created by the arrival of refugees, the intra-Schengen borders which by law must be free of border guards controlling the movement of people is still subject to exceptions from Germany, Austria, and the Nordic states where intra-Schengen border controls continue to take place;¹⁶

- Migration: The EU has an incomplete set of measures on migration which include family reunification (for third country nationals), students and researchers and workers. The Commission proposed amendments to the cornerstone labour migration measure, the Blue Card Directive in 2016, but little progress has been made mainly because of a lack of appetite from some Member States;
- Asylum and refugee protection: The EU has developed the Common European Asylum System (CEAS) since 2000 after being allocated competence to do so. The system must be compliant with the Refugee Convention, CAT and the Charter of Fundamental Rights (which includes a right to asylum). To provide reception for people arriving in Greece and Italy, the EU adopted two temporary measures to relocate asylum seekers from those states to other Member States on the basis of a redistribution key. This was highly divisive and was attacked before the Court of Justice by two Member States (unsuccessfully).¹⁷ A third set of proposals to revise the CEAS were presented by the Commission in July 2016 but progress has been very slow.¹⁸ One of the obstacles is the Dublin system which seeks to allocate responsibility for reception and determination of asylum claims to Member States according to a hierarchy of criteria which do not include the asylum seeker's preference. The Dublin system is at the centre of the CEAS, and feared by asylum seekers who having failed to find durable solutions to move from one Member State to another in search of security. As a result the system does not work in practice;
- Return and expulsion: In March 2017, the Commission proposed to renew the EU's common measures on return (including the Return Directive¹⁹) to introduce greater efficiency and coercion into forced return.²⁰ It, too, in 2019, was not proceeding rapidly in the Council while at the same time the number of persons subject to forced return in the EU was dropping leading to questions on the necessity of the measures anyway. In September 2018, the Commission proposed a new recast Directive.²¹

Borders, migration and asylum in numbers

So what is missing from the EU policy debate which could assist to provide more coherence and less political heat? The first thing which should be done is all political leaders and their staff should have a serious look at the actual numbers of third country nationals coming to the EU and why. This would help to put some reality back into the debate. For instance, on visas — are third country nationals seeking to enter in massive numbers? The EU (Schengen) states issued in 2017 a total of 14,652,724 uniform short stay visas.²² A total of 16.1 million applications were made resulting in a non-issuance rate of 8.2% for all countries whose nationals are subject to the requirement. It seems EU states approve the vast majority of visa applications made to them. It is important to start here as the extra territorialisation of migration governance and controls starts with visas. The use of visas as tools to control migration and ensure that only those people a state 'wants' to arrive at its border do so has become ingrained in European thinking. But is this a meaningful category? If only 8.4% of people who apply for visas are refused then is there really

a relationship of coherence between objective and outcome? The basis of visa policy is that all nationals of some states are more likely to be illegal immigrants than all nationals of some other states. This presumption is presented as if it were based on some kind of external reality. But as it appears, whether someone will be treated as irregularly present in a state is an administrative issue where choices are made by street level bureaucrats. Whether nationals of some countries or others are more likely to be treated as irregularly present depends on a wide range of issues such as whether the expulsion of individuals will be simple or complicated. It also depends on whether the authorities consider that if left to their own devices the person who has overstayed his or her permission to be on the territory is likely to leave under his or her own steam. There is nothing scientific about the category of irregular migrant – it is constructed by state policies from the widest, for instance, enlargement of the EU where all nationals of the acceding state magically become regular on the accession of their state to the EU to the narrowest, bureaucracy not targeting very elderly foreign family members of citizens on the basis of concerns about bad publicity if they are seen tearing elderly people from their loved ones.

As regards entry of third country nationals at EU external borders, the Schengen borders, are governed by the EU Border Code.²³ According to Frontex, 306,904,064 passengers entered the EU in 2017 (a year-on-year increase of 4.6%). A total of 183,548 were refused entry – a refusal rate of approximately 0.06%. So it would seem that the external borders of the EU are not under attack. Further, most refusals took place at land borders (84.4%) with air borders being second (12.9%). Refusals at sea borders constitute a tiny minority of 2.7%.²⁴ It is also worth mentioning that most refusals were based on the individual not having a valid travel document, with the lack of a justification for the purpose of stay being second.²⁵ The image of the border and its control is high emotive. The pictures presented regularly in European media showing little boats full of people with dark skins seeking to enter the EU irregularly dominates all media coverage of borders. Yet, this picture is highly misleading. Instead, what actually happens at EU external borders is that border guards check whether people have valid passports (and visas) and if they do they enter (within the 12 second time limit with logistics of roads and airports places on border guards). The public perception that at borders, there is a serious investigation into each individual foreigner's past and future intentions, is simply incorrect. There is no time for this to happen. When border controls are abandoned altogether, such as in the EU's Schengen area after 25 March 1995, it becomes more difficult to count how many people are moving. Yet, the perception that there is a diminution of security as a result of the abolition of border controls does not correspond to reality in the EU. Recorded crime, according to Eurostat, the EU's statistical agency, shows a consistent drop in serious crime from 2002 to the present.²⁶ As border controls were abolished among the original Schengen states (five – Belgium, France, Germany, Luxembourg and the Netherlands) in 1995 then with other Schengen states including with 9 Central and Eastern European states, the three Baltic states and Malta in 2007, the crime statistics remain stable. This is not a question of cause and effect, the argument is not that the abolition of border controls on persons reduces crime, it is rather an argument that there is no statistical relationship between crime levels and border controls.

In 2017, the 28 EU Member States issued 3.1 million first residence permits to third-country nationals.²⁷ Residence permits only refer to those allowing the individual to reside for 3 months or longer and include work, family, study or other permits – the latter category comprising not only international protection but also other permits. 2017 is the year where the EU 28 has granted more first residence permits since 2008. The majority of residence permits – a third – are granted for employment reasons. This is followed by family reunion (830,000), other reasons (767,000 out of which 538,000 were granted international protection) and education (530,000). Eight Member States alone granted close to 88% of all residence permits: Poland, Germany, the

UK, France, Spain, Italy, Sweden and the Netherlands, in that order. The largest single nationality of recipients of first residence permits in the EU in 2017 was Ukrainian²⁸ (followed by Syrians, Chinese, Indians and US nationals).²⁹ It is worth remembering that the EU in 2019 had a population of over 500 million thus the arrival of about 3 million foreigners every year hardly has a substantial consequence of the total population of the EU. It is the choice of the Member States to issue these residence permits. Except for the category of refugees, there are few international obligations to issue residence permits to foreigners. This is particularly true in the case of workers and students. These are choices which states make. Their bureaucracies examine applications and issue residence permits because the authorities consider that this is in the interests of the state. The idea which is often presented in the press that the issue of residence permits to foreigners is a rare and exceptional event is nonsense and not supported by the evidence. Further, a simple examination of the situation of Ukrainians in the EU bears a little more attention. Following the annexation of Crimea by the Russian authorities in 2014 followed by the substantial armed conflict in Eastern Ukraine has resulted in many people being displaced. According to Eurostat, about half million Ukrainians have arrived each year in Poland since the conflict began. The approach of the Polish authorities has been to issue Ukrainians with work and residence permits (Brunarska et al. 2016). However, Ukraine was on the EU visa black list so people fleeing the conflict in Ukraine who arrived in Poland crossed the border irregularly. In order to resolve this problem, the EU legislature took Ukraine off the visa black list in June 2017. From that date, Ukrainians travelling with biometric passports no longer needed visas to cross the border into Poland (or elsewhere in the EU) and so no longer entered irregularly. As a total number of arrivals of persons of a single nationality entering the EU, Ukrainians far outnumber Syrians in respect of whom there was so much controversy in 2015–2016.

In 2017, the number of asylum seekers applying for international protection in the EU was over 705,000 a drop by roughly half from the figure in 2016. In the same year, 2017, 538 000 asylum seekers were granted protection status in the EU 28. Once again, it is important to bear in mind that the figure even of those seeking international protection in the EU accounts for less than a third of first new residence permits issues to foreigners. The authorities responsible for determining asylum applications in the EU, found that about half of the claims were found to be genuine and the individual was entitled to protection. These figures do not support a vision of undeserving foreigners seeking to exploit EU asylum systems in massive numbers. It rather indicates that half of those who apply are recognised as in need of international protection and these decisions were by the issuing authority. The statistics also show a substantial number of refusals reversed by the courts when appealed (Guild 2016; Mitsilegas 2017). Of course, there are substantial variations of reception of asylum seekers in the EU with most claiming asylum in Germany, Italy and France while there were almost no applications in the Czech Republic, Portugal or Slovakia. Yet, the EU remains fixated on the principle that its rules of where an asylum seeker should make his or her application for asylum must be respected (Guiraudon 2018). This system is known as the Dublin system which sets out a hierarchy of rules determining which Member State will be responsible for an asylum seeker. In practice the most common criterion is the place of entry into the EU. In theory this should mean that states close to EU external borders would have the largest number of asylum applicants to care for and their cases to determine. Much literature focuses on the unfairness of the system to countries like Greece and Italy with long sea borders and close to countries which are refugee producing (such as Syria) (Schuster 2016). Yet, in practice asylum seekers end up in states where they hope to receive a fair asylum procedure and a chance to live safely.

Turning to irregular migration in 2017, the number of illegal border-crossings was the lowest in the EU since 2013, dropping from 511,000 to 204,000 as compared with 2016.³⁰ This

indicates that EU external borders are not places of massive influx of persons. Indeed, the numbers are tiny in comparison with the over 300 million people who enter the EU at regular border crossing points. Media induced fears about people creeping across EU external borders are not substantiated by the available data. The argument can always be made that the data only accounts for those foreigners whom the border guards have caught. It misses all those who successfully creep into the EU irregularly. But these later figures, if they are in fact substantial should turn up in the statistics on people detected already within the EU as irregularly present. These are the statistics which the EU calls 'illegal stay'.

As regards detection of illegal stay, in 2017, 618,780 cases were reported by Member States but only 516,115 orders were issued to leave EU territory.³¹ There is little information on what happened to the 100,000 who were detected but not ordered to leave the country. The assumption must be that they provided a good reason for their presence in the EU and so fell out of the statistics on irregularly present foreigners. In the end, after the necessary procedures only 75,115 third country nationals (foreigners) were forcibly expelled from the EU that year.³² The top five nationalities of those detected to be irregularly residing in the EU are Albanians, Syrians, Moroccans, Iraqis and Afghans, three of these nationalities are also among the top beneficiaries of international protection. This is an enormous drop from the number of persons whom the border authorities detected as irregularly present in the first instance to those whom those same authorities actually were willing to pursue to expulsion. It must be admitted that forced expulsion is lengthy and costly. Yet, from the discourse of some of the EU institutions as presented in the media, expulsion is the natural end place of migration. Yet, it touches the lives of so few people. Also, examining the nationalities of people who are expelled leaving aside the protection claims which Syrians, Iraqis and Afghans may have, the other two top countries to which people are expelled are EU neighbours – Albania and Morocco. With the first, there is a Stabilisation and Association Agreement with the EU which was supposed to provide a right to Albanian nationals to be self employed in the EU. The agreement entered into force in 2010 and five years thereafter (by 2015) the necessary measures were supposed to have been adopted to allow self employment. But this has not happened. Instead the EU continues to expel Albanians at a higher rate than any other single nationality. Many of these persons might have been able to establish themselves in self employed activities if the EU had fulfilled its promise to them rather than being the object of EU coercion. As regards Morocco, the situations are similarly problematic. The EU entered into a Mobility Partnership with Morocco in 2013 the purpose of which was to facilitate access for Moroccan nationals, including the issuing of visas for certain groups of people, particularly students, researchers and business professionals to the EU. But, according to Eurostat, while first residence permits issued to Moroccan nationals to carry out remunerated activities in the EU in 2013 numbered 19,064, by 2016 the number had dropped to 10,341. The EU-Morocco Mobility Partnership seems to have diminished rather than enhanced economic mobility between Morocco and the EU. Instead, Moroccan nationals have become one of the top nationalities for expulsion from the EU.

Finally, third country nationals account for 4.2% of the total EU population.³³ Does the EU need to be afraid of third country nationals arriving on its territory? Clearly the answer to this question is no. The practice of the EU is to welcome third country nationals as tourists, workers, students and persons in need of international protection. For those Member States that fear that the arrival of foreigners will change their traditions,³⁴ these statistics should provide profound comfort, not a source of anxiety and political concern. Indeed, the political participation of third country nationals in EU states remains low (de Rooij 2011; Martinello 2005). Foreigners, migrants and third country nationals, all terms for the same people, are not taking over European political institutions. They are rather the objects of national and European legislation than the makers of it.

Where next?

The EU's own experience with free movement of persons has been a very positive one. EU citizens cherish their right to move and work in another Member State. The seven enlargements of the EU have, on each occasion (except the 1994 one), been accompanied by concerns about floods of people moving from poorer to richer parts of the EU (Guild 2009). But the reality has been quite different. EU citizens do move from one Member State to another mainly doing so to find work when unemployment rises in their home state or to pursue studies not available to them at home. Many of them go back to their home country sooner or later (in full knowledge that they can set out again should the need arise). The number of EU citizens who live and work in another Member State than that of their citizenship has never exceeded 4% of the total population, is usually under 3%, and this is without an restrictions on crossing borders of migration. This is notwithstanding very substantial differences in wages, unemployment levels and standards of living across the EU. Free movement of persons has been achieved in the EU through the agreement of all states to trust one another and to work towards achievement of this pillar of the EU. The Member States need to accept that third country nationals resemble EU citizens in all ways except that they do not have EU passports. Just as EU citizens go to third countries to pursue their employment opportunities and dreams so too third country nationals come to the EU. Understanding migration of third country nationals to the EU as just as normal as that of EU citizens around the EU and to third countries is the starting point. The EU is not being flooded nor is it being invaded by third country nationals. The third country nationals who are coming to the EU in the largest numbers and working here are the most invisible, Ukrainians, the second largest number, Syrians, are war refugees entitled to our compassion. From this starting point the EU should move towards a common position on migration, acknowledging the entitlement of all people to dignity and negotiating together agreements with third countries which facilitate migration and movement of their people to achieve their legitimate aspirations.

The question of migration and refugee protection in the EU is mired in misinformation, half-truths and images of little boats packed with young black men. This is not accidental – it is part of public policy. The policy documents of the EU institutions insist on the need to 'curb' migration, focus on the ills of irregular migration without ever specify what they actually are and certainly never identifying how easily they can be resolved by simply issue residence permits to those classified as irregularly present. Instead, the whole field of migration (including refugee protection) is presented as a policy challenge of exponential proportions which demands an adequate political response. There is little support for this dramatic vision from the statistics which are produced by the same institutions which sell the unease scenario. The academic world is far too ready to engage with the political framing of migration and refugee protection as a massive challenge rather than to examine the framing itself, the evidence and to pierce the frightening illusion of invasion on the basis of which the policies are driven.

Notes

1. COM (2018) 168.
2. See: <https://www.politico.eu/article/belgium-sets-up-minority-government-after-migration-dispute-breaks-coalition/> visited 17 February 2019.
3. Frontex, 'Twelve Seconds to Decide', January 2015.
4. Frontex indicates that in 2018 there were 150 114 illegal border crossings between border crossing points. Frontex, 'Risk Analysis for 2019', February 2019.
5. Eurostat, 'Statistics on Enforcement of Immigration Legislation', June 2018.

6. <https://www.telegraph.co.uk/news/2017/11/29/europe-promises-44bn-marshall-plan-africa-migrant-slavery-libya/> visited 5 August 2019.
7. <https://www.reuters.com/article/us-europe-migrants-libya-idUSKBN1DC11C> visited 5 August 2019.
8. <https://www.aljazeera.com/indepth/features/world-refugee-day-unhcr-head-flies-niger-abused-migrants-180620004405582.html> visited 5 August 2019.
9. <https://www.theguardian.com/world/2010/feb/19/niger-military-junta-coup> visited 5 August 2019.
10. L C Petteng, 'How security turmoil in the Sahel is helping Niger renegotiate its influence in global affairs', International Studies Association Conference Accra 2 August 2019.
11. <https://etias.com/> accessed 21 December 2018.
12. <https://www.consilium.europa.eu/en/press/press-releases/2018/12/21/eunavfor-med-operation-sophia-mandate-extended-until-31-march-2019/> accessed 21 December 2018.
13. <https://sea-watch.org/en/legal-action-against-italy-over-its-coordination-of-libyan-coast-guard/> accessed 21 December 2018.
14. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).
15. https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-coast-guard_en.pdf visited 7 January 2019.
16. <https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control> accessed 9 January 2019.
17. Guild, E., Costello, C., Garlick, M., & Lax, V. M. (2015). *The 2015 refugee crisis in the European Union*. Centre for European Policy Studies.
18. http://europa.eu/rapid/press-release_IP-16-2433_en.htm accessed 21 December 2018; [http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/625194/EPRS_IDA\(2018\)625194_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/625194/EPRS_IDA(2018)625194_EN.pdf) accessed 21 December 2018.
19. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.
20. http://europa.eu/rapid/press-release_IP-17-350_en.htm accessed 21 December 2018.
21. Brussels, 12.9.2018 COM(2018) 634 final 2018/0329 (COD) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third-country nationals (recast).
22. All statistics are from the European Commission.
23. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)
24. Ibid.
25. Ibid.
26. [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Recorded_crime,_EU-28,_2002%E2%80%932012_\(1\)_millions_.YB14.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Recorded_crime,_EU-28,_2002%E2%80%932012_(1)_millions_.YB14.png) and https://ec.europa.eu/eurostat/statistics-explained/index.php/Crime_statistics visited 18 February 2019.
27. Eurostat, Residence Permits Statistics, October 2018, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statisticsexplained/index.php/Residence_permits_statistics#First_residence_permits:_an_overview accessed 9 January 2019.
28. Ukraine was removed from the Schengen visa black list in June 2017.
29. https://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statistics accessed 9 January 2019.
30. Ibid., p. 18.
31. The data by Frontex is also different since it reports 435.786 detections of illegal stay and 279.215 return decisions. FRONTEX, European Border and Coast Guard Agency, Risk Analysis for 2018, Warsaw, p. 16.

32. https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2018.pdf accessed 9 January 2019.
33. Eurostat, Migration and Migrant Population Statistics, March 2018, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_and_migrant_population_statistics#Migrant_population:_almost_22_million_non-EU_citizens_living_in_the_EU
34. <http://www.spiegel.de/international/europe/viktor-orban-wants-to-keep-muslim-immigrants-out-of-hungary-a-1052568.html> accessed 7 January 2019.

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