Competing priorities
at the EU's external border

Katharina Bamberg
Junior Policy Analyst

Francesca Fabbri
Policy Analyst

Frank Mc Namara
Policy Analyst

Credits: Markus Kaiser, Friedrich Naumann Foundation for Freedom

Table of contents

ABOUT THE AUTHORS

Katharina Bamberg is a Junior Policy Analyst in the European Migration and Diversity Programme.

Francesca Fabbri is a Policy Analyst in the Europe in the World Programme.

Frank Mc Namara is a Policy Analyst in the European Migration and Diversity Programme.

ACKNOWLEDGEMENTS

DISCLAIMER

Foreword

by the Friedrich Naumann Foundation for Freedom

In June 2018 I was sitting in a small plane with the authors of this issue paper travelling along the European Union's external border in the Aegean Sea. Our first destination was the island of Lesbos, described by my guidebook as: "a wonderful mix of stunning sea and mountain scenery, marble gravel beaches and quirky villages". However, on our arrival it quickly became clear that for some people this island paradise had turned into a prison. Having survived a journey prompted by persecution or poverty, migrants on Lesbos and also on Samos had reached safety but not freedom. Their hosts, local Greek citizens and national agencies, were doing their best to help, but felt let down by their European partners. It was clear that years after its peak in 2015, the migration crisis was anything but solved.

Our experiences on the Greek islands confirmed our decision to support this joint project by the European Policy Centre (EPC) and the European Union Institute for Security Studies (EUISS). The migration crisis and its management at the external border of the European Union (EU) touch on core values that the Friedrich Naumann Foundation for Freedom (FNF) seeks to promote: the protection of human rights and solidarity among member states.

The EU's southern border is a maritime frontier, and this natural obstacle has cost more than 3,000 lives per year since 2015. As a former naval officer, I share every sailor's deeply held conviction that the safety of life at sea is paramount. Sailors do not discriminate when lives are at risk. The EU and its member states, as promoters and defenders of human rights, should share this philosophy. They must not deter irregular crossings by reducing or restricting rescue operations. Rather than hiding behind natural obstacles, the EU should provide consistent immigration rules and legal pathways. Human rights can only be defended and promoted as a credible concept if they are universal.

Greece, Italy, and Spain are on the front line of the continuing crisis. Their burden in receiving large numbers of sea arrivals has not been sufficiently shared by other member states. Negotiations about the fair distribution of refugees and a reform of the infamous Dublin III Regulation has sparked considerable conflict among EU member states. As of yet this has not yielded any tangible results. Simultaneously, an anti-migrant, populist backlash has been seen in the domestic politics of many member states. The migration crisis has proved to be a serious stress test for the future of European integration.

The contributions in this issue paper take up some of the most relevant questions arising from this backdrop: How has the EU's border management changed? How did the crisis affect the EU's relations with third countries? How could human rights be better protected at the border in the future?

We wholeheartedly support the analyses and ideas developed and presented by Katharina Bamberg, Francesca Fabbri, Frank Mc Namara and Roderick Parkes. Enjoy the read!

Sebastian Vagt

Expert Hub for Security Political Dialogue
Friedrich Naumann Foundation for Freedom, Brussels

Foreword

by the Finnish Ministry for Foreign Affairs and Ministry of the Interior

The European project has habitually faced challenges, but arguably the past ten years – from the financial crisis of 2008 to the political impasse in the aftermath of the 2015 'migration crisis' – has put a particularly heavy strain on the unity, coherence and solidarity of the European Union (EU). The challenges highlight not only the political rifts between European countries, but also a growing interdependence between the EU and third countries. In this context, decision-makers are tasked with finding solutions to an array of highly complex challenges. It is after all at the EU's external border that internal and external aspects of security meet and interact, transforming from abstract notions to reality.

The project 'All things to all men – Geopolitics and competing priorities at the EU's external border' by the EPC and the EUISS focuses on the increasingly politicised external borders of the EU – actors, priorities and policies. It has become clear that the EU's border management cannot be seen merely as a technical home affairs issue. Management of borders, migration and asylum are intertwined, and successful policy action often begins beyond the EU's external border. While the system of Integrated Border Management is based on this reality, there is a demand for more discussion about the changes to the EU's border management; their geopolitical implications for the EU; and better integration of foreign policy considerations into border management.

In contributing to this project, the Finnish Ministry for Foreign Affairs and the Ministry of the Interior seek to support a Europe-wide debate about the future of border management, and, ultimately, to better inform policymaking both in member states and at Union level. As a first step, the project's roundtables in Brussels and Paris succeeded in gathering an impressive collection of experts and stakeholders to participate in the discussion. We expect this report to broaden and intensify the dialogue even further.

Europe needs good policies for the sake of both migrants and border countries, but also – and most fundamentally – for the sake of Europe as a whole.

Dr Ossi Piironen

Senior Researcher
Policy Planning and Research
Ministry for Foreign Affairs of Finland

Dr Hanna-Miina Sihvonen

Senior Specialist
Strategic Steering and Development
Ministry of the Interior of Finland

Ulkoministeriö
Utrikesministeriet — Ministry for Foreign Affairs of Finland

Ministry of the Interior
Finland

Executive summary

In 2015 there was a significant increase in the number of migrants crossing the Mediterranean and arriving on European shores. The numbers were such that the phenomenon became known in the public debate as the 'migration crisis'. Numbers have since diminished to what is perceived to be a much more manageable level. However, the crisis period continues to reverberate within European politics and to drive law and policy reform. Much of that reform has focused on how the European Union (EU) manages its external border and especially the role that foreign policy plays in that management. The Issue Paper seeks to shed some light on the interplay between border management and foreign policy, and to make recommendations for a more integrated and consistent European approach.

In the first chapter, Frank Mc Namara charts the evolution of Integrated Border Management (IBM), the concept through which the EU manages its external border, and its role in the future of the external border. IBM has become increasingly central to the EU's strategy in managing future migration crises. Mc Namara argues that foreign policy measures were central to decreasing the number of migrants arriving in the EU by sea during the recent crisis. However, these initiatives were *ad hoc* and did not reflect the principles of solidarity, the fair sharing of responsibility between member states and fundamental rights. Recent and envisaged reforms seek to better frame future foreign policy action in the context of IBM. Nevertheless, those reforms in and of themselves cannot preclude future recourse to the type of piecemeal foreign policy initiatives that were spawned by the previous crisis. Mc Namara argues that the prominent position given to IBM in the reforms is an opportunity to take a more long-term and principled approach to cooperation with third countries. That approach would reduce the likelihood of future crises arising, simultaneously reducing the need for recourse to such makeshift foreign policy initiatives.

In the second chapter, Katharina Bamberg discusses the Union's proposal for a Resettlement Framework, marking an attempt to approach resettlement in a systematic, structured and sustainable way. However, tensions emerged during negotiations reflecting two different and conflicting approaches to the purpose of this policy instrument. The European Parliament saw it as a humanitarian pathway for the most vulnerable, while the European Council appeared to wish to use it as migration management tool within an increasingly control-oriented Common European Asylum System. Bamberg argues that turning the Resettlement Framework into an instrument of migration management is problematic, in particular when it comes to cooperation with third countries. The legislative proposal makes EU commitments on resettlement from third countries dependent on the cooperation of those countries in asylum and migration matters, mostly in relation to border control and preventing departures. This signals a push to use foreign policy to outsource protection responsibilities, and ultimately carries the risk of impeding access to asylum. Bamberg contends that the traditionally humanitarian dimension of resettlement should not be forgotten, and that member states should take steps to uphold the right to asylum and meet the protection needs of vulnerable people.

In the third chapter, Francesca Fabbri evaluates how foreign and migration policies can be more effectively targeted at achieving European objectives in Libya, a country of special significance to both the EU's migration and foreign policy agendas. She provides an overview of the Libyan economic and political state of play, and identifies priorities to better address the challenges on the ground. The analysis then moves to assessing the policy approaches put in place by the EU and its member states in Libya. Fabbri explains how these approaches may have provided quick fixes, but have fallen short of delivering long-term solutions to both migration and security challenges because they did not address the roots of instability. The mobilisation of a wide range of development and foreign policy instruments for migration control purposes in Libya has not advanced the EU's broader political and security objectives in the country. Fabbri offers recommendations for a more structural approach to achieving stability in Libya and highlights the need to integrate foreign and migration policy tools and objectives more effectively.

Collectively, the chapters of this Issue Paper acknowledge that cooperation with third countries to control migration and manage the external border is inevitable. However, they argue that the EU must make a number of law and policy decisions to enhance the coherence and effectiveness of border management and foreign policy measures in the pursuit of lasting, sustainable solutions that reflect core EU principles. Only by doing so will the Union achieve a border management approach that can be 'all things to all men' in balancing security with respect for fundamental rights.

November 2018

List of acronyms

ATCR   Annual Tripartite Consultations on Resettlement
CBL   Libyan Central Bank
CEAS   Common European Asylum System
CSDP   Common Security and Defence Policy
DDR   Demobilisation, Disarmament and Reintegration
EBCG   European Border and Coast Guard
EU   European Union
EUBAM   EU Border Assistance Mission
EULPC   EU Liaison and Planning Cell
EUTF   EU Emergency Trust Fund for Africa
GDP   Gross Domestic Product
GNA   Government of National Accord
HoR   House of Representatives
IBM   Integrated Border Management
IcSP   Instrument contributing to Stability and Peace

IDP   Internally Displaced Person
IRC   International Rescue Committee
IRO   International Refugee Organisation
JHA   Justice and Home Affairs
LIA   Libyan Investment Authority
LNA   Libyan National Army
LPA   Libyan Political Agreement
MoU   Memorandum of Understanding
NGO   Non-governmental Organisation
NOC   National Oil Company
SAR   Search and Rescue
SFL   Stabilisation Facility for Libya
UNDP   United Nations Development Programme
UNHCR   United Nations High Commissioner for Refugees
UNSMIL   United Nations Support Mission in Libya

Chapter 1

Integrated Border Management and migration: A crisis concept or a concept in crisis?

Frank Mc Namara
Policy Analyst

Integrated Border Management (IBM) is the concept by which the European Union (EU) manages its external border. IBM involves national and international cooperation between all authorities and agencies involved in border security and trade facilitation. Its goal is to establish effective and coordinated border management at the EU's external borders.[1]

IBM can be traced back to 2001 when the European Council recognised that the easing of internal frontiers required a corresponding strengthening of external border control.[2] When it was being drafted, large numbers of migrant arrivals by sea were not at the forefront of policymakers' minds. IBM was not developed specifically to respond to crisis situations *per se*. However, it is reasonable to assume that the integration of external border management was undertaken on the basis that it should be able to face all eventualities at that border.

What the EU experienced is perhaps better described as a crisis of border management than a 'migration crisis' *per se*.

The following years saw the number of migrants arriving by sea across the Mediterranean remain within a relatively low range.[3] In 2014 this pattern changed, with a large increase in migrants making the crossing to the EU. During the second half of 2015 there was a surge in arrivals by sea, marking the start of a phenomenon that

has since been widely referred to as the 'migrant crisis' in the public debate. It is important to note that that term 'crisis' is contentious in this context.[4] The EU certainly experienced a very significant increase in the number of irregular migrants arriving by sea via the Eastern Mediterranean and, to a much lesser extent, the Central Mediterranean route, in 2015. However, levels increased during a relatively brief period (2015–2017) and even at their height were dwarfed in comparison with the figures for refugee populations and other migrants scattered across the world, including in the EU's neighbourhood. What the EU experienced is perhaps better described as a crisis of border management than a 'migration crisis' *per se*. The EU's border management regime was unable to adequately respond to the significant increase in arrivals of migrants by sea. In these circumstances, the concept which underpins external border management must be considered afresh.

This paper considers the foreign policy response to the crisis in the context of IBM. It also examines how recent and envisaged reforms, undertaken in response to that crisis, have better equipped the external border for future crisis situations. These reforms include an overhaul of Frontex, the external border agency, and a reimagining of IBM. Part of the latter has included the incorporation of strong reference to certain core EU principles – notably fundamental rights; solidarity; and the fair sharing of responsibilities between member states.[5] The disconnect between these principles and the foreign policy measures adopted in response to the crisis serves as a reference point throughout this paper as it charts the Union's efforts to crisis-proof its external border. However, as the paper sets out, there is a limit to what the EU can do to shape future foreign policy to reflect those principles.

This is because there remains a jealously guarded national prerogative for foreign policy in this field.

IBM – A BRIEF BACKGROUND

IBM was developed following the easing of internal borders through the incorporation of the Schengen Agreement into EU law with the Treaty of Amsterdam (1999). The European Council believed that all segments of the external border (at each of the relevant member states) would require more integrated management as this new era of co-dependency on entry of persons began. In May 2002 a Commission Communication responded to the aforementioned requirement by the European Council by introducing IBM.[6]

IBM was not materially considered at the time that Frontex, the agency tasked with managing the Union's external border, was established. In fact, Frontex's founding Regulation (2004) made no reference to IBM, merely stating that the agency was being established with a view to improving "the integrated management of the external borders" of the European Union.[7] It was the Justice and Home Affairs (JHA) Council Conclusions of 2006 that further refined IBM and introduced the 'dimensions' which would demark the framework.[8] These dimensions incorporated a strong foreign policy component.

Frontex and IBM both evolved slowly and separately for about a decade after those JHA Council Conclusions, and it was only with the onset of the crisis in 2015 that radical and fast-paced reform began to take place. That reform has seen the future of Frontex become much more entwined with the role of IBM.

It is useful to note as a preliminary point that Frontex remains the agency tasked with management of the external border but has been referred to as the European Border and Coast Guard (EBCG) in recent reforming legislation. The EBCG Regulation (2016) provided Frontex with unprecedented new powers and expanded significantly on IBM. This was followed by the Commission's ambitious EBCG proposal in September 2018, which built further on its predecessor with another expansion of powers for Frontex and for the Commission. The new proposal also set out IBM in greater detail than ever before. In addition to the 2018 EBCG proposal, Frontex is currently readying itself for a further reorganisation of IBM with a technical and operational strategy due to be published in the coming months. At the same time, national authorities are drafting their own strategies for IBM.[9] Taking stock of the recent crisis is particularly appropriate at this time, when new policies are in the process of being formulated. Such an examination provides a basis for considering the extent to which current reforms will enable the EU and member states to better respond to future crisis situations.

The evolution of IBM

This section considers the evolution of IBM in terms of how it interacts with third countries, and with regard to the principles that have recently been given increased prominence vis-à-vis the external border.

THE FOREIGN POLICY COMPONENT

The foreign policy aspect of IBM went without any detailed clarification until the aforementioned JHA Council Conclusions of 2006 set it out. It was then expanded on in subsequent policy guidelines.[10] IBM's foreign policy role is stated to relate to two areas: measures that are taken in third countries, and cooperation with third countries. The measures taken within third countries include advice and training by liaison officers and travel document experts. Cooperation with third countries consists of the exchange of information and the establishment of appropriate communication channels, plus central, regional and local contact points and emergency procedures.[11]

The EBCG Regulation (2016) incorporated a strong foreign policy component within IBM, stipulating "cooperation with third countries in the areas covered by

this Regulation" as one of its defined components.[12] This cooperation focuses on "neighbouring countries and on those third countries which have been identified through risk analysis as being countries of origin and/or transit for illegal immigration".[13] As will be described below, the 2018 proposal for reform of Frontex proposes a further expansion of cooperation with third countries within the framework of IBM.

Cooperation with third countries in this field dates back to the early 2000s, when the Western Balkans became the first laboratory for IBM. The aim was to establish a fully integrated system of border management for the Balkans, encompassing intra-service cooperation, alongside inter-agency and international cooperation. IBM has also been promoted in third countries through EU Border Assistance Missions (EUBAMs) in Moldova, Ukraine, Libya and at the Rafah Crossing Point (between the Gaza Strip and Egypt). While the objectives of each of these missions has differed, border security has been central to each of them.[14] The rationale has been that tighter border control in neighbouring third countries will have the positive effect of reinforcing the EU's external border further downstream, and will prepare those third countries for closer ties with the Union.[15]

The rationale has been that tighter border control in neighbouring third countries will have the positive effect of reinforcing the EU's external border further downstream, and will prepare those third countries for closer ties with the Union.

The promotion of IBM in third countries has not been without criticism. It has been suggested that such promotion was inappropriate as the concept had not yet been fully developed nor harmonised at the EU's own external borders. Its promotion at the external borders of third states has thus been contentious.[16] Despite this, IBM is now an important element of EUBAM missions, where it is repeatedly referred to as a strategy that should be promoted.

In addition to the interactions described above, IBM is more loosely associated with other foreign policy initiatives which still clearly come within the scope of the concept since they concern cooperation with third countries in an area covered by the EBCG Regulation (2016).[17] The organisation of the return of third-country nationals who are subject to a deportation order and the assigning of Immigration Liaison Officers to airports in third countries are examples of such initiatives. It is less clear whether the foreign policy initiatives undertaken during the crisis fall within the scope of IBM's foreign policy component. These initiatives are considered below.

While these principles were not prominently present in IBM's foundational texts, they are now increasingly informing EU policy towards the management of its external border.

HOW THE EU'S FUNDAMENTAL PRINCIPLES FIT WITH MANAGING ITS EXTERNAL BORDER

Solidarity, the protection of fundamental rights and the fair sharing of responsibilities between member states are all principles of EU law. While these principles were not prominently present in IBM's foundational texts, they are now increasingly informing EU policy towards the management of its external border.

Frontex's founding Regulation (2004) made reference to the central role of solidarity, a theme that is continued in the EBCG Regulation (2016) and the

EBCG proposal (2018).[18] The 2016 Regulation also significantly expanded its references to the protection of fundamental rights, something that had been only briefly acknowledged in the Frontex founding Regulation (2004). The EBCG proposal (2018) continues in this vein. Frontex's founding Regulation did not refer to the principle of the fair sharing of responsibility between member states.[19] The EBCG Regulation (2016) has a specific provision dedicated to 'Shared Responsibility'. This states that Frontex will "implement European integrated border management as a shared responsibility of the Agency and of the national authorities responsible for border management".[20]

The growing importance of these principles can be gleaned from several significant policy documents. In May 2015, a few months before the crisis got fully underway, the Commission issued a Communication entitled 'A European Agenda on Migration'.[21] This was effectively a rallying cry for achieving a common European migration policy. It did not make any reference to IBM. In May 2018, however, a post-crisis Commission Communication (progress report) on the implementation of the European Agenda on Migration was issued.[22] This report dedicated a whole annex to IBM and was at pains to emphasise the centrality of the fundamental principles in underpinning European IBM.[23] It stated that the "principles of solidarity and fair sharing of responsibilities between Member States… should be fully integrated into" the development of IBM. It added that IBM should also guarantee the full respect of fundamental rights in all border management and included an explicit reference to respect for non-refoulement.

In summary, policy and legal developments over recent years have increasingly emphasised the role of key principles in framing and guiding the evolution of IBM. These principles were, however, conspicuously absent in the foreign policy initiatives which brought about the end of the significant numbers of sea arrivals between 2015 and 2017.

Foreign policy and the rise and fall of a crisis

In 2015 over a million people arrived in the EU via the Eastern and Central Mediterranean routes, with roughly 85% using the Eastern route. Migrant flows along these routes have fallen dramatically since then, and it is projected that the figures for 2018 will not exceed 5% of the 2015 high. Foreign policy was instrumental in bringing about this massive decrease in the number of sea arrivals along both routes.

Decisive foreign policy action effectively ended the crisis, leading to quite sudden month-on-month falls along both routes.

Decisive foreign policy action effectively ended the crisis, leading to quite sudden month-on-month falls along both routes, as shown in the accompanying graph, below. While these policy measures were effective, questions may be asked as to how they fit with the aspiration to develop IBM, and whether they can be considered as a sustainable course of action in responding to possible future crises.
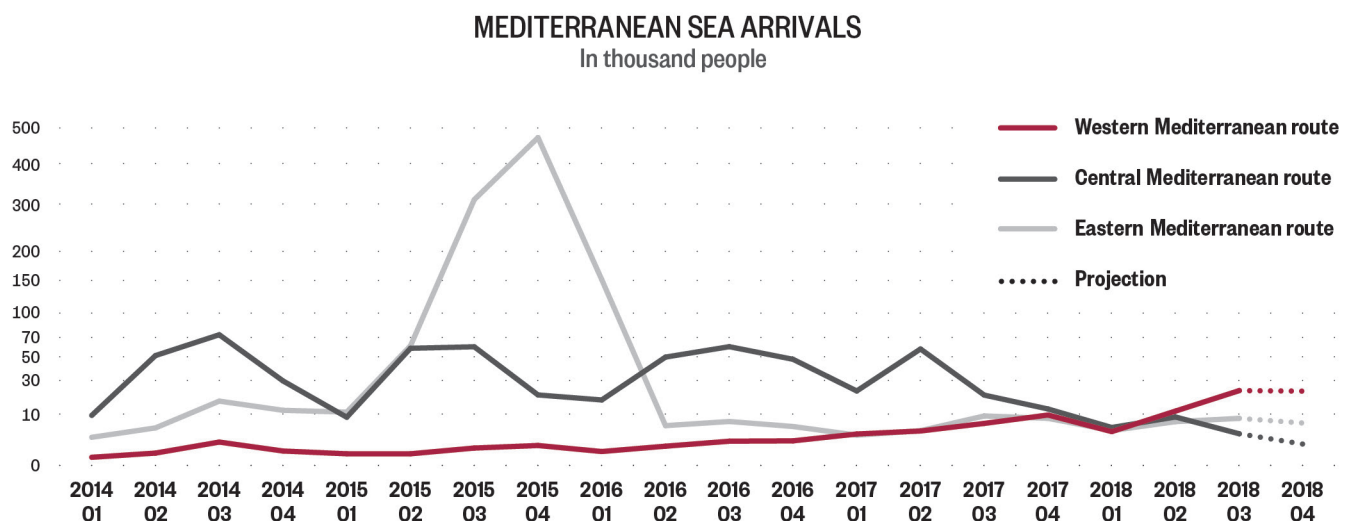
THE EASTERN MEDITERRANEAN

The second half of 2015 and the first three months of 2016 marked the peak period for arrivals in the Eastern Mediterranean. The vast majority of 2015 sea arrivals (91%) reached Europe between July and December of that year. This sustained influx continued until spring 2016, with 151,452 people arriving in the three months to the end of March. By comparison, a comparatively modest 21,998 people reached Europe's shores via this route from April to December. This drop in sea arrivals coincided with a unique instrument of foreign policy – the EU-Turkey Statement.[24]

The German government was a key driving force behind the complex negotiations that led to the signing of the Statement.[25] A number of different factors have been cited in explaining the decline of sea arrivals in 2016. Notable among these was the closure of several crucial borders in the Balkans.[26] However, the EU-Turkey Statement should be recognised as being the primary reason for this decrease. In achieving the objective of decreasing the flow of migrants through this deal, appropriate standards of democratic and judicial oversight were compromised. The way in which the Statement fitted into wider international treaty-making was also unclear.[27]

Furthermore, there were questions about who was actually party to the deal. After it had been agreed, the EU released a press release which stated that: "the EU and Turkey today decided to end the irregular migration from Turkey to the EU".[28] Nonetheless, in February 2017,

Fig. 1

MEDITERRANEAN SEA ARRIVALS
In thousand people

Legend:
- Western Mediterranean route
- Central Mediterranean route
- Eastern Mediterranean route
- Projection

Source: Author's graph with use of UNHCR figures

in a controversial ruling, the General Court of the EU found that it was not the Union but its member states – as actors under international law – who had conducted the negotiations and come to an agreement with Turkey, and the Court thus found that it lacked jurisdiction to review the Statement.[29]

The adoption of an important foreign policy decision through a press release has been heavily criticised as being inconsistent with the democratic and judicial checks and balances that would normally accompany such an agreement.[30] Furthermore, the Statement has been criticised for putting the fundamental rights of migrants at risk.[31] Finally, solidarity and a fair sharing of responsibility among member states, principles to which the Union aspires, were sorely lacking in the lead up to the Statement.

THE CENTRAL MEDITERRANEAN

A smaller but still significant increase in migrant numbers occurred in the Central Mediterranean in 2014, leading to a peak of 181,436 arrivals in 2016. In early 2017 it looked as if the annual total would outstrip the figure for 2016, but in July there was a significant drop in numbers and arrivals via this route have been on a downward trajectory ever since. Between January and July 2018, 18,510 migrants arrived via the Central Mediterranean, representing a more than five-fold decrease compared with the same period in 2017. The route thus experienced a very clear month-on-month drop-off in the same way that the Eastern Mediterranean did following the EU-Turkey Statement.

A number of factors are commonly mentioned as possibly having influenced the decrease in arrivals by sea along the Central Mediterranean route. Foremost among these are the restrictions placed on the work of NGOs and the renewed activities of the Libyan Coast Guard. Successive Italian governments have been hostile to the work of NGOs that set out to rescue migrants in the Mediterranean. However, it has been convincingly argued that the activities of NGOs did not materially impact the number of people departing from Libya and were therefore not a factor in the number of arrivals by sea in the EU.[32]

The reassertion of sovereign control over Libyan waters by the Libyan Coast Guard has also been mentioned as a factor, with Italy and the EU providing material and expert assistance.[33] The controversial 'pull-backs' by the Libyan Coast Guard have certainly contributed to making the journey to Europe a more difficult prospect for migrants in Libya.[34] However, it is extremely difficult to quantify the impact of these operations on the number of sea arrivals in the EU.

It is impossible to definitively measure the impact of the policies restricting the work of NGOs, or the Libyan Coast Guard's interceptions, in stemming the flow of people leaving Libyan shores. They certainly did not represent the same type of single defining moment as the EU-Turkey Statement did in the Eastern Mediterranean.

Instead, the closest thing to such an intervention was the Italian foreign policy efforts that took place in Libya. In the absence of a properly functioning central government, these involved informal bilateral agreements with the Government of National Accord, as well as allegedly coming to opaque arrangements with key non-state actors on the ground.[35] Any such deal with non-state actors places the fundamental rights of migrants at risk. It is also clear that such foreign policy approaches resulted from a failure of solidarity and the fair sharing of responsibility among member states. Italy felt compelled to act alone in order to stem the migrant flow that it was faced with. As with the EU-Turkey Statement, the foreign policy measures allegedly employed to stem the flow via the Central Mediterranean route do not lend themselves to institutional oversight and judicial safeguards.

REACTION TO THE CRISIS – IBM'S CONTINUED EVOLUTION

Foreign policy has played a crucial role in the response of the EU and its member states to the rise in the number of migrants arriving by sea via both the Central and Eastern Mediterranean routes. The reaction to the crisis reflected an external border that was not equipped to deal with sea arrivals on such a large scale. Foreign policy responses were focused on gaining control over these arrivals, and came at the cost of fundamental rights, solidarity, and the fair sharing of responsibility among member states.

Foreign policy responses were focused on gaining control over these arrivals, and came at the cost of fundamental rights, solidarity, and the fair sharing of responsibility among member states.

This crisis experience has forced the EU to embark on a reform of Frontex to better prepare the external border for any future crisis. Published shortly after the EU-Turkey Statement, the 2016 EBCG Regulation gave IBM unprecedented prominence, strengthening its role in shaping Frontex's future crisis response. The EBCG Regulation was clearly conceived as a framework by which future crises could be more effectively handled than had previously been the case. In this regard, the continued inclusion of the principles of solidarity, the fair sharing of responsibility and fundamental rights is very important. As described above, references to those principles had been limited in the Frontex founding Regulation (2004).

Proposed reforms of Frontex took centre stage in Commission President Juncker's State of the Union address in September 2018.[36] As currently envisaged, the proposed EBCG Regulation would provide for a standing corps of 10,000 operational staff by 2020. They would rely first and foremost on the agency's own equipment,

rather than member states' vessels, planes and vehicles. Among the most far-reaching and contentious elements contained within the proposal is a provision that would delegate important power to the Commission in the event of a member state's failure to adopt the necessary measures during a crisis.[37] In such situations, the Commission could decide, without the consent of the relevant member state, that an intervention by Frontex's border guards was necessary. The Commission would also have the power to assert that internal border controls should be reintroduced for that member state. Assigning new powers of this nature to the Commission, without any check from the Council, is an ambitious starting point for the proposal.[38]

More importantly in the current context, the Commission states that the proposed Regulation would herald stronger cooperation with non-EU countries.[39] Subject to the agreement of relevant third countries, the agency would be able to deploy its staff in joint operations with them, even beyond territories neighbouring the EU. Unlike the 2016 EBCG Regulation, this proposal includes IBM in its provision for cooperation with third countries. The relevant section opens with the words: "the Member States and the Agency shall cooperate with third Countries for the purpose of integrated border management and migration policy".[40]

Article 72(3) adds that both Frontex and the member states must comply with Union law, "including norms and standards which form part of the Union acquis", when cooperation with third countries takes place on the territory of those countries. Article 73 covers bilateral and multilateral international agreements including those relating to cooperation at an operational level.

Article 73(3) requires that such agreements be subject to "Union and international law on fundamental rights and on international protection". It adds that when implementing such agreements member states should "continuously assess and take into account the general situation in the third country".

Finally, Article 77(3) states that member states must notify the Commission of any existing bilateral and multilateral agreements and it "shall verify whether their provisions comply with this Regulation". There is a clear intention that all future agreements will have to abide by Union standards and principles. This reform resonates when considered against the backdrop of the agreements which brought an end to the crisis.

Conclusion

In its early days, IBM could be described as being a vague piece of Euro-jargon. Despite this it was – in theory at least – the concept by which the EU's external border was supposed to be managed. The primary response of the EU to the migration crisis has been to reform Frontex, and the inclusion of IBM in that reform is significant. It is difficult to say with certainty what impact IBM's incorporation into the Regulation will have, but it can be interpreted as a signal that responses to future crises, should they occur, should be better framed by shared principles. The inclusion of IBM at the heart of the reform of Frontex should thus be taken as a positive development for foreign policy in crisis situations.

One of the primary goals of the proposed 2018 reforms of EBCG must be to underscore the EU's firm commitment to democratic and judicial oversight. This would help to regulate future crisis-driven foreign policy to ensure that it is in line with the customary oversight for international treaties which are already subject to, for example, the Court of Justice's review on fundamental rights compliance. The question is how effectively such oversight can be brought to bear on foreign policy which is organised on an informal basis, rather than being enshrined in a treaty. The deals allegedly carried out by Italy in Libya are a prime example, as this kind of deal-making is tremendously difficult to supervise. The preferred approach must be to manage the external border in a way that means such deals are unnecessary.

It is better to prevent the need for knee-jerk foreign policy in response to a crisis than to attempt to regulate policies which do not live up to the Union's standards and principles.

It is better to prevent the need for knee-jerk foreign policy in response to a crisis than to attempt to regulate policies which do not live up to the Union's standards and principles. Avoiding *ad hoc* policy responses requires a long-term perspective on crisis prevention, rather than simply focusing on short-term objectives when reacting to a situation that is already unfolding. The inclusion of IBM in the proposal for reform of Frontex (EBCG Regulation 2018) represents an opportunity to set new standards for all cooperation with third countries. The challenge in grasping that opportunity is in resisting the temptation to pursue sticking-plaster solutions that may provide temporary relief from the immediate pressure of arrivals, but do so only at the cost of adhering to the EU's standards and principles. Achieving a more long-term and holistic response will require a concerted effort across all migration-related foreign policy to try and prevent crisis situations from arising.

Commitment by the EU to a large-scale resettlement programme which focuses on providing a clearly defined humanitarian pathway for those seeking international protection would act as a clear statement of intent. The use of resettlement to this end is the subject of the next chapter.[41] Simultaneously, there is a need to act more decisively in addressing the challenges on the ground in relevant third countries. Again, there is a danger of being distracted by the short-term objective of managing migrant departures towards Europe. A longer-term approach would instead address the root causes of instability. The third and final chapter of this issue paper addresses the challenges and opportunities of such an approach in the context of Libya.[42]

Through its inclusion in the reforms of Frontex, IBM's role as the concept for managing the external border has evolved significantly. It has now also become the concept for managing crises at that border. Although the informal deal-making that brought an

end to the migration crisis has resulted in an uneasy *status quo*, with relatively small numbers of migrants crossing the Mediterranean, migrant flows could very well increase again in the future. The recent reform of Frontex and the Commission's proposal for further changes signal a greater preparedness on behalf of both the Agency and the Commission to react decisively if faced by a future crisis.

Cooperation with third countries will remain crucial to migration control and the management of the external border. The key to the success of the supporting foreign policy will be the adoption of a more long-term, principled and holistic approach to migration. This has the potential to alleviate the intensity of any future crisis situation at the border, and simultaneously support a response based on solidarity, a fair sharing of responsibility among member states, and the protection of fundamental rights.

1   See definition on the European Commission's website.

2   Presidency Conclusions European Council Meeting in Laeken, 14-15 December 2001.

3   For the recent history of irregular arrivals by sea, see Fargues, Philippe (2017), "Four Decades of Cross-Mediterranean Undocumented Migration to Europe", Brussels: International Organization for Migration.

4   Miles, T. (2018), "U.N. view on the European migrant crisis? There isn't one", *Reuters*.

5   Communication from the Commission to the European Parliament, the European Council and the Council, COM (2018) 250 final, "Progress report on the Implementation of the European Agenda on Migration. Annex 6 - The main elements for developing the European Integrated Border Management Strategy", Brussels: European Commission.

6   Communication from the Commission to the Council and the European Parliament, "Towards Integrated Management of the External Borders of the Member States of the EU", COM(2002) 233 final, Brussels: European Commission.

7   Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Article 1(1).

8   These dimensions were, and are still, referred to as the four-tier access control model and include: "…measures in third countries, cooperation with neighbouring countries". Council Conclusions on Integrated Border Management, 2768th JUSTICE and HOME AFFAIRS Council meeting, Brussels, 4-5 December 2006.

9   Communication from the Commission to the European Parliament, the European Council and the Council COM (2018) 250 final. "Progress report on the Implementation of the European Agenda on Migration".

10 European Commission (2010), "Guidelines for Integrated Border Management in European Commission External Cooperation", Brussels: European Commission.

11 *Ibid*.

12 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard. Recital 3. See also: Article 4(f), European integrated border management.

13 *Ibid*.

14 Ukraine and Moldova: Memorandum of Understanding between the European Commission, the Government of the Republic of Moldova and

the Government of Ukraine of 7 October 2005 on the European Union Border Assistance Mission to the Republic of Moldova and to Ukraine. "The Mission aims to improve the auditing and control of cargo and passenger traffic between the two countries. More specifically, the Mission must contribute to combating human trafficking, the smuggling of goods, arms trafficking and corruption." Available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:ps0002&from=RO

Libya: Council Decision 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya). Part of this mission's mandate is "to support the Libyan authorities in developing the capacity to enhance the security of Libya's borders in the short term, and to assist in developing a broader strategic Integrated Border Management (IBM) concept in the longer term."

Rafah Crossing Point: Agreed Principles for Rafah Crossing, 15 November 2005. "The third party [EU] will assist the PA [Palestinian Authority] to build capacity – training, equipment and technical assistance – on border management and customs."

15 Collantes-Celador, Gemma and Ana E. Juncos (2012), "The EU and border management in the Western Balkans: preparing for European integration or safeguarding EU external borders?", *Southeast European and Black Sea Studies*, Volume 12, Issue 2.

16 Hernández i Sagrera, Raül (2014), "Exporting EU integrated border management beyond EU borders: modernization and institutional transformation in exchange for more mobility?", *Cambridge Review of International Affairs*, Volume 27, Issue 1, pp. 167-183.

17 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard. Article 4(f), European integrated border management.

18 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard. Recital 10.

19 For other references to 'responsibility' in the regulation, see: Recitals 4 and 20. Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

20 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard. Article 5.

21 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of

the Regions, A European Agenda on Migration, COM(2015) 240 final, Brussels, 13.5.2015.

[22] Communication from the Commission to the European Parliament, the European Council and the Council COM (2018) 250 final, "Progress Report on the Implementation of the European Agenda on Migration".

[23] The annex to the progress report listed those principles as being fundamental rights, solidarity and the fair sharing of responsibility between member states and referenced Article 80 of the Treaty on the Functioning of the EU with regard to the two latter principles. Communication from the Commission to the European Parliament, the European Council and the Council COM (2018) 250 final, Progress report on the Implementation of the European Agenda on Migration. Annex 6 - The main elements for developing the European Integrated Border Management Strategy.

[24] EU-Turkey Statement, 18 March 2016.

[25] Karnitschnig, M. and J. Barigazzi (2016), "EU and Turkey reach refugee deal", Politico.

[26] Spijkerboer. T. (2016), "Fact Check: Did the EU-Turkey Deal Bring Down the Number of Migrants and of Border Deaths?", Border Criminologies Blog, University of Oxford.

[27] den Heijer, M., Spijkerboer, T., (2016), "Is the EU-Turkey refugee and migration deal a treaty?", EU Law Analysis Blog.

[28] EU-Turkey statement, 18 March 2016, Press Release.

[29] T-192/16, T-193/16 and T-257/16 NF, NG and NM v European Council

[30] Carrera, Sergio, Leonhard den Hertog and Marco Stefan (2017), "It wasn't me! The Luxembourg Court Orders on the EU-Turkey Refugee Deal", Policy Insights 2017-15, Brussels: Centre for European Policy Studies.

[31] Alpes, Maybritt Jill., Sevda Tunaboylu and Ilse van Liempt (2017) "Human Rights Violations by Design: EU-Turkey Statement Prioritises Returns from Greece Over Access to Asylum", Issue 2017/29, Migration Policy Centre, Florence: European University Institute.

[32] Work carried out by the Italian Institute for International Political Studies. "Sbarchi in Italia: il costo delle politiche di deterrenza", Matteo Villa, October 2018. Available (in Italian).

[33] Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, February 2017.

[34] On the case being brought against Italy by the Global Legal Action Network for Italian legal responsibility for Libyan pull-back operations.

[35] Howden, D. (2017), "Central Mediterranean: European Priorities, Libyan Realities, Refugees Deeply", Newsdeeply.

[36] Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council COM(2018) 631 final.

[37] Further commentary on the proposal: Gkliati, M. (2018), "The next phase of the European Border and Coast Guard: towards operational effectiveness", EU Law Analysis Blog.

[38] Further commentary on the proposal: Angelescu, Irina and Florian Trauner (2018), "10,000 border guards for Frontex: Why the EU risks conflated expectations", Policy Brief, Brussels: European Policy Centre.

[39] State of the Union 2018 – Commission proposes last elements needed for compromise on migration and border reform (2018). European Commission Press release.

[40] Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council COM(2018) 631 final. Article 72(1).

[41] Please see Katharina Bamberg's chapter in this issue paper on the opportunities and obstacles in the future of resettlement.

[42] Please see Francesca Fabbri's chapter in this issue paper on the prioritisation of the promotion of peace and stability in EU development policies.

Chapter 2

The EU Resettlement Framework: A new migration management tool and its foreign policy implications

Katharina Bamberg
Junior Policy Analyst

Following the migration management crisis of 2015-16,[1] the European Union (EU) set out to reform the Common European Asylum System (CEAS). Among the policy goals put forward was the harmonisation of asylum standards across member states, combined with a desire to make the policy framework more robust in the face of large-scale migration flows. One of the approaches considered was resettlement: that is, the transfer of individuals processed as eligible for international protection from an asylum country to another state, with the aim of permanent settlement.[2]

To date, the Union's resettlement efforts have taken the form of voluntary schemes, with members pledging their commitment on an *ad hoc* basis.[3] Following on from these voluntary arrangements, proposals were put forward to organise resettlement in a more structured and systematic manner.[4] A new policy instrument appeared on the European agenda: the EU Resettlement Framework. One of its aims is to offer a safe alternative to individuals in need of international protection before they resort to dangerous crossings via the Mediterranean. When introducing the Resettlement Framework proposal, Commissioner Dimitris Avramopoulos stated that the EU was "opening a genuine legal window in our efforts to close the irregular backdoor".[5]

The European Commission presented its legislative proposal during the summer of 2016, and the European Parliament adopted its position in autumn 2017 on the basis of a report by MEP Malin Björk.[6] The European Council's mandate for negotiations followed shortly afterwards,[7] and negotiations began in December 2017.

Following five scheduled trilogue meetings, negotiations broke off during summer 2018 without official agreement between the institutions being reached. This was partly because of the – as yet unfulfilled – aim of reaching a package deal with other files of the CEAS.[8] But more significantly, negotiations were stalled by a clash of positions on resettlement. These differences mainly relate to differing perspectives on the concept of resettlement as either a humanitarian pathway or a migration management tool, as will be reviewed in further detail in this chapter.

This chapter starts by summarising the historical context of resettlement policies and looks at how resettlement made its way onto the EU policy agenda. It also touches on the different attitudes towards resettlement, which became more pronounced as negotiations on the Framework proposal progressed. In a second section, it explores the extent to which the proposal is developing into a tool for migration control. It examines the most controversial provisions in the Commission's proposal, namely those that relate to the exclusion or deterrence of individuals in need of international protection. In particular, it examines the use of conditionality in ensuring the cooperation of third countries with resettlement. It concludes by looking at the extent to which resettlement is moving away from its traditional role as a humanitarian pathway to become a migration management tool.

Resettlement in the EU: A new direction?

This section provides a brief history of resettlement and its evolution at a global level. It then focuses on the EU's resettlement efforts, in particular the two *ad hoc* schemes of 2015 and 2017. Afterwards it describes the negotiations between the Council and the European Parliament on the Resettlement Framework proposal, outlining the most contentious points of the discussions.

HISTORICAL PERSPECTIVE

Resettlement has been a component of migration policies in one way or another since the two World Wars. Following the foundation of the International Refugee Organisation (IRO) in 1946, resettlement and repatriation helped large numbers of refugee groups in and beyond Europe gain protection. Four years later, and with the IRO subsumed by the newly founded United Nations High Commissioner for Refugees (UNHCR), resettlement became a primary tool for protecting refugees internationally.

Following the Vietnam War (1955–1975) and the resettlement of large groups of Vietnamese refugees in the 1970s and 80s, states' support for resettlement shifted to individual cases and became more systematic.[9] This approach was significant in the context of conflicts in the Middle East in the 1980s; the first Gulf War (1991); the collapse of Yugoslavia (1992); and the Kosovo War (1999). During these conflicts, states increasingly looked to UNHCR to identify, submit and resettle refugees,
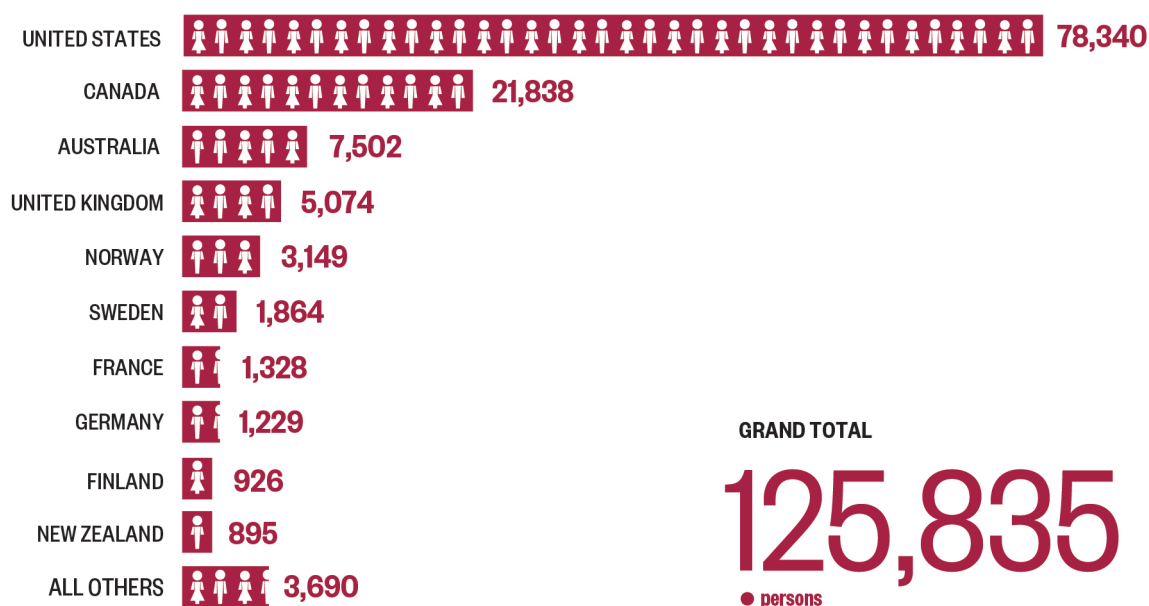
and the UN refugee agency thus began developing specific resettlement criteria.[10] From 1995, Annual Tripartite Consultations on Resettlement (ATCR) began. These became an essential platform for states, non-governmental organisations (NGOs), and international organisations to cooperate on resettlement.[11] They also promoted the tripartite structures underlying resettlement. Under these structures, UNHCR usually identifies and processes individuals for resettlement, while states provide permanent sites of residence, and NGOs assist with identification, pre-departure procedures, and post-resettlement integration.

CURRENT TRENDS

Today, the number of individuals in need of resettlement continues to grow, most recently as a result of the Syrian War (from 2011 onwards). Both the number of countries participating in resettlement schemes, and the diversity of resettlement programmes, including humanitarian admission and private sponsorships, have increased.[12] The number of worldwide departures peaked in 2016, with close to 130,000 individuals resettled out of a projected 1,150,000 global resettlement needs.[13] Of these, however, only a tenth were resettled to European countries under national programmes, with the UK, Norway and Sweden resettling the highest number of individuals.[14] By contrast, states such as Liechtenstein, Poland and Romania did not resettle any asylum seekers at all.[15]

Fig. 2

UNHCR RESETTLEMENT DEPARTURES 2016

UNITED STATES	78,340
CANADA	21,838
AUSTRALIA	7,502
UNITED KINGDOM	5,074
NORWAY	3,149
SWEDEN	1,864
FRANCE	1,328
GERMANY	1,229
FINLAND	926
NEW ZEALAND	895
ALL OTHERS	3,690

GRAND TOTAL

125,835
● persons

Source: UNHCR Projected Global Resettlement Needs 2018

16

The EU has administered two *ad hoc* resettlement schemes, one in 2015[16] and a second in 2017.[17] The 2015 scheme led to the resettlement of close to 23,000 individuals, while the more recent plan aims to resettle 50,000 individuals over a period extending to October 2019. As of September 2018, the schemes have led to the resettlement of 38,000 persons to EU member states.[18] These schemes marked the first time that resettlement policies had been formally coordinated at EU level with member states contributing through voluntary pledges.

It has the potential to offer a safe route to asylum for individuals in need of international protection, and to provide a real alternative to dangerous crossings via the Mediterranean.

THE DEBATE ON THE RESETTLEMENT FRAMEWORK

The Commission's proposal for a Resettlement Framework represents a significant departure from previous approaches. Running in parallel with national programmes, the EU Framework is not an *ad hoc* resettlement scheme such as those introduced in 2015 and 2017. As such, it represents an attempt to develop a more systematic and structured way of managing resettlement at EU level. It has the potential to offer a safe route to asylum for individuals in need of international protection, and to provide a real alternative to dangerous crossings via the Mediterranean. At the same time, the Framework proposal is consistent with the EU's aim of both reducing uncontrolled migration and strengthening the capacity of legal pathways, on the basis of which governments can monitor the profile and the total number of individuals in need of international protection.

During negotiations on the file, the Council and Parliament clashed on a number of issues. At their core, these clashes can be boiled down to a disagreement on the very nature of resettlement efforts.

The Council, on the one side, underlined the potential of resettlement as "a strategic instrument to manage migration flows".[19] This acknowledged that in addition to humanitarian and values-based considerations, states have various motivations for resettlement including strategic geopolitical considerations in first countries of asylum; foreign policy interests; and border management goals.[20] The Council also emphasised the voluntary nature of resettlement as a priority during the negotiations. This was largely influenced by the political fallout and ensuing discord between European countries in response to mandatory quotas for the EU relocation schemes.[21] Member states previously showed considerable reluctance

to commit to relocating refugees from Italy and Greece, and to follow up on their commitments. The initial aim was to relocate 160,000 individuals, but this number was later reduced to around 98,000, of which a final 32,000 were relocated.[22]

Moreover, the Council pushed for a widening of the scope of the Framework to include humanitarian admissions, which it argued should be on an equal footing with resettlement, albeit with a more limited set of guarantees and rights than those associated with the latter. The Council also highlighted the strategic and geopolitical objectives of migration management that resettlement could contribute to. More concisely, the Council's position emphasised that the "resettlement framework is part of a well-managed migration policy".[23]

Finally, it insisted on the inclusion of a conditionality element when collaborating with third countries on resettlement, thereby creating a strong link between the EU's commitment to resettlement and the overall cooperation of third countries on migration management. In this regard, the Council sees an opportunity to reduce incentives for irregular migration, in particular through the expansion of protection systems in those third countries.

Similarly, some member states see a control-based approach to resettlement as an important means to tackle a number of more general migration management issues. Andres Anvelt, Minister of the Interior for Estonia, stated for instance, that resettlement would "help decrease flows to our own external borders, disrupt the business model of smugglers and balance the efforts done in other fields, for example in returns".[24]

The Parliament, on the other side, stressed the humanitarian character of resettlement and set explicit quotas for resettlement and humanitarian admissions. In addition, and in direct opposition to the Council's position, it consistently posited resettlement as a durable solution for refugees and underlined that the "strategic use of resettlement should not be interpreted as migration control or used as a means to achieve the Union's foreign policy objectives".[25]

Similar to the Parliament's position, UNHCR has stressed the need to preserve the traditional role of resettlement as a humanitarian pathway and protection tool for the most vulnerable. The UN refugee agency also emphasised that resettlement should complement other ways of migration and not prevent the spontaneous arrival of refugees and other migrants.[26]

Civil society organisations have also voiced strong concerns. In their view, the EU is attempting to create a system that controls and reduces migration, rather than building sustainable and accessible pathways to asylum in the Union.[27] For NGOs, the initial mention of 'maximum',[28] rather than 'minimum' numbers of resettlement beneficiaries, has been a particularly contentious issue. Furthermore, the fact that member states' resettlement commitments would be voluntary has fuelled uncertainty as to whether the Framework could

become a sustainable channel to asylum, especially given the substantial global resettlement needs.[29]

In what follows, the chapter looks first at the eligibility grounds included in the Resettlement Framework proposal that could deter asylum seekers from accessing protection through resettlement. In a next step, the chapter focuses on those provisions that could outsource protection responsibilities to third countries.

Resettlement: Deterring asylum seekers?

The following section looks more closely at contentious provisions of the proposal that aim to discourage spontaneous arrivals to the EU or deter asylum seekers from accessing resettlement more generally. To illustrate these, Article 6 of the Resettlement Framework proposal, 'Grounds for ineligibility', will be discussed in more detail.

Article 6 of the proposed legislation, '**Grounds for ineligibility**' (labelled 'exclusion' in the legislative proposal prior to negotiations), specifies that "persons who have irregularly stayed, irregularly entered, or attempted to irregularly enter the territory of the member states during the five years prior to resettlement" shall be excluded from targeted Union resettlement schemes. As such, the text excludes migrants and refugees who self-initiated their journey from resettlement.

This is particularly interesting in the context of discussions on 'disembarkation platforms', a concept first floated by the Council and Commission in the spring of 2018. While the precise legal nature and practical delivery of these platforms remains uncertain, they are perceived as centres in third countries where migrants would be disembarked after being intercepted by search and rescue missions in the Mediterranean.[30] Following disembarkation, individuals would either be returned to their country of origin or resettled in the EU, with an explicit reference to the Resettlement Framework.[31] But bearing in mind that the legislation proposes excluding people from resettlement who have attempted to enter the EU irregularly, it is clear that there is a discrepancy between these two migration management tools. Accentuating this, the Commission further specified that resettlement would not be available to all disembarked individuals in need of international protection and that, in any case, resettlement would not be limited to Europe.[32] This raises the question of whether the EU would create new legislation to cover other pathways, including guarantees to protect those individuals who would not be eligible for resettlement to Europe.

The eligibility criteria also illustrate the proposal's portrayal of resettlement as an alternative, exclusive form of migration, designed as an instrument to discourage spontaneous migrant arrivals. During the trilogues, the Parliament was particularly critical of such punitive ineligibility grounds. This led to the term 'exclusion' being replaced by 'ineligibility' to avoid the misinterpretation that this would mean exclusion from asylum, rather than ineligibility for resettlement.

Moreover, including an '**integration potential**' criterion to admit or refuse candidates for resettlement has proved very contentious during the negotiations. As such, integration potential could simultaneously serve as a rewarding criterion, by enabling resettlement, or as a punitive criterion, by being used as grounds for exclusion from resettlement. In the end, member states would thus be able to select candidates on the basis of their perceived potential for integration, a development that once again attests to a migration management approach in this part of the legislation. The Council was in favour of citing a lack of integration prospects in Article 6 as a reason for ineligibility for resettlement. Such a lack of integration prospects could, for instance, be found in a refusal to participate in pre-departure orientation. The Parliament has vigorously opposed this, stressing the importance of the right to asylum and arguing that protection should not be made conditional on one's integration potential.

Concerns about taking integration potential into account have been flagged up before in proposals for business-led resettlement schemes,[33] while the perceived ability to integrate has been used as a more or less formal selection criterion by some member states. In these cases, however, certain groups are frequently exempted from the integration potential criterion based on their protection needs and vulnerability, and the rule is not necessarily used as a reason to exclude someone from resettlement.[34]

In the end, the integration potential criterion could lead to discriminatory practices in selecting candidates for resettlement and potentially undermine member states' obligation to resettle those who are most vulnerable.

With this clause in the Resettlement Framework, it would be the first time the EU would be in a position to condition access to protection (in this case through resettlement) on integration potential. Including this as a criterion could give preference to certain individuals over some of the most vulnerable persons or groups, especially since the Commission's proposal does not clearly define how this would relate to vulnerability and other eligibility criteria. In the end, the integration potential criterion could lead to discriminatory practices in selecting candidates for resettlement and potentially undermine member states' obligation to resettle those who are most vulnerable.

These punitive or exclusionary criteria reflect a more general desire among member states to apply greater selectivity to their resettlement programmes. The criteria would provide a tool to discourage spontaneous (and in the member states' views, uncontrolled) arrivals. This could then lead to a more targeted and streamlined migration management process. In short, ineligibility criteria create an instrument for greater migration control for member states, and as such represent a departure from the core humanitarian character of resettlement.

Resettlement: Outsourcing protection responsibilities?

The following section looks more closely at the involvement of third countries in managing the EU's resettlement efforts, as described in Article 4 of the legislative proposal on 'Countries from which resettlement is to occur'. More importantly, it traces how the legislative text establishes an unbalanced relationship based on the concept of conditionality. Article 4 was the focus of particular debate between the Council and the Parliament during discussions about the EU's cooperation with third countries in the context of migration management.

RESETTLEMENT IN THE EU'S RELATIONS WITH THIRD COUNTRIES

The proposal for a Resettlement Framework mirrors the EU's increasing reliance on partnerships with third countries in the context of migration management. With regard to the external dimension, resettlement was mentioned briefly in the 2016 Partnership Framework communication as a way for the EU "to discourage irregular and dangerous journeys".[35]

Resettlement was also an important part of the EU-Turkey Statement, stipulating that for every asylum seeker returned to Turkey from the Greek islands, a European member state would resettle a Syrian refugee. Moreover, all new irregular arrivals to EU territory after the conclusion of the Statement would be returned to Turkey. In exchange for receiving these individuals, Turkey would be paid a total of EUR 6 billion. However, rather than fulfilling their pledges of resettling individuals in need of international protection in the EU, member states created what has become a deterrence mechanism aimed to keep migrants and asylum seekers in Turkey.[36]

Resettlement was picked up again in the joint communication on Libya entitled 'Migration on the Central Mediterranean Route: Managing flows, saving lives' of January 2017, where the Commission raised the possibility of including the resettlement of persons in need of international protection in the EU's overall approach to managing migration on this route.[37] The Resettlement Framework proposal signals the next step in the EU's efforts to involve third countries in migration management more closely by making use of the concept of conditionality in its cooperation with these countries on migration management.

> **Conditionality has played a central role in the EU's foreign policy towards third countries since the end of the Cold War.**

CONDITIONALITY IN THE EU'S RELATIONS WITH THIRD COUNTRIES

Conditionality has played a central role in the EU's foreign policy towards third countries since the end of the Cold War. In 1998 it was described by Smith as connecting "perceived benefits for another state… to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principles".[38] Since then, the role of conditionality has moved beyond a focus on human rights.

In the EU context, conditionality was applied most strikingly during the accession process for Central European states in the 1990s and 2000s, when the EU linked accession to political transformation of potential member states. More recently, conditionality also played a crucial role in the EU's European Neighbourhood Policy towards countries in North Africa and the Middle East, with the underlying aim of, *inter alia*, migration control.[39]

Following the migration management crisis, this approach was embedded further in the EU's Migration Partnership Framework of 2016. With the Framework, the EU seeks to adopt migration compacts with third countries of origin and transit in Africa and the Middle East. The aim is to reduce irregular migration by, among other things, addressing root causes and accelerating returns.[40] In exchange, third countries can benefit from facilitated mobility for their citizens, for instance by means of visa provisions or mobility partnerships.

As such, conditionality in migration control is now based on the premise of third countries controlling irregular migration movements towards the EU. This also relates to the basic understanding of an incentive- based relationship, either linked to 'carrots' (positive incentives) or 'sticks' (negative incentives).[41] A number of concerns have been expressed regarding this often imbalanced

relationship, both with regards to practical elements and credibility, such as concerns about ethical issues and human rights questions.[42]

More generally, the EU has previously been criticised for its disregard for human rights when shifting responsibility for migration management outwards to third countries. UN Special Rapporteur François Crépeau's 2013 report on the management of the EU's external borders and its impact on human rights was critical of illegitimate detention; a shifting of responsibility for migration control to third countries; and capacity-building and support of foreign border controls with little regard for human rights. He also criticised the externalisation of border controls through readmission agreements and push-backs of migrants.[43] The European Parliament and development NGOs have repeatedly stressed that aid in particular should not be conditional on cooperation with migration management, as this runs the risk of diverting funds away from poverty reduction.[44] Moreover, using development aid to tackle the 'root causes' of migration can also be misguided, for instance in the case of displacement following political conflicts.

This spells out a way for the EU to use resettlement as leverage in policy and political dialogues with third countries.

CONDITIONALITY IN THE RESETTLEMENT FRAMEWORK

Discussions on a controversial conditionality clause, introduced in the Resettlement Framework proposal, have slowed down progress on the file. Article 4 on 'Regions or third countries from which resettlement is to occur', specifies that third countries' 'overall relations' with the Union in the area of migration and asylum will be an important factor on which the Commission will base its choices of regions or third countries from which resettlement should take place. During negotiations, the European Parliament strongly opposed this conditionality clause and argued that the proposal had to reflect the humanitarian character of resettlement more strongly. Disagreement with the Council on this issue became one, if not the main, stumbling block of the trilogues. For the Council, this article is of great importance in ensuring that the Resettlement Framework forms "part of a well-managed migration policy".[45] During the trilogues, the institutions agreed that the selection process would also take UNHCR projected global resettlement needs into account,[46] as was traditionally the case in national resettlement programmes. They also agreed that member states would still rely on UNHCR for referral of candidates. Nevertheless, the inclusion of a conditionality clause making resettlement dependent on functioning partnerships with countries in the region is new. This spells out a way for the EU to use resettlement

as leverage in policy and political dialogues with third countries. NGOs in the field have widely criticised the EU for making a commitment to resettlement hinge on the cooperation of third countries.[47] Their criticism goes back to the central issue of preserving resettlement as a humanitarian tool and a durable solution for refugees, instead of employing it for migration deterrence. In their view, making the EU's commitment to resettlement conditional on the cooperation of third countries significantly compromises the humanitarian impact of this pathway.

The legislative proposal specifies that resettlement should also be based on a 'third country's effective cooperation' with the Union in the area of migration and asylum. More specifically, cooperation will be measured against each country's efforts to reduce the number of third-country nationals crossing the EU's border from its territory. The third countries will also have to create the conditions under which asylum applicants can be returned to them. This would include a further expansion of the use of the first country of asylum and safe third country concepts. Moreover, the proposal calls on third countries to develop an effective asylum system to increase their capacity for reception and protection of persons staying in their territories. Lastly, increasing the rate of readmission and return through the conclusion of readmission agreements would also constitute an aspect of 'effective cooperation' on the part of the third country.

SHIFTING THE FOCUS OF RESETTLEMENT COOPERATION

Member states' general approach to cooperation with third countries on migration management is the basis for the interpretation of Article 4. Resettlement has a logical role to play in alleviating pressure on countries that experience difficulties when hosting refugees. But making resettlement conditional on a third country's broader cooperation on migration and asylum would be problematic, and far from helpful for countries already in distress.[48] Such an approach could significantly shift the EU's attention towards countries that cooperate well on migration management more generally, rather than to those that are hosting large populations of individuals in need of international protection.

In particular, this article can be interpreted as an instrument for member states to exert influence on third countries more generally, even more so to the extent that it links cooperation on resettlement with the receipt of development aid or EU assistance in other areas. This becomes clear when looking at the criteria for countries that should be prioritised for resettlement schemes, as mentioned in Article 4. Collaboration on resettlement seems to depend more on compliance with the criteria listed in the legislative text than on other considerations, such as the individuals actually processed for resettlement in the country in question. This further detracts from the humanitarian objectives of resettlement and invites a much stronger focus on restrictive migration management elements, such as returns and readmissions.

Moreover, this also puts the EU and the Resettlement Framework in a position of being dependent on the cooperation of third countries in managing irregular migration movements. This is problematic for two reasons:

► First, conditions on the ground can change rapidly, creating new conflict situations that lead to individuals needing international protection. If the EU genuinely wishes to establish a more structured and systematic response to protecting displaced people, it should also consider the robustness of the Resettlement Framework. Making it dependent on the cooperation of third countries that may be susceptible to instability can reduce its reliability.

► Second, it puts the EU in a comparatively disadvantaged negotiating position vis-à-vis third countries. One of the EU's migration management priorities relates to improved border management in countries of origin and transit, so that irregular movements to the EU territory can be reduced. Yet the resettlement of a few thousand people out of countries under high migratory pressure will not make a significant difference to those countries, and could indirectly shift responsibility to protect to external partners. Therefore, the EU should expect significant demands from these third countries and, being dependent on their cooperation, will not be in the best negotiating position.

These considerations show how quickly resettlement could take on a considerable geopolitical dimension in the EU's effort to manage migration, moving it very far from its origins as a humanitarian pathway.

It is also unclear to what extent third countries would be incentivised to reform their asylum systems and border management in order for the EU to agree to commitments on resettlement. As of now, there is no clarity concerning the form that other incentives might take. It is however likely that the EU will link the Resettlement Framework with other initiatives under the EU's Partnership Framework on Migration with third countries. In that case, these initiatives and the Union's incentives would have to be tailored to the third country's specific situation, something the Resettlement Framework does not currently foresee. This is problematic because it could lead to resettlement being further conditioned on third countries' cooperation, for instance with regards to development aid.

TACKLING THE ROOT CAUSES?

The use of conditionality in development aid with the aim of reducing migration to the EU's territory – in particular by means of readmission agreements or migration compacts within the European Neighbourhood Policy – has been widely criticised by civil society actors. According to NGOs, these policies do not take into account that a 'root cause' for migration can be political unrest in third countries,[49] in which case the use of development aid would not only be misplaced, but also exacerbate imbalances in the relations with such countries at the expense of migrants.[50] The

International Rescue Committee (IRC) has also warned about a possible shift of focus from asylum countries with pressing resettlement needs to countries that would be cooperative under the conditions laid down in the Resettlement Framework. According to the IRC, "ignoring pressing needs in [locations facing protracted displacement situations] in favour of those of short term political interest may lead to the creation, exacerbation and spill-over of crises with longer term consequences for the EU".[51]

The Resettlement Framework proposal also draws on controversial considerations, such as the 'first' country of asylum or a 'safe' third country. These apply when defining the conditions for the return to third countries of asylum seekers that have irregularly entered the EU. The 2016 EU-Turkey Statement is an example of how such an exchange with a designated safe third country could work in practice.[52] Although some doubts have been raised regarding this,[53] the Statement was credited with significantly reducing the number of people trying to reach the EU via Turkey, and was seen as a success by the EU and many member states.[54] Yet, concerns have been raised about the lawfulness of returning individuals from the Greek islands to Turkey.[55] This is mainly due to Turkey still maintaining the geographical limitation of the original Geneva Convention, and, as such, excluding non-Europeans from qualifying for refugee status. In particular, this applies to nationality groups such as Syrians, Afghans or Iraqis who can only access temporary protection in Turkey. The level of protection and support that individuals in need of international protection receive in Turkey has also been scrutinised, in particular following claims of arbitrary detention, push-backs and physical violence against asylum seekers.[56]

The strategic use of the safe third country concept has the potential to make the situation on the ground for refugees more difficult and, somewhat paradoxically, less safe.

Civil society organisations have heavily criticised how the 'safety' condition is rendering resettlement dependent on cooperation with countries that have allegedly established safe conditions.[57] This would mean that third countries that are deemed to offer safe conditions for the return of refugees and asylum seekers would be prioritised for resettlement schemes. Reliance on the 'safe third country concept' is problematic,[58] particularly with regard to how the EU would deal with a deterioration of conditions for asylum seekers in such supposedly safe countries. As described by Frelick et al., externalisation of migration control could seriously threaten the ability to protect the rights of asylum seekers in particular. For example, a person may be denied asylum because he or she could have sought protection in a safe third country

prior to reaching the EU.[59] In addition, this provision also raises the question of whether third countries would be deprioritised for resettlement schemes if they could not prove they had established conditions that would make it safe for individuals in need of international protection to be returned there.

This strategic use of the safe third country concept has the potential to make the situation on the ground for refugees more difficult and, somewhat paradoxically, less safe. Establishing the Resettlement Framework with the aim of moving away from *ad hoc* measures and uncontrolled migration movements is not consistent with resettlement options that could be at the mercy of changing conditions in third countries.

Two intermediate conclusions can be drawn from this particular article. First, member states are pursuing a migration management approach based on conditional cooperation with third countries on resettlement. Second, this quid-pro-quo approach of linking resettlement with third countries' compliance in managing the EU's external border contributes further to an externalisation of the EU's borders and migration management.[60]

THE IMPACT ON PROTECTION POSSIBILITIES IN THIRD COUNTRIES

This move to an externalisation of migration management is problematic as it will have an impact on where refugees can access asylum.[61] Where border and migration controls prevent refugees from seeking asylum in a regular way, they usually create more perilous channels through which vulnerable individuals will seek protection. As Basheska and Kochenov outline in the context of Euro-Mediterranean relations, "[by] making migration *de facto* impossible through legal channels, the EU necessarily promotes irregular migration flows".[62] One of the Council's main objectives in creating an EU Resettlement Framework is to provide

safe and legal pathways to the EU.[63] However, the Resettlement Framework could actually reinforce the trend of individuals resorting to perilous ways to access protection. This applies in particular to conditionality elements in the proposal that make resettlement more restrictive by cooperating with third countries on migration management. Relying on conditionality in resettlement to sustain the EU's relations with third countries could eventually reinforce the harmful and dangerous contexts in which individuals are trying to access protection today.

In this context, it is also important to consider the threat to the right to protection for individuals who are, through such EU legislation, *de facto* prevented from leaving a state to subsequently apply for asylum in the EU.[64] This could hurt the principle of non-refoulement, i.e. the prohibition to expel, return, or in any other way transfer a refugee to the country of origin or any other country where his or her life or freedom would be under threat.[65] Conversely, the right to leave a country is not an absolute right and can be exceptionally restricted in a proportionate manner for reasons of national security, public order, public health and the freedom of others.[66] Yet this is only permissible if the principle of non-refoulement is not compromised, and therefore it is centrally relevant for the role of the EU and of third countries in preventing an individual in need of international protection from coming to the EU.[67] As Markard has argued, "where would-be migrants risk persecution or severe human rights violations in the third country that would oblige the member state to provide protection, preventing them from leaving would constitute an abuse of right".[68] Such pre-emptive measures in the form of cooperation with third countries in the context of resettlement could indeed have a grave impact on an individual's chances of accessing asylum in the EU and the right to leave any country, including their own.

Recommendations

The Resettlement Framework represents an effort by the European Union to address resettlement in a systematic, structured and sustainable way. It has the potential to shape the future of resettlement at EU level. In its optimal form, it would provide a safe way for individuals in need of international protection to access asylum in the member states.

However, the focus on resettlement as a potential migration management tool could lead to a significant shift away from its traditional role as a humanitarian pathway. This evolution is problematic for several reasons:

► First, it **shifts the geographical focus (sometimes quite literally) to a selection of regions**. Focusing exclusively on areas that seem most 'affected' by uncontrolled migration risks neglecting countries that might not be in a position to benefit from institutionalised resettlement, but still have particularly vulnerable refugees.

► Second, it **discriminates between individuals in need of international protection**. During negotiations between the European Parliament and Council, the UNHCR resettlement criteria were added to the Resettlement Framework proposal. However, there is still a high risk of access to

asylum being impeded for those who may not meet the resettlement criteria, and who are not in a position to access protection via other channels. For instance, some individuals may be ineligible for resettlement on the grounds of vulnerability or family reunification. Equally, they may have tried to reach Europe in an irregular fashion, which could be a basis for exclusion from Union-led resettlement. At the same time, they may have been persecuted in their countries of origin, and have the right to protection as refugees. The exclusionary and deterring elements of the Resettlement Framework would make it difficult for these individuals to gain asylum in any way.

The conditionality clause that has been included in the Resettlement Framework, and which links the cooperation of third countries on asylum and migration to EU commitments to resettlement, leads to particular issues:

► First, the EU **should not base its relationships with third countries on the control or prevention of onward migration** to Europe. This is problematic as it creates a context in which the processing of asylum applications could be geographically refocused on third countries altogether.

► Second, the **EU should not outsource protection responsibilities to third countries** that frequently have more limited resources or a less stable political context to offer a durable solution for refugees in their territories. Resettling a limited number of individuals will not significantly improve the situation on the ground for third countries. It is therefore doubtful that they would see added value in investing in migration management for the EU with little return, aside from comparatively few resettlement transfers out of their territories. The Resettlement Framework could also prioritise resettlement out of third countries that cooperate more generally on migration management. This risks the exclusion of regions and individuals that would need resettlement the most. Moreover, it would be even more problematic if, in an attempt to make cooperation more attractive, the EU chose to link development aid and commitments to resettlement to third countries' cooperation in preventing onward movements.[69] Both conditionality aspects and possible incentives should be seen critically.

In summary, the Resettlement Framework proposal is part of an ongoing shift from a values-based to an interest-based approach to managing migration and providing asylum. The proposed legislation illustrates the evolution of thinking about resettlement from a primarily humanitarian pathway to one that is strongly focused on migration management. From a *Realpolitik* perspective, cooperating with third countries on migration management might be effective in reducing the number of migrants coming to the EU, including those in need of international protection. However, this approach is likely to postpone and even exacerbate migration issues that the EU will have to face eventually,

and is thus short-sighted. Furthermore, it is not consistent with the legal and ethical standards described above.

The EU Resettlement Framework could be a great opportunity to pragmatically address this challenge without sacrificing the humanitarian origins of resettlement. To do so while effectively reducing the number of irregular migrants crossing its borders, the EU would need to significantly increase channels of regular and safe migration, in particular for those seeking international protection. Resettlement of particularly vulnerable individuals therefore needs to be increased and their protection status guaranteed, not only to support a values-based and humanitarian approach, but also to protect the strategic interests of member states. With no compromise in sight between the Council and the Parliament, it remains to be seen to what extent the Resettlement Framework will successfully meet increasing protection needs, rather than merely proving to be a short-sighted migration management tool.

1   Please see Frank Mc Namara's chapter in this issue paper on the linguistic terms used in this context.

2   Resettlement is not to be confused with relocation which concerns the transfer of persons who are in need of international protection from one EU member state to another EU member state. See also United Nations High Commissioner for Refugees (n.d.), "Resettlement", Geneva: United Nations High Commissioner for Refugees (UNHCR).

3   European Parliament (2017), Briefing EU legislation in progress: Resettlement of refugees: EU framework, Brussels: European Parliament.

4   European Commission (2016), "Proposal for a Union Resettlement Framework", Brussels: European Commission.

5   European Commission (2016), "Enhancing legal channels: Commission proposes to create common EU Resettlement Framework", Press release, Brussels: European Commission.

6   European Parliament (2017), "Report on the Proposal for a Union Resettlement Framework", Brussels: European Parliament.

7   Council of the European Union (2017), "EU resettlement framework: Council ready to start negotiations", Press Report, Brussels: Council of the European Union.

8   The CEAS reform comprises a revision of the Dublin Regulation, a recast of the Eurodac Regulation, the establishment of an EU Asylum Agency, a reform of the Asylum Procedures Directive, a reform of the Reception Conditions Directive and the establishment of the EU Resettlement Framework.

9   Beirens, Hanne and Susan Fratzke (2017), "Taking Stock of Refugee Resettlement: Policy Objectives, Practical Tradeoffs, and the Evidence Base", Oxford: Migration Policy Institute.

10 UNHCR (2011), "UNHCR Resettlement Handbook", Geneva: UNHCR.

11 UNHCR (n.d.), "Annual Tripartite Consultations on Resettlement", Geneva: UNHCR.

[12] UNHCR (n.d.), "Population Statistics", Geneva: UNHCR (last accessed 31 May 2018).

[13] UNHCR (2015), "Projected Global Resettlement needs 2016", Geneva: UNHCR.

[14] UNHCR (n.d.), "Resettlement data finder", Geneva: UNHCR (last accessed 11 June 2018).

[15] UNHCR (2017), "Projected Global Resettlement Needs 2018", Geneva: UNHCR.

[16] European Commission (2015), "A European resettlement scheme", Commission Recommendation 2015/914 of 8 June 2015.

[17] Commission Recommendation (2017), "Enhancing legal pathways for persons in need of international protection".

[18] European Commission (2018), "Enhancing legal pathways to Europe: An indispensable part of a balanced and comprehensive migration policy", Brussels: European Commission.

[19] *Op. cit.* Council of the European Union (2017).

[20] *Op. cit.* Beirens, Hanne and Susan Fratzke (2017).

[21] Bamberg, K., Marta Llonch and Marie De Somer (2018), "EPIM Policy Update", February 2018, Brussels: European Programme for Integration and Migration.

[22] Statewatch (2018), "Final overview of Member States' Support to the Emergency Relocation Mechanism", London: Statewatch (last accessed on 5 February 2018).

[23] Council of the European Union (2018), "Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council", Brussels: Council of the European Union.

[24] *Op. cit.* Council of the European Union (2017).

[25] *Op. cit.* European Parliament (2017).

[26] UNHCR (2016), "UNHCR's Observation and Recommendations on the EU Resettlement Framework proposal", Geneva: UNHCR.

[27] European Council on Refugees and Exiles (2017), "Protection in Europe: Safe and legal access channels", Brussels: European Council on Refugees and Exiles (ECRE).

International Red Cross (2017), Joint Comments Paper by Caritas Europa, Churches' Commission for Migrants in Europe (CCME), European Council for Refugees and Exiles (ECRE), International Catholic Migration Commission (ICMC Europe), International Rescue Committee (IRC), Red Cross EU office.

European Council on Refugees and Exiles (2016), "Untying the EU Resettlement Framework", Brussels: ECRE.

[28] European Commission (2016), "Proposal for a Union Resettlement Framework", Article 7, Brussels: European Commission.

[29] *Op. cit.* UNHCR (2017).

[30] European Commission (2018), "Migration: Regional disembarkation arrangements", Brussels: European Commission.

[31] European Commission (2018), "The legal and practical feasibility of disembarkation options", Brussels: European Commission.

[32] European Commission (2018), "Non-paper on regional disembarkation arrangements", Brussels: European Commission.

[33] Ardittis, Solon (2016), "Can the new EU Resettlement Framework face up to the challenges and complexities of the current refugee crisis?", *E!Sharp*.

[34] Woon, Long Litt (2007), "A comparative study of integration potential as an additional selection criterion for the resettlement of refugees", Oslo: The Norwegian Directorate of Immigration.

[35] European Commission (2016), "Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration", Brussels: European Commission.

[36] Walter-Franke, Marie (2018), "Two years into the EU-Turkey deal – taking stock".

[37] European Commission & High Representative of the Union for Foreign Affairs and Security Policy (2017), Joint Communication to the European Parliament, the European Council and the Council: "Migration on the Central Mediterranean Route – Managing flows, saving lives".

[38] Smith, Karen E. (1998), "The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?", *European Foreign Affairs Review*, Volume 3, Issue 2, pp. 253–274.

[39] Balfour, Rosa (2012), "EU Conditionality after the Arab Spring", Barcelona: European Institute of the Mediterranean.

[40] European Commission (2016), "Communication on establishing a new Partnership Framework with third countries on the European Agenda on Migration", Brussels: European Commission.

[41] Bauloz, Céline (2017), "The EU Migration Partnership Framework: an External Solution to the Crisis?", Brussels: EU Immigration and Asylum Law and Policy, Free University Brussels.

[42] Koenig, Nicole (2017), "The EU's External Migration Policy: Towards win-win-win partnerships", Strasbourg: Institut Jacques Delors.

[43] Crépeau, François (2013), "Management of the external borders of the European Union and its impact on the human rights of migrants", Report of the Special Rapporteur on the human rights of migrants – Regional study, Geneva: Office of the High Commissioner for Human Rights.

[44] Schlein, Elly (2018), "Migration is not an emergency", *GREAT Insights Magazine*, Volume 7, Issue 1, Maastricht: ECDPM.

Latek, Marta (2016), "Growing impact of EU migration policy on development cooperation", Briefing, Brussels: European Parliamentary Research Service.

Concord (2017), "Concord Aid Watch 2017", Brussels: Concord.

[45] *Op. cit.* Council of the European Union (2018).

[46] *Op. cit.* UNHCR (2017).

[47] International Rescue Committee (2018), "Unlocking frozen futures: Recommendations for an ambitious, humanitarian and sustainable Union Resettlement Framework", New York: International Rescue Committee.

Amnesty International (2016), "The Proposed EU Resettlement Framework", London: Amnesty International.

Danish Refugee Council (2016), "Danish Refugee Council's positions on the EU's new Partnership Framework with third countries", Copenhagen: Danish Refugee Council.

[48] International Rescue Committee (2016), "Rescuing Futures: Europe's Vital Role in Refugee Resettlement", New York: International Rescue Committee.

[49] See Francesca Fabbri's chapter in this Issue Paper on the Libyan case.

[50] *Op. cit.* Concord (2017).

[51] *Op. cit.* International Rescue Committee (2018).

[52] European Council (2016), "EU-Turkey Statement", Press release, 18 March 2018, Brussels: European Council.

[53] Spijkerboer, Thomas (2016), "Fact Check: Did the EU-Turkey Deal Bring Down the Number of Migrants and of Border Deaths?", *Border Criminologies Blog*, Oxford: University of Oxford.

[54] European Commission (2016), "Second Report on the progress made in the implementation of the EU-Turkey Statement", Brussels: European Commission. See also Frank Mc Namara's chapter for a discussion on the effects of the EU-Turkey Statement.

[55] Collett, Elizabeth (2016), "The Paradox of the EU-Turkey Refugee Deal", Oxford: Migration Policy Institute.

[56] İçduygu, Ahmet and Evin Millet (2016), "Syrian Refugees in Turkey: Insecure Lives in an Environment of Pseudo-Intgration", *Global Turkey in Europe*, Working Paper 13, Rome: Istituto Affari Internazionali.

[57] For the case of returns from Germany to Afghanistan, see ProAsyl (2017), "Afghanistan: No safe country for refugees", Frankfurt: Proasyl.

[58] Akkerman, Mark (2018), "Expanding the Fortress: The policies, the profiteers and the people shaped by EU's border externalisation programme", Amsterdam: Transnational Institute.

[59] Frelick, B., Kysel, I.M., Podkul, J. (2016), "The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants", *Journal on Migration and Human Security*, Volume 4, Issue 4, pp. 190-220.

[60] While a vast body of literature exists on the concept of externalisation (outsourcing), in the context of this Issue Paper it boils down to a shifting of EU migration and border control tools beyond the actual external border of the EU. For background reading, see Boswell, Christina (2003), "The External Dimension of EU Cooperation in Immigration and Asylum", *International Affairs*, Volume 79, Number 3, pp. 619-638, London: Chatham House. Lavenex, S. (2006), "Shifting Up and Out: The Foreign Policy of European Immigration Control", *West European Politics*, Volume 29, Issue 2, pp. 329-350.

[61] European Council on Refugees and Exiles (2017), "Protection in Europe: Safe and legal access channels", Issue Paper, Brussels: ECRE.

[62] Besheska, Elena and Dimity Kochenov (2015), "Euro-Med, Migration and Frenemy-ship: Pretending to Deepen Cooperation across the Mediterranean", Research Paper Series, Issue 15, p. 11, Groningen: Faculty of Law, University of Groningen.

[63] *Op. cit.* Council of the European Union (2018).

[64] Guild, Elspeth (2013), "The right to leave a country", Strasbourg: Council of Europe.

[65] UNHCR (1977), "Note on Non-refoulement", 23 August 1977, Geneva: UNHCR.

[66] Goodwin-Gill, Guy and Jane McAdam (2007), *The Refugee in International Law*, Oxford: Oxford University Press.

[67] Markard, N. (2016), "The Right to Leave by Sea: Legal Limits on EU Migration Control by Third Countries", *European Journal of International Law*, Volume 27, Issue 3, pp. 591-616.

[68] *Ibid*, p. 616.

[69] For an investigative report on how EU aid to Niger is spent largely on migration management programmes: Howden, Daniel and Giacomo Zandonini (2018), "Niger: Europe's Migration Laboratory", *NewsDeeply*.

The migration crisis and the stabilisation of Libya: Managing priorities at Europe's external border

Francesca Fabbri
Policy Analyst

European policies relating to Libya have mainly sought to reduce the number of migrants crossing the Mediterranean. This reflects an increasing tendency in Europe to look at foreign policy towards Africa through the lens of migration. However, a careful assessment of the most recent developments on the ground shows that such a focus on short-term aims has been detrimental to the key objective of stabilising the country, as well as of providing long-term solutions to the management of irregular migrant flows. This chapter evaluates how foreign and migration policies can be more effectively targeted at achieving European objectives in Libya.

Libya is a particularly relevant case study for highlighting the complex interactions between foreign and migration policies. The country occupies a key border position on the Central Mediterranean migrant route. Its economy has unravelled, insecurity is widespread, and clashes between opposing factions are recurrent. Chronic instability in Libya has generated significant political, security and economic challenges which the European Union (EU) has struggled to cope with. A variety of factors, including differences between member

states – notably Italy and France – combined with the competing influences of other external actors, such as Russia, Algeria, Egypt, and the Gulf States, have frustrated the search for structural solutions.

This chapter begins with an overview of the Libyan economic and political state of play, and identifies priorities to better address the challenges on the ground. The analysis then moves to assessing the policy approaches put in place by the EU and its member states in Libya. It explains how these approaches may have provided quick fixes, but have often fallen short of delivering long-term solutions because they did not address the roots of instability. In particular, the chapter describes how the use of a wide range of instruments for migration control in Libya has failed to advance the EU's broader political and security objectives in the country. The final section offers policy recommendations for a more structured approach to achieving stability in Libya. The recommendations highlight the need to integrate foreign and migration policy tools and objectives more effectively.

The state of play in Libya: A perfect storm of conflict and migration crisis

Since the revolution of 2011, Libya has been in constant upheaval. It is in the grip of a political stalemate between competing authorities in Tripoli and the east of the country. Across most of its territory, and particularly in

the west and south, lawlessness, fighting, lack of access to resources and dire economic conditions prevail. Rivalries that erupted at the time of the 2014 House of Representatives (HoR) elections resulted in political

fragmentation at national level and widespread conflict. The ensuing negotiating process led by the United Nations Support Mission in Libya (UNSMIL) delivered the Libyan Political Agreement (LPA) in 2015.[1] Its goal was to unify the country's fragmented political, economic and military bodies, but it failed to overcome political paralysis, which is deeply rooted in the failures of the 2011 revolution.

The body that was created following the LPA, the Government of National Accord (GNA), is the international community's main partner, but has only limited control over Tripoli's surroundings.[2] It is also in constant competition with the eastern institutions controlled by General Khalifa Haftar. The current UN envoy in Libya, Ghassan Salamé, has been trying to find a way to break the stalemate and provide a constitutional basis for shared nationwide institutions.

In June 2018, at a high-level conference in Paris hosted by President Emmanuel Macron of France, the leaders of the competing Libyan authorities accepted that elections would take place in December 2018. This was based on a belief that they represented the only way to generate the necessary legitimacy to overcome the stalemate. But the discussions failed to agree the constitutional framework and rules under which the elections would take place, and did not address the underlying cleavages driving conflict in the country. As a result, the prospect of holding an election receded significantly during the following months. Recent crises in June[3] and September 2018[4] highlighted the precariousness of the *status quo* and the importance of efforts to renegotiate security, political and economic arrangements. At the same time, grievances relating to ethnic, linguistic and religious minorities, neglected by the Gaddafi regime, remain present. In the south, resentment over unequal access to citizenship rights for the Tuareg and the Tebu, combined with competition over economic resources and the collapse of institutions, has had a particularly detrimental effect on instability.

It is also widely agreed that addressing Libya's unravelling economy is key to stabilising the country.[5] As a nation Libya is potentially wealthy, and it could also create jobs for migrants from Africa as it did before the revolution. Largely dependent on oil trade revenues, Libya had a GDP of USD 74.77 billion in 2010. However this figure had dropped by more than half to USD 34.7 billion the following year.[6] Its economic deterioration not only relates to the sharp decline in oil production and exports, but also to inflation and the lack of access to liquidity. High levels of volatility on the ground are of course a major brake on prospects for economic recovery.

Before the overthrow of the dictator Mu'ammar Gaddafi it was estimated that Libya hosted 2.5 million migrants on its territory, mostly from Africa, but also from Asian countries.[7] Of these, 600,000 were regular workers and between 750,000 and 1.2 million were irregular. Since then, Libya has increasingly become a transit country to Europe, but stabilisation could, at least in part, reverse this trend. The political stalemate and ongoing violence are contributing to a worsening economic situation in which different actors – individuals, communities and militias – compete for control of economic activities, smuggling routes, resources, infrastructure, and institutions such as the National Oil Company (NOC), the Libyan Central Bank (CBL) and the Libyan Investment Authority (LIA). This 'war economy'[8] mainly works through the sale of commodities and goods through smuggling; rent-seeking practices; the use of extortion; and predation of state resources. It fuels itself through a protracted lack of governance and puts the population under strain. At the same time, a liquidity crisis and the lack of imports have driven price inflation across many products. In this context, human smuggling is a critical component of Libya's economy, with estimated revenues of USD 978 million in 2016, equivalent to 3.4% of Libya's 2015 GDP.[9] European efforts to curb migration, particularly those aimed at supporting socio-economic development at a local level, thus need to take into account the powerful financial incentives that drive actors to get involved in human smuggling. It is also worth noting that the European, Italian-led, 'cash-for-migration-control' policy, has repeatedly contributed to the emergence of an anti-smuggling business through the co-option of militias, again to the detriment of stabilisation efforts.[10]

It is clear that there is no easy pathway to stabilising Libya. While the search for a political solution is a necessary step, it cannot be achieved without reversing the economic deterioration and the predatory war economy.

It is clear that there is no easy pathway to stabilising Libya. While the search for a political solution is a necessary step, it cannot be achieved without reversing the economic deterioration and the predatory war economy. As the international community seeks to support these efforts, the links between development, migration and security become central. Policies that are highly focused on limiting the number of migrants getting to European shores have been applied without taking into account the consequences for the economy. More concretely, involving militias in fighting human smuggling is reportedly strengthening the role of warlords and undermining parallel European and international efforts to create unified national security structures.[11] At the same time, as the recent outbreak of hostilities around Tripoli in September has shown, greater efforts should be directed towards reconciling armed groups at a local level, and municipalities should be given a bigger role in re-establishing functioning governance structures and reconverting the economy. The EU and its member states should consider all these factors in pursuing a comprehensive approach to Libya, both to stabilise the country and to deal with migration and security challenges on its territory.

The European approach to Libya: High stakes, growing engagement

The European Union's approach to the Libyan crisis has remained fundamentally unchanged since 2014, at least on paper. Confirming the key orientation expressed by the Political Framework for a Crisis Approach,[12] the Foreign Affairs Council concluded in July 2017 that "there is no solution to the Libyan crisis through the use of force" and reiterated its support for the LPA and the GNA as the only legitimate political interlocutor.[13] Simultaneously, Libya has become an increasingly important partner for the EU in the field of migration, and collaboration with the UN-backed GNA deepened following the adoption of the Joint Communication on the Central Mediterranean route and the Malta Declaration in January and February 2017 respectively. These documents form the basis of the EU's approach to migration in the Central Mediterranean and mainly focus on the objective to reduce migration flows and fight human smuggling and trafficking networks.

Italy has played a pivotal role in shaping the EU's approach to Libya in light of its historical ties with the country, its interests related to oil and gas imports, and its concerns regarding migration.

Italy has played a pivotal role in shaping the EU's approach to Libya in light of its historical ties with the country, its interests related to oil and gas imports, and its concerns regarding migration. At the same time, France has often intervened in matters related to Libyan reconciliation, as the meeting convened by President Macron in June 2018 illustrates. France's political support for the leader of the Libyan National Army (LNA) in the east,[14] General Haftar, who is competing with the GNA, has put it at odds with the diplomatic efforts of other countries, notably Italy. These dynamics have made it even more difficult to adopt a consistent European approach to the Libyan crisis.[15]

The EU has repeatedly expressed its desire to find a solution to the political crisis and thereby stabilise Libya. However, the instruments put in place suggest that its focus has been on curbing migration flows instead. The EU has earmarked EUR 266 million for Libya under the EU Emergency Trust Fund for Africa (EUTF), most of it since January 2017. Building on the May 2015 European Agenda on Migration,[16] the EUTF was officially set up at the Valletta Summit on Migration of November 2015 and supported activities in the Migration Partnership Framework of June 2016. This framework envisaged the conclusion of new agreements with key third countries targeted at addressing migration.[17]

The EUTF was set up to provide a rapid, flexible and effective response to the emergency situation ensuing from the 'migration crisis'. It focuses on three priority areas: the Sahel and Lake Chad; the Horn of Africa; and the north of Africa, of which Libya is part. In 2016, it provided EUR 26 million for Libya, a figure that then represented the biggest allocation within the whole of the North Africa Window. It supported projects focused on the protection of migrants; humanitarian repatriation; reintegration of vulnerable migrants; and on stability and resilience through supporting Internal Displaced Persons (IDPs) in Libya.

The EUTF budget was boosted in 2017, and in that year alone EUR 200 million was allocated to new projects in Libya. This increase builds on the priorities set by the European Commission in the Joint Communication 'Migration on the Central Mediterranean route: Managing flows, saving lives' of January 2017[18] and further developed by the Malta Declaration of 3 February 2017.[19] These policy documents responded to the increase in arrivals along the Central Mediterranean route that was recorded in 2016.[20]

As a result of this increase, a programme worth EUR 92 million entitled 'Managing mixed migration flows in Libya through expanding protection space and supporting local socio-economic development' was adopted by the European Union. This has two sub-components.[21] The first pillar allocates EUR 50 million to humanitarian protection. The second pillar, with an envelope of EUR 42 million, "aims at fostering socio-economic development at municipal level and support local governance, in order to better integrate migrants and refugees, and to stabilize host communities". Among the goals listed, reference is made to activities that would "contribute to preventing potential further movement of migrants or potential displacement of host communities, by enhancing local socio-economic conditions and promoting cohesion and by offering alternative economic opportunities for persons involved in smuggling and trafficking activities or tempted to do so".

The scope of activities envisaged under this second pillar is increasing. A new programme of EUR 50 million, 'Recovery, stability and socio-economic development' has been developed by the European Commission and Italy and implementation will start in November 2018.22 This aims "to improve the living conditions and resilience of vulnerable populations (including migrants, refugees, Internally Displaced Persons, returnees and host communities) and support local governance, in particular in the municipalities most affected by migratory flows, by enhancing access to basic and social services". These initiatives aim to focus on municipalities as legitimate interlocutors, close to citizens and able

to manage rapid-impact stabilisation projects such as creating job opportunities, restructuring local services, and reinforcing educational infrastructure. A complementary programme, co-financed by the EUTF and Italy, of EUR 46 million was adopted in July 2017 and is implemented by the Italian Interior Ministry.[23] It aims to reinforce the integration and humanitarian protection of migrants, along with the border management capacities of Libyan authorities. The beneficiaries include the Libyan Coast Guard, Libyan maritime authorities, and Libyan border guards in the south. As part of this programme, a capacity-building pilot project has been set up in the Ghat area to restore or establish border area surveillance facilities. An operational centre has also been planned in this context. However, at the time of writing, the identification of local needs still has to be carried out and discussions with local partners to allow delegations from Tripoli and Italy to visit Ghat and its surroundings are ongoing.

The EU also supports stabilisation in Libya using the Instrument contributing to Stability and Peace (IcSP). This currently finances 13 projects worth EUR 36.8 million supporting conflict mediation;[24] providing electoral assistance; and contributing to the reconciliation efforts of the UN Development Programme (UNDP) and the Stabilisation Facility for Libya (SFL).[25] The IcSP also supports the EUTF programmes by screening project proposals to make sure that they adequately take into account conflict dynamics.

Besides the EUTF and the IcSP, EU-Libya cooperation involves a variety of security and border management facilities aimed at addressing migration. Frontex's operation Triton and the EU Common Security and Defence Policy (CSDP) operation EUNAVFOR MED Sophia have been patrolling in the Mediterranean

since 2014 and 2015 respectively. Deployed in May 2015, operation Sophia conducts anti-smuggling activities, carries out search and rescue tasks in cases of need and provides training and capacity-building to the Libyan Coast Guard. Its activities have been under discussion lately. In the summer of 2018, Italy's newly formed populist government started pushing for a change to operation Sophia's mandate to stop its vessels offloading migrants in its ports.[26] The EU Border Management Mission (EUBAM Libya), based in Tunisia but with an increasing presence in Tripoli, provides additional support (advising, training and mentoring) to Libyan security forces to strengthen their capacity in the fields of border management and security. An expert from Frontex and another from Europol have been deployed to EUBAM Libya. An EU Liaison and Planning Cell (EULPC) provides further military planning and intelligence capacity to the United Nations Support Mission in Libya (UNSMIL) – the integrated political mission mandated to support reconciliation, the implementation of the LPA and the security and aid activities of the international community. In addition to these instruments, the Seahorse Mediterranean Network aims to create a secure platform to exchange information between the Mediterranean countries on migration flows and illicit trafficking.[27] It also contributes to the training of the Libyan Coast Guard.

As well as these EU-level activities, Italy also bilaterally supports the Libyan authorities in the field of migration. In February 2017, a Memorandum of Understanding (MoU) was signed between the then Italian Prime Minister Paolo Gentiloni and Fayez Sarraj, the head of Libya's GNA. The MoU saw Rome pledge support in the form of training, equipment and funds to help the Tripoli government improve border security on the coast and in the south, and to fight the smuggling and trafficking of human beings.

The focus on migration and precarious solutions

The various measures outlined above include some relevant approaches to reducing instability in Libya, such as supporting municipalities and fighting organised crime in a more comprehensive way than just focusing on human smuggling. Measures include arrest warrants against a smuggling ring with links to the Italian mafia and organised crime in Libya and Malta, and the inclusion of fuel smuggling in the MoU signed by Italy and Libya, as well as in the revised mandate of the EU naval operation Sophia. The involvement of local actors through EUTF programmes is another useful step towards addressing migration-related challenges. Since interlocutors with effective authority over the entire country are absent, there is a need to engage with municipalities to support some degree of governance and restart Libya's economy, at least in some parts of the country.

The issue of migration has dominated the EU agenda towards Libya. While flows of people from Libya to Europe have decreased sharply since 2017,[28] the country's security crisis continues to unfold and the roots of instability have not been adequately addressed.

On the whole, however, the issue of migration has dominated the EU agenda towards Libya. While flows of people from Libya to Europe have decreased

sharply since 2017,[28] the country's security crisis continues to unfold and the roots of instability have not been adequately addressed. In practice, the policy record so far indicates that creating the conditions for stabilisation to take hold and last has not been prioritised. The actions put in place signal that the aim to unify and stabilise Libya, which is ultimately key to managing migration and borders, has not been consistently pursued and sometimes relies on diplomatic adventurism.

Policies and instruments that are dominated by security and migration-related concerns risk being detrimental to achieving long-term stability. Overcoming the war economy is the most important step in stabilising Libya, rather than reinforcing militias and warlords by dealing with them to curb migration flows. Additionally, efforts to strengthen local governance can be undermined if the diplomatic track does not achieve its goals of political reconciliation; the establishment of an agreed framework for security and law enforcement at national level; and the redistribution of economic resources. Failing to address these challenges in a holistic way, as a shared EU priority, risks undermining efforts and wasting resources.

There is a need for a comprehensive approach to address the south of Libya too. This will not only involve setting up facilities and capacity-building, but also engaging with the border communities. Firstly, it should provide alternative economic development opportunities for the large portion of the workforce that is currently reliant on illicit business. Secondly, it must focus on political integration and the empowerment of minorities such as the Tebu and Tuareg tribes that have high stakes in this system but are excluded from Libyan nationality.

At the same time, the reduction in the number of migrants arriving in Europe has been accompanied by reports of human rights abuses in Libya,[29] combined with dire reception conditions. The human rights situation of migrants in the country has also been deteriorating as a result of policies intended to stop the flows. In addition, and particularly since the introduction of new policies by the Italian government as of June 2018, these trends have also coincided with an increase in the number of casualties and those missing at sea.[30] These developments, and the worsening security situation, suggest that looking at Libya mainly from a migration perspective may deepen the underlying causes of instability in the long run.

The way forward and implications for foreign and migration policies

As the previous section has shown, the EU's agenda regarding Libya is mainly driven by the goal of reinforcing its borders and curbing migration flows. While these are legitimate objectives, the actions put in place to date mainly reflect the externalisation of domestic concerns. Recent elections in key member states have shown that the perceived threat of migration dominates political discourse in the EU.[31] The failure to achieve a Europe-wide consensus on migration has deepened the political crisis around this issue and has led to increasing polarisation both among and within member states.

The failure to achieve a Europe-wide consensus on migration has deepened the political crisis around this issue and has led to increasing polarisation both among and within member states.

At the same time, policymakers in individual member states have sought to prevent the rise of nationalist political parties by increasingly adopting restrictive migration policies. The case of Italy and Libya is a clear

example. The MoU signed with the Libyan authorities in early 2017 was also a move by the then Prime Minister Paolo Gentiloni to show that the government was acting, and to prevent a shift of votes to the far right Lega or the populist Five Star Movement in the upcoming election.[32] This strategy has not paid off. The current government formed by a coalition of these two forces has doubled down on already weak migration flows in a rhetorical battle with the EU institutions and other member states.

The distorting effect of domestic migration-oriented political goals on foreign policy undermines efforts to effectively manage borders in the longer run.

The distorting effect of domestic migration-oriented political goals on foreign policy undermines efforts to effectively manage borders in the longer run. The case of Libya shows that quick fixes are not solutions, and points to three key lessons learned, along with necessary adjustments to the current strategy and policies:

- **Lesson 1 – reassessing priorities**. Insecurity in Libya is a push factor for migration. While the measures taken so far have contributed to the short-term reduction of flows of migrants and asylum-seekers, these will not stop. Even with heightened risks of death when crossing the Mediterranean due to a reduced number of search and rescue operations, people will attempt to reach Europe's shores. Political stabilisation is therefore not only key to addressing migrants' humanitarian needs, but also to creating a context where at least a proportion of such migrants can continue to live and work in Libya. Priorities need to be reassessed. Addressing the war economy, of which human smuggling is a component, will certainly help stabilise the country by reducing the power of organised crime and militias, and by providing opportunities for better governance. These efforts should start with inclusivity in the political and security negotiation process and feature the unification of national economic institutions.

  Political negotiations should be as representative as possible and not only involve the most high-level actors. Up to now, disputes involving economic institutions such as the National Oil Company (NOC), the Central Bank (CBL) and the Libyan Investment Authority (LIA) have fuelled competition for control of state revenues and assets and the creation of parallel institutions. For example, the CBL has been divided into rival branches in the west and east. The struggle for control over the NOC and the CBL is continuous and creates constant obstacles to their functioning.[33] In this context, greater support for the unification of these institutions and an end to disputes over them should be treated as a priority. The economic reforms introduced by the GNA in September 2018 must be supported, but at the same time European partners should help the Libyan authorities in addressing flaws that have been identified by international experts, such as the need to devaluate the dinar and provide a better scheme for scaling down subsidies.[34] Efforts should also involve increasing investigative capacity throughout the migration route. The expansion of the mandate of Operation Sophia to seize ships illegally smuggling oil products is a positive development in this direction. However, greater efforts should be made to address criminal activities in Libya in a comprehensive manner, rather than by compartmentalising distinct criminal activities.

- **Lesson 2 – bridging the gap between objectives and actions**. The gap between aspirations on the one hand, and the capacity or willingness to achieve them on the other, emerges in different areas of EU policy responses to the Libya crisis. For example, the EU wishes to promote stabilisation and political reconciliation, but makes relatively little effort to do so. Similarly, it aims to limit migration, but introduces temporary solutions that risk deepening the problem and making it more complex. This gap creates unrealistic expectations among local partners, as well as European audiences.[35]

  If the EU wishes to be seen as a credible actor, it should re-evaluate its own instruments and their fitness to achieve its objectives. For example, the focus on training the Libyan coast and border guard to contain migration flows, instead of the introduction of long-term security arrangements – in particular the progressive demobilisation, disarmament and reintegration (DDR) of militia members – exposes this gap. While the co-option of militias may appear to be a suitable way of bringing armed groups under control, this is not the same as demobilising and integrating them into a national security apparatus – which was one of the central goals of the Libyan Political Agreement. Instead, the warlords have been strengthened through co-option because their agenda, their organisational structure and their stake in the war economy have remained unchanged. Given the inextricable links between control over economic assets and conflict, these militias must not be provided with a lifeline and legitimacy.

  Recent developments on the ground seem to offer a window of opportunity to reopen negotiations between opposing factions which could lead to progress in DDR too.[36] In this context, an international conference on Libya is scheduled to take place in Palermo in November 2018 on the initiative of the Italian government. This will provide an opportunity to establish a new roadmap for reconciliation. At the time of writing, it is not yet clear who will participate on the Libyan side, and how many participants will represent local authorities and the different institutions. Two factors will be crucial to the success of the conference. Firstly, key Libyan factions must be represented. Secondly, the international community needs to join forces to push the Libyan counterparts into finding an agreement. At a European level, this can only be achieved if the EU and its member states adopt a unified approach in their policies towards Libya. Recent Foreign Affairs Council conclusions in support of the Palermo conference seem to suggest a move in this direction,[37] but it is too early to predict whether these will translate into tangible joint action.

- **Lesson 3 – raising conflict sensitivity**. The EU needs to extend both its footprint and its communication beyond migration control, which is of limited domestic interest in Libya and thus lacks conflict sensitivity. At the same time, local stakeholders should be given the opportunity to inform the design of EU programmes and contribute to increasing their impact. Coherence and sustainability with an eye to the conflict dynamics should be prioritised. The role of municipalities is important but, beyond that, a wider range of representative actors on the ground should form a core element of projects and programmes where possible. Local discussions among tribal representatives and civil society activists are not enough. These should be accompanied by negotiations specifically aimed at bringing military commanders and leaders of armed groups together at a local level, then integrating them into a wider national security dialogue. So far, attempts to gather all security actors under the umbrella of a single security apparatus have not been successful. In the meantime, to pave the way for a nationwide security dialogue, the experience on the

ground suggests that, in some contexts, engaging with local armed groups under the supervision of civilian leadership can provide some degree of security.[38]

The south of the country is key to this process. Arab, Tebu and Tuareg tribes and armed groups should be involved in a national dialogue and the formation of a unified army with local legitimacy across the country. Resentment over unequal access to citizenship rights is one of the most significant factors contributing to insecurity in the south. Much of this stems from Mu'ammar Gaddafi's cynical manipulation of tribal constituents in the south by promising them citizenship in exchange for service in his security forces. These promises never materialised and, combined with economic competition and institutional collapse, their legacy has been a major driver of conflict in the post-2011 era.

Pursuing the measures described above would improve the coherence and effectiveness of the European approach to Libya, although it is important to emphasise that the complexity of the situation makes quick fixes elusive. Europe and the international community will have to show persistence in their pursuit of stability and none of the approaches proposed here will be effective in isolation. In particular, they cannot be separated from the diplomatic and political effort required to overcome the current political stalemate. The Libyan experience illustrates that attempts to externalise Europe's migration policy and border management through relatively short-term programmes in third countries is ultimately short-sighted. Instead, investing in long-term stability, improved governance and institution-building will be central drivers to addressing the push factors and causes of migration.

1   Wehrey, Frederic and Wolfram Lacher (2018), "The Wrong Way to Fix Libya", *Foreign Affairs*.

2   Tripoli and its surroundings form the most densely populated part of Libya, followed by other coastal areas such as Benghazi and Misratah according to the latest census published by Libya's Bureau of Statistics and Census. Such statistics can only be considered to be estimates in the current volatile situation, but the total national population is estimated to be about 6 million.

3   In June 2018, forces loyal to Haftar lost control of two major oil export terminals to local opponents. After restoring his authority over the area, Haftar stopped the Tripoli-based National Oil Corporation (NOC) from resuming oil exports, implicitly demanding changes at the NOC and the Central Bank to allow him to access state funds. Haftar subsequently backed down, faced by heavy external pressure. The issues at the core of the dispute remain unresolved: who runs the Central Bank, and how does it distribute its resources. A recent report explores in-depth consequences of this crisis: International Crisis Group (2018), "After the Showdown in Libya's Oil Crescent", Middle East and North Africa Report, Issue 189, Brussels: ICG.

4   Violent clashes for control of Tripoli erupted and shook the balance of power in the capital. They illustrated how the GNA has limited control over the city. Following stabilisation, Tripoli is now home to a broader and more volatile range of interests.

5   Megerisi, Tarek (2018), "Order from chaos: Stabilising Libya the local way", Policy Brief, London: European Centre on Foreign Relations (ECFR). Eaton, Tim (2018), "Libya's War Economy: Predation, Profiteering and State Weakness", Research Paper, Middle East and North Africa Programme, London: Chatham House. Gazzini, Claudia (2017), "Quick Fixes Won't Block Libya's People Smugglers for Long", Commentary, Brussels: International Crisis Group (ICG).

6   See GDP graph on World Bank Data.

7   Migration Policy Centre (2013), "MPC Migration Profile – Libya", Florence: European University Institute.

8   *Op. cit.* Eaton, Tim (2018).

9   *Ibid.*

10 Micallef, Mark and Tuesday Reitano (2017), "The anti-human smuggling business and Libya's political end game", North Africa Report 2, Addis Ababa: Institute for Security Studies.

11 *Ibid.*

12 European External Action Service (2014), "Libya, Political Framework for a Crisis Approach", Brussels: European External Action Service.

13 Council of the European Union (2018), "Outcome of the Council Meeting, 3643rd Council meeting, Foreign Affairs", Brussels: Council of the European Union.

14 Harchaoui, Jalel (2017), "How France Is Making Libya Worse", *Foreign Affairs*.

15 Gazzini, Claudia (2018), "Making the Best of France's Libya Summit", Middle East and North Africa Briefing, Issue 58, Brussels: International Crisis Group.

16 European Commission (2015), "European Agenda on Migration", Brussels: European Commission.

17 European Commission (n.d.), "Migration Partnership Framework: A new approach to better manage migration", Brussels: European Commission.

18 European Commission (2015), "Migration on the Central Mediterranean route: Managing flows, saving lives", Joint Communication to the European Parliament, the European Council and the Council, Brussels: European Commission.

19 European Council (2017), "Malta Declaration by the members of the European Council on the external aspects of migration: Addressing the Central Mediterranean route", Brussels: European Council.

20 International Organization for Migration (2017), "Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079", Press release, Brussels: International Organization for Migration.

21 European Commission (2017), "Managing mixed migration flows in Libya through expanding protection space and supporting local socioeconomic development", Brussels: European Commission.

22 European Commission (2018), "Recovery, stability and socio-economic development in Libya", Brussels: European Commission.

23 European Commission (2017), "Support to integrated border and migration management in Libya", Brussels: European Commission.

24 See the map of projects of the European Commission's Instrument contributing to Stability and Peace. Available at https://icspmap.eu/ (last consulted on 19 October 2018).

25 The SFL is a project led by the GNA and supported by the UNDP and the international community aimed at helping "the GNA to demonstrate its value to the country's citizens in providing visible and tangible results for the population at the local level." It mainly supports rehabilitation of critical infrastructure; the capacity of local authorities to address the needs of the population; and local mediation and conflict resolution capacities. United Nations Development Programme (n.d.), "Stabilization Facility for Libya: What is the project about?", Tripoli: United Nations Development Programme.

26 Pietz, Tobias (2018), "What Salvini teaches us about Operation Sophia", *EUObserver*.

27 Seahorse Mediterranean Network is a Mediterranean-wide coordination system for border surveillance.

28 United Nations High Commissioner for Refugees (2018), "Desperate journeys", Geneva: United Nations High Commissioner for Refugees.

29 See for instance reports from *Medecins Sans Frontières* (2018), "Stop arbitrary detention of refugees and migrants disembarked in Libya", Paris: *Medecins Sans Frontières*. Amnesty International (2018), "Libya: Shameful EU policies fuel surge in detention of migrants and refugees", London: Amnesty International.

30 Villa, Matteo (2018), "Sea Arrivals to Italy: The Cost of Deterrence Policies", Milan: Italian Institute for International Political Studies (ISPI).

31 Mudde, Cas (2018), "The EU helped create the Italy crisis. If it doesn't learn, worse will follow", *The Guardian*.

32 Torelli, Stefano M. (2017), "Italy's u-turn on migration: Polls come first", London: European Centre on Foreign Relations (ECFR).

33 Eaton, Tim (2017), "An impediment to peace: Libya's lucrative and destabilizing war economy, War on the Rocks", London: Chatham House.

34 International Crisis Group (2018), "Watch List 2018 – Third Update", EU Watch List n° 13, Brussels: International Crisis Group (ICG).

35 Loschi, Chiara, Luca Raineri and Francesco Strazzari (2018), "The implementation of EU crisis response in Libya: Bridging theory and practice", Working Paper, Brussels: EUNPACK.

36 Lacher, Wolfram (2018), "Libya: Getting serious about negotiations", SWP Comment, Berlin: German Institute for International and Security Affairs.

37 Foreign Affairs Council (2018), "Conclusions on Libya", Brussels: Council of the European Union.

38 Megerisi, Tarek (2018), "Order from chaos: Stabilising Libya the local way", Policy Brief, London: European Centre on Foreign Relations (ECFR).

MISSION STATEMENT

The **European Policy Centre** is an independent, not-for-profit think tank dedicated to fostering European integration through analysis and debate, supporting and challenging European decision-makers at all levels to make informed decisions based on sound evidence and analysis, and providing a platform for engaging partners, stakeholders and citizens in EU policymaking and in the debate about the future of Europe.

The **Migration and Diversity Programme** provides expertise and independent information on European migration policies. It seeks to contribute to a positive and constructive dialogue on the multidimensional consequences of migration for Europe. With a multidisciplinary team, the EPC's migration programme is contributing to the migration policy debate from several angles: the reform of the Common European Asylum System; the management of the EU's external borders and cooperation with third countries; the link between migration and populism; the creation of safe and legal pathways to Europe.

The **Europe in the World Programme** scrutinises the impacts of a changing international system on Europe, and probes how the EU and its member states can leverage their untapped potential to advance their interests and values on a regional and global level. It thus examines the evolution of EU relations with major powers, such as the United States, China, and Russia, and how Europe can contribute to a rules-based global order. Second, the Programme focuses on the role of the EU in fostering reforms, resilience and stability in neighbouring regions. It looks closely at the developments in Turkey and Ukraine. Third, the Programme examines how the EU can strengthen its security in the face of terrorism, jihadist radicalisation or hybrid and cyber threats. It also seeks to advance the debate on Europe's defence policy.