



Wilfried
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The Transatlantic Perspective on Migration

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Attuning Migration Policy to National Politics

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Summary

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The challenge of irregular migration has left policymakers on both sides of the Atlantic bewildered about how to respond coherently in a way that is effective and angers the fewest people. The migration surge on the southern border of the US has peaked at its highest level ever, at nearly 1.7 million encounters in one year.¹ In the first 10 months of 2021, there were 184,000 illegal border crossings into the EU, mainly through the Central Mediterranean and the Western Balkans routes. This represents a 45% increase on the pre-pandemic year 2019.²

The difficulty of managing irregular migration is but the latest in a series of issues that have strengthened the nationalist tendencies which over the past decade have overwhelmed the political establishments in the EU and the US. Although not the only driver, the perception of uncontrolled migration adds strong fuel to the fire of the new nationalist parties and leaders that seek a fundamental revision of foreign policy. It has thus weakened the ability of the transatlantic community to act collectively on other strategic issues, such as how to deal with Russia and China.³ Irregular migration is closely related to the concept of 'Westlessness', as coined by the Munich Security Conference in 2020, which describes a divided and unconfident West that is having difficulties finding an international foothold.⁴

¹ J. Gramlich and A. Scheller, 'What's Happening at the U.S.-Mexico Border in 7 Charts', *Pew Research Center*, 9 November 2021, accessed at <https://www.pewresearch.org/fact-tank/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/> on 25 November 2021.

² *FRONTEX*, 'Migratory Situation in October: Persisting Pressure on Eastern Border', 22 November 2021, accessed at <https://frontex.europa.eu/> on 25 November 2021.

³ S. Wallace Goodman and F. Schimmelfennig, 'Migration: A Step Too Far for the Contemporary Global Order?', *Journal of European Public Policy* 27/7 (2020), 1103–13.

⁴ T. Bunde et al., 'Munich Security Report 2020: Westlessness', *Munich Security Conference*, February 2020, accessed at <https://securityconference.org/publikationen/munich-security-report-2020/> on 25 November 2021.



This paper aims to distinguish between three broad measures that could help policymakers on both sides of the Atlantic structure their response to irregular migration. These measures are (1) making deals with third countries, (2) enforcing sovereign borders and (3) adapting legal interpretations. Clarity about the pros and cons of each policy measure, and their combinations, could help decision-makers find a workable compromise that reaffirms both the sovereign right of democracies to control who enters their territories and the humanitarian concerns that will always be an essential part of what the transatlantic community stands for.

Keywords US – EU – Irregular migration – Nationalism – Immigration control – The West – Societal polarisation

The US and the UK withdrawn

The US is experiencing perhaps the deepest political polarisation within the transatlantic community, along the Republican–Democrat party lines.⁵ Donald Trump was elected in 2016 in no small part due to the support of voters who saw irregular immigration as an issue requiring unprecedented measures.⁶ However, Trump took his dissatisfaction with his country's international commitments much further, questioning its post-1945 commitment to NATO (from which he considered withdrawing), the EU (which he treated as a trade foe) and the UN (from parts of which he did withdraw). The narrowness of Joe Biden's election victory in 2020 showed that Trump's popularity is not a transitory phenomenon. Should the public perceive the establishment to be failing to deal with immigration once again, he or a like-minded candidate may have the foundation for (re-)election in 2024.

To date the UK's vote to leave the EU has been the most durable international withdrawal caused by the perception of uncontrolled (albeit mainly legal) migration. Research shows that strong public concerns, particularly in the local communities having undergone significant demographic change, were central to explaining the outcome of the Brexit

⁵ T. T. Reny et al., 'Vote Switching in the 2016 Election: How Racial and Immigration Attitudes, Not Economics, Explain Shifts in White Voting', *Public Opinion Quarterly* 83/1 (2019), 91–113.

⁶ J. Gramlich, 'Trump Voters Want to Build the Wall, but Are More Divided on Other Immigration Questions', *Pew Research Center*, 29 November 2016, accessed at <https://www.pewresearch.org/fact-tank/2016/11/29/trump-voters-want-to-build-the-wall-but-are-more-divided-on-other-immigration-questions/> on 25 November 2021.



referendum in 2016.⁷ Once the UK had left the Union, the Johnson government appealed to the popular desire to bring migration under control by shifting away from the use of cheap European labour and severely punishing irregular migration from across the English Channel.⁸ The UK will remain a core NATO ally, but Brexit leaves a durable crack in Europe's otherwise integrated economies.

Europe polarised

Brexit offers a warning about anti-immigration-inspired referendums in other countries that could push the EU towards further disintegration. Indeed, the Union's immigration and asylum system dramatically failed to handle the migration crisis in 2015–16. Migration is among the most salient of the factors behind the polarisation of politics in continental Europe and the rise of far-right parties that seek to break the existing foreign-policy consensus on the value of continued EU membership.

The difficulties in cooperation between the established political parties and the new nationalists over the past five years have resulted in protracted coalition government negotiations and instability in Germany,⁹ Sweden,¹⁰ Belgium,¹¹ Spain¹² and the Netherlands.¹³ In Italy, until 2019 the right-wing Interior Minister Matteo Salvini was a constant source of tension within the government, not least due to his controversial anti-immigration measures.¹⁴ In Poland and Hungary, the aversion to accepting allegedly inassimilable Middle Eastern and African migrants strength-

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- ⁷ K. Adam and W. Booth, 'Immigration Worries Drove the Brexit Vote. Then Attitudes Changed', *Washington Post*, 16 November 2018; M. Goodwin and C. Milazzo, 'Taking Back Control? Investigating the Role of Immigration in the 2016 Vote for Brexit', *The British Journal of Politics and International Relations* 19/3 (2017), 450–64.
- ⁸ UK Government, 'The UK's Points-Based Immigration System: Policy Statement', 19 February 2021, accessed at <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement> on 25 November 2021.
- ⁹ D. McGuinness, 'Germany Coalition Deal Reached After Months of Wrangling', *BBC News*, 7 February 2018, accessed at <https://www.bbc.com/news/world-europe-42973419> on 25 November 2021.
- ¹⁰ C. Anderson, 'Sweden Forms a Government After 133 Days, but It's a Shaky One', *New York Times*, 18 January 2019.
- ¹¹ M. Schreuer, 'Government in Belgium Loses Majority Over U.N. Migration Pact', *New York Times*, 9 December 2018.
- ¹² G. Hedgecoe, 'Spanish Elections: How the Far-Right Vox Party Found Its Footing', *BBC News*, 11 November 2019, accessed at <https://www.bbc.com/news/world-europe-46422036> on 25 November 2021.
- ¹³ J. Henley, 'Dutch Parties Agree Coalition Government After a Record 208 Days', *The Guardian*, 9 October 2017, accessed at <https://www.theguardian.com/world/2017/oct/09/dutch-politicians-ready-form-government-election-coalition> on 25 November 2021.
- ¹⁴ H. Roberts et al., 'Migrants at Sea Caught Up in Italy's Political Turmoil', *Financial Times*, 15 August 2019.



ened the illiberal governments' grip on power and has become a chief source of tension with the other EU countries. With the rise of Marine Le Pen or Éric Zemmour, France may be the next country in line for a nationalist resurgence driven by immigration, ahead of the presidential elections in early 2022.¹⁵

The pull factor

The undeniable political trends towards domestic polarisation and international withdrawal on both sides of the Atlantic underline the urgency with which the root causes of these actions need to be addressed. The alternative to reconciliation could be further withdrawal from and erosion of NATO, the EU and the UN, organisations which the new nationalists in many instances see as obstacles to asserting national sovereignty.

Decisions concerning the fate of individual human beings and families tend to spark emotional reactions, but immigration and asylum policy is otherwise no different from any other aspect of foreign affairs in that it requires a trade-off between internal and external concerns. Tackling immigration must start with a nuanced debate that acknowledges the divergent interests. In essence, the humanitarian and economic reasons for asylum seekers and irregular migrants to settle in safer and more prosperous countries need to be balanced against some notion of what constitutes the national interest, including legitimate concerns about costs, the ability to integrate newcomers, and the preservation of state sovereignty and cohesion.¹⁶ The key challenge is how to help refugees in real need of protection while deterring irregular migrants.

Western countries must address their enforcement and interpretation of the asylum and migration laws as a crucial aspect of their effort to reduce the pull factor that tempts potential irregular migrants to try their luck. The number of asylum seekers attempting to enter a country is affected by the likelihood of their application being rejected, and the likelihood of repatriation in the case of rejection or when the need for refugee protection ceases to exist. Similarly, the number of irregular migrants is affected by the likelihood of being apprehended at the border or later deported, including in

¹⁵ C. Caulcutt, 'Eric Zemmour, the French TV Star Who Is Stealing Marine Le Pen's Thunder', *Politico*, 4 June 2021.

¹⁶ D. Frum, 'If Liberals Won't Enforce Borders, Fascists Will', *The Atlantic*, April 2019.



cases where the migrant's asylum status or visa has expired. Unlike other pull factors, such as living standards and the presence of diasporas, which are 'constant', governments have the power to regulate asylum and migration law. In this respect, governments need to structure the difficult trade-offs they face when attuning migration policy to national politics. They may find it useful to distinguish between three policy instruments as a basis for the exploration of compromises that could bring back a sense of internal control over external developments: making deals with third countries, enforcing sovereign borders and adapting legal interpretations.

Deals with third countries

The first instrument is to secure third-country cooperation in joint border security, the repatriation of rejected asylum applicants and the prevention of dangerous sea journeys. US threats to raise tariffs in 2019 pressured Mexico into curbing irregular migration along the common border, as well as accepting asylum seekers on Mexican soil.¹⁷ The US similarly negotiated 'safe third country' agreements with Guatemala, El Salvador and Honduras.¹⁸ In 2016 the EU made a deal with Turkey in a successful attempt to reduce the most acute pressure from spontaneous asylum seekers. It concluded similar deals with other Mediterranean countries, such as gaining the support of the Libyan coastguard, and has pursued similar agreements with countries neighbouring Afghanistan.¹⁹

The growing number of rejected asylum seekers that the EU does not manage to repatriate complicates the implementation of a fair immigration policy. Without effective returns, migration policy starts to lose meaning.²⁰ It goes against a sense of justice that it pays off for rejected asylum seekers to refuse to cooperate with repatriation, thereby also occupying the spaces of refugees in real need of protection. Less than 30% of migrants ordered to leave the EU actually did so in 2019, and less than 20% did so

¹⁷ US Congressional Research Service, 'Mexico: Background and U.S. Relations', January 2021, 20–4, accessed at <https://crsreports.congress.gov/product/pdf/R/R42917/50> on 25 November 2021.

¹⁸ A. Cheatham, 'Central America's Turbulent Northern Triangle', *Council on Foreign Relations*, 1 July 2021, accessed at <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle> on 25 November 2021.

¹⁹ N. Nielsen, 'Revealed: EU Migration Plans for Morocco, Libya and Others', *EUObserver*, 28 October 2021.

²⁰ V. Novotný, *Reducing Irregular Migration Flows Through EU External Action*, Wilfried Martens Centre for European Studies (Brussels, March 2019), accessed at <https://www.martenscentre.eu/wp-content/uploads/2020/06/reducing-irregular-migration-europe.pdf> on 25 November 2021.



in 2020.²¹ This is a problem the US has struggled with for decades, resulting in the estimated more than 10 million undocumented immigrants with an unclear future. European countries are increasingly willing to consider (despite doubts about their effectiveness) all possible forms of conditionality, including those affecting development aid, trade and visa regimes, to incentivise third countries to readmit rejected asylum seekers.²²

It is important that the application of policy measures does not fuel polarisation on the left-hand side of the political spectrum. As a strict focus on cooperation with third countries to contain migration may alienate voters on the left, it should be counterbalanced by the provision of increased relief to refugees in their first countries of arrival (e.g. Colombia or Turkey), which suffer heavily under the burden they already carry. Money is much better spent protecting and providing opportunities for refugees in the safest neighbouring country than resettling them in a Western country.

Under any circumstance, asylum systems are discriminatory in their very nature because they reward those who have both the financial means to pay smugglers to arrive at the US or EU borders and the physical fitness to undertake such dangerous journeys: the elderly and women with children are clearly disadvantaged over young men. This should be a weighty argument in favour of supporting local governance structures and increasing assistance to third countries to reduce the push factor to emigrate. It should also offer a strong argument in favour of the orderly resettlement of refugees from crisis regions, enabling the protection of the most deserving.

Enforcing sovereign borders

The second instrument to contain the rising numbers of irregular migrants attempting to make their way into Europe and the US without applying through the authorised channels is, naturally, the improved enforcement of sovereign borders. Relying on third countries can be an effective temporary

²¹ European Commission, 'Overall Figures of Immigrants in European Society', accessed at https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en#returns on 25 November 2021. See also European Court of Auditors, 'Migrant Returns and Readmission to Third Countries Probed by EU Auditors' (28 July 2020), accessed at https://www.eca.europa.eu/Lists/ECADocuments/INAP20_07/INAP_Migrant_return_policy_EN.pdf on 25 November 2021.

²² A.-H. Neidhardt and O. Sundberg Diez, *The Upcoming New Pact on Migration and Asylum: Will It Be up to the Challenge?*, European Policy Centre (April 2020), accessed at https://www.epc.eu/content/PDF/2020/The_upcoming_New_Pact_on_Migration_and_Asylum.pdf on 25 November 2021.



solution, but never a permanent one. Political scientist Kelly Greenhill has studied the weaponisation of migration, by which countries exploit existing legal commitments or domestic moral inclinations to accept irregular migrants.²³ This was seen in action in 2020, when Turkey opened its borders with Greece to extract concessions from the EU. In 2021, Morocco also weaponised migration to punish Spain over the situation in the Western Sahara, and Belarus punished the EU for supporting the Belarusian domestic opposition movement and imposing sanctions against the country.

Strong border control to deter irregular migration is no longer as controversial as it was, say, a decade ago, and the creation of border chaos under any circumstances cannot be the right indicator for Western countries to take their share of responsibility for refugees.²⁴ New technology has increased the capacity to monitor long and porous borders, and to keep track of visa applicants, asylum seekers and rejected asylum seekers who may be tempted to enter illegally.²⁵ On the other hand, the enforcement of sovereignty is not necessarily a narrow national concept.

As far as the EU is concerned, it was, in hindsight, a mistake to abolish internal border controls without allocating the necessary resources to enforce a strong external border. The EU member states are increasingly seeing eye-to-eye on the need for control-oriented policies that limit irregular migration, but the southern and eastern members carry too heavy a burden when it comes to protection of the common external border. The Union must be ready to co-finance the erection of external walls and fences by its members, as well as increase the pace with which it is strengthening its external border and coastguard agency, FRONTEX. The plan to employ 10,000 guards by 2027 is too dilatory to deal with the pressing challenge that irregular migration poses to the Union. As during the migration crisis in 2016, the use of NATO assets may again be necessary to support the civilian effort to cut the lines of migrant smuggling.²⁶

²³ K. M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy* (Ithaca: Cornell University Press, 2016).

²⁴ V. Novotný, 'Boundaries of the West: New Criteria Should Judge U.S. and EU Migration Policies', *The National Interest*, 10 May 2021.

²⁵ See, for instance, M. Leese et al., 'Data Matters: The Politics and Practices of Digital Border and Migration Management', *Geopolitics* 26/5 (2021), 1–22; R. Tracy, 'Lawmakers See Benefits in Facial Recognition at Borders, Despite Concerns', *Wall Street Journal*, 6 February 2020.

²⁶ NATO, 'NATO's Deployment in the Aegean Sea', May 2016, accessed at https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_05/20160519_1605-factsheet-aegean-sea.pdf on 25 November 2021.



As far as the US is concerned, the deep polarisation along party lines, including the two federal government shutdowns in 2018 over allocations to ‘the wall’ and the deportation of individuals unlawfully present in the country, shows the difficulty of finding a national consensus on how to reduce the pull factor for irregular migration.²⁷ Controlling both Congress and the White House, it would fall most naturally to the Democrats to explore options for a national compromise. They should acknowledge the need for a permanent reinforcement of the southern border and be open to considering the advantages of third-country deals if the Republicans, in exchange, agree to the legalisation of existing undocumented immigrants to some extent. It should give cause for serious thought that President Biden’s pledge to roll back Trump’s asylum policies is among the least popular of his policies.²⁸

Adapting the legal interpretations

Europe and the US cannot, in the long run, escape the third instrument of migration management, namely bringing the interpretation of international legal regimes more into line with national politics. As argued by the recognised migration experts Paul Collier and Alexander Betts, sustainable immigration policies need to give the populations a sense of predictability by bringing decisions on the intake of people (back) under democratic control.²⁹ Europe and the US will probably remain united in their continued commitment to the Refugee Convention, which was adopted 70 years ago in the context of the post-Second World War geopolitical jigsaw. To reduce the incentive for irregular migration, however, they must adhere to the Convention’s original wording.

First, this will require a sharper distinction between refugees and migrants than is the case today. All societies within the transatlantic community feel a moral obligation to rescue refugees but have reservations against wel-

²⁷ T. Kane, ‘What’s Driving the Border Crisis?’, *Hoover Institution*, 23 March 2021, accessed at <https://www.hoover.org/research/whats-driving-border-crisis> on 25 November 2021.

²⁸ C. Easley, ‘Biden’s Move to Expand Refugee Admissions Is His Most Unpopular Executive Action So Far’, *Morning Consult*, 10 February 2021, accessed at <https://morningconsult.com/2021/02/10/biden-refugee-cap-executive-orders-polling/> on 25 November 2021.

²⁹ A. Betts and P. Collier, *Sustainable Migration Framework*, Norwegian Directorate of Immigration, 41–5, accessed at https://www.udi.no/globalassets/global/european-migration-network_i/emn-norway-papers/emn-norway-occasional-papers-betts-collier.pdf on 25 November 2021.



coming them out of a fear that they will never return to their home countries but will eventually be given the right to settle down, to de facto migrate. It is worth noting that the Refugee Convention prescribes no right to migrate and obliges participating states only to provide protection to refugees for as long as required by the circumstances in their home country.³⁰ The problem lies with the interpretation of certain participating states and UN agencies that tends to blur the distinction between the rights of refugees and the rights of migrants. Participating states to the Refugee Convention must no longer treat asylum largely as a gateway to permanent residence. This means there needs to be a more systematic application of the provisions of the Refugee Convention that prescribe the cessation of refugee status, namely the return of people as (parts of) their home countries become sufficiently safe.³¹

Second, Western countries must be prepared for a more literal interpretation of the right to protection. The Refugee Convention obliges participating states to provide protection to people that face a well-founded fear of persecution in their home countries, whether related to race, religion, nationality, membership of a particular social group or political opinion. A few examples deserve mention here. In 2018 the US made it harder for migrants fleeing private crimes such as domestic violence and gang violence to gain asylum, which is a right that is less firmly established in refugee law.³² In 2020 Greece suspended asylum applications to take pressure off of the escalating situation at the border caused by Turkey. The judicial and legal interpretations of Australia, the US and Canada are all more in line with the Refugee Convention's wording and original intention than the European asylum system, which has added to the Convention a superstructure of additional legal obligations on governments.³³ Scope reductions and suspension of the right to asylum may be justified as preventive measures against uncontrolled de facto immigration, including its weaponisation by other states and their non-cooperation in readmitting rejected asylum seekers.

³⁰ UN High Commissioner for Refugees, *The Refugee Convention* (1951), §1(C), accessed at <https://www.unhcr.org/4ca34be29.pdf> on 25 November 2021.

³¹ For an assessment of the situation regarding Syrian refugees, see International Committee of the Red Cross, 'The ICRC's Position Regarding the Issue of Returns to Syria', accessed at https://www.icrc.org/en/download/file/71770/returns_paper.pdf on 25 November 2021.

³² M. G. Heyman, 'Domestic Violence and Asylum: Toward a Working Model of Affirmative State Obligations', *International Journal of Refugee Law* 17/4 (2005), 729–48; K. M. Manuel, 'Asylum and Gang Violence: Legal Overview', *Congressional Research Service*, September 2014, accessed at <https://sgp.fas.org/crs/homsec/R43716.pdf> on 25 November 2021.

³³ V. Šimoňák and H. C. Scheu, *Back to Geneva: Reinterpreting Asylum in the EU*, Wilfried Martens Centre for European Studies (2021), accessed at <https://www.martenscentre.eu/publication/back-to-geneva-reinterpreting-asylum-in-the-eu/> on 25 November 2021.



Restoring transatlantic leadership

Although policy instruments are obviously most effective when combined, governments should apply them to the extent that they are conducive to domestic political compromise and reconciliation. Denmark and Austria offer examples of how established parties can successfully foster less-polarised political ecosystems by incorporating parts of the immigration policies of far-right parties—that is, stricter border controls and a commitment to the repatriation of rejected asylum seekers and people deemed to no longer require protection.

Conversely, countries that are today failing to reconcile the antagonistic positions on migration are more vulnerable to foreign influence. Russia has successfully befriended anti-establishment and anti-immigration parties and leaders in the US,³⁴ Germany,³⁵ France³⁶ and Italy,³⁷ with the aim of weakening NATO and EU cohesion. In its effort to pit the political right against the political left and ‘the people’ against ‘the elite’, Moscow relies on disinformation to exacerbate existing perceptions that governments lie about and are unable to cope with migrants.³⁸ China similarly befriends European governments such as Hungary that seek a counterweight to Brussels (not only on migration), successfully weakening criticism of its human rights violations in Hong Kong and Xinjiang.³⁹

The current age of mass migration calls for a new strategic thinking that no longer ignores the challenges it brings to transatlantic cohesion and self-confidence. A discussion on the subject is necessary within the existing EU–US dialogues. The perception of the prevalence of uncon-

³⁴ A. Polyakova, *What the Mueller Report Tells Us About Russian Influence Operations*, Brookings Institution (18 April 2019), accessed at <https://www.brookings.edu/blog/order-from-chaos/2019/04/18/what-the-mueller-report-tells-us-about-russian-influence-operations/> on 25 November 2021.

³⁵ G. Lachmann, ‘Die AfD will zurück zu Bismarcks Aussenpolitik’ [The AfD Wants to Return to Bismarck’s Foreign Policy], *Die Welt*, 10 September 2021.

³⁶ J. Perry, ‘Putin Meets French Far-Right Candidate Marine Le Pen at Kremlin’, *CNN*, 25 March 2017, accessed at <https://edition.cnn.com/2017/03/24/europe/putin-le-pen-kremlin/index.html> on 25 November 2021.

³⁷ A. Desidero, ‘Putin’s Party Signs Deal with Italy’s Far-Right Lega Nord’, *Financial Times*, 11 April 2017.

³⁸ *EUvsDisinfo*, ‘The Pro-Kremlin Narrative About Migrants’, 16 May 2017, accessed at <https://euvsdisinfo.eu/the-pro-kremlin-narrative-about-migrants/> on 25 November 2021.

³⁹ H. Larsen and L. Maduz, ‘China as a Stress Test for Europe’s Coherence’, in M. Hass and O. Thränert (eds.), *Strategic Trends 2020: Key Developments in Global Affairs* (Zurich: Center for Security Studies, ETH Zurich, 2020), 58–70.



trolled migration holds perhaps the most significant potential for additional nationalist backlashes. It now falls on policymakers to tackle the resumption of irregular migration following the worst of the corona-pandemic lockdowns.

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