

European &
International
Analysts Group



Migration Policy

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Intra-European cooperation

Migration and border management are major issues in the politics of all European countries, whether they be in the EU, the Schengen area or otherwise. Some are islands (or think of themselves as such), others are landlocked; some have land or short sea borders with countries of emigration or transit; others are (or seem to be) a long way from Europe's borders with other continents. Some have longstanding historical links with countries in other continents, often stemming from the colonial era. Some have national identity cards, while others do not, although they often go to great lengths to urge the use of cards with similar purposes but different names.

Notwithstanding all these differences, they share a concern about immigration. In the United Kingdom, Brexit was thought by many to be the solution to the perceived problem: they were persuaded that ending free movement of workers within the EU would enable Britain to control its own migration flows, thus reducing net immigration. The intervening years have shown that migration is a more complicated phenomenon than that, no more susceptible to sovereign will in the absence of other measures than King Canute's commands to the tides in the Thames. Migration management requires a coherent set of interlocking policies and international cooperation.

Recent improvements in UK-EU relations have seen progress on difficult issues surrounding the management of the country's only land border with the EU (between Northern Ireland and Ireland). More generally, cooperation arrangements have been agreed between the British border authorities and the EU's Frontex agency to improve administration of movements across the English Channel.¹ The land border between Gibraltar and Spain also needs an agreement between the UK and the EU to maintain ease of travel to and from Spain and the Schengen area of which it is a member.

As a member state, the UK managed its interactions with the Schengen system with considerable skill, participating in some activities and not in others. This pre-Brexit balancing act, more accurately the skilfully negotiated trade-offs inherent in EU membership, had its ups and downs and visits to the European Court of Justice, but generally worked well in practice. The concentration of minds brought about by international terrorism obviously helped too as political alliance-building, inventive lawyering and goodwill usually won the day.

¹ HM Government, 'Working arrangement establishing operational cooperation between the European Border and Coast Guard Agency and the Home Office of the United Kingdom of Great Britain and Northern Ireland', 23 February 2024

Now outside the EU and facing the reality and aftermath of new crises unforeseen in 2016 (pandemic and war), the UK's task is much harder.² For the EU, the challenge is to muster the political will to act decisively without the spur of a crisis. Both parties' security needs, as Julian King's recent paper³ shows, are best served by cooperation between them. Migration, for the UK as for other states, can be managed effectively only in cooperation with neighbouring countries. The UK's neighbours have their separate policies, but increasingly work collectively to manage migration flows through the European Union's various mechanisms. All European countries have learned from hard-won experience that no country can expect to manage its borders alone.

The UK's newly legislated Safety of Rwanda (Asylum and Immigration) Act is the most recent example. It has had an immediate effect on the UK's relations with Ireland, France, the EU as a whole, and of course on Rwanda itself. Given the scale of migration to the UK and the limited reception capacity available in Rwanda, this policy seems unlikely to have any lasting impact except on the people unwillingly deported there, although deterrence and diversion to Ireland may have consequences, whether intended or not. The UK would benefit most from agreement on a strengthened system of shared international cooperation to deal with the common challenge of managing migration in a decent and sustainable way. This cannot be achieved alone.

Continued global conflicts, instability and oppression mean that rapid, efficient and humane asylum systems will be needed for some time to come. Not all applicants succeed and international agreements are necessary to facilitate their return. In the case of the United Kingdom, leaving the European Union and its Dublin system has not made this any easier. That EU system, now enshrined in the 2024 Asylum and Migration Management Pact, provides for asylum application in the first member state entered and for return to safe third countries, backed up by dedicated funds and IT applications. A "border procedure" would apply to certain categories of applicants, in respect of whom a quick assessment would be made at the EU's external borders to determine whether applications are unfounded or inadmissible. Persons subject to the asylum border procedure would not be able to enter the member state's territory. The EU's border procedure is worth careful examination as it gets under way. The challenge for the UK at its borders is threefold: the rapidity of the processing of asylum applications and the treatment of successful and unsuccessful applicants.

Poor relations between the UK and the EU since Brexit have made it harder to develop and implement the necessary cooperation arrangements. However, signs of hope are emerging. Better cooperation has been agreed between key EU agencies Frontex and Europol and their British counterparts, reflecting a better understanding of the need for coordinated responses to common challenges.

We acknowledge the fundamental practical difficulty for policy in this area: once people arrive on your territory, it is extremely hard to send them somewhere else. People on

² See Janan Ganesh, 'Vietnam and the art of not choosing', *Financial Times*, 23 February 2024: "The more time passes since Brexit, the more wowed I am by the four decades before it. What an act of negative capability it was, on a national scale, to be in but not quite of the EU, to co-author the single market but abstain from the euro, to observe free movement but not Schengen."

³ See Sir Julian King, *The Case for an Ambitious UK/EU Security Cooperation Pact*, European & International Analysts Group, 1 February 2024; and Sir Alan Dashwood KC, *An Ambitious Form of UK/EU Cooperation on Foreign, Security and Defence Policy – Why and How*, European & International Analysts Group, 3 March 2024

British soil should be able to apply for asylum. The stated objective of British policy is to deter people from crossing the frontier. The cooperation of foreign countries, mainly neighbours, is necessary. The surprise in recent British politics has been the emergence of Rwanda as the crucial foreign country in this connection. Rwanda style “solutions” are unlikely to prove practicable at scale, are extremely costly and raise serious legal and human rights concerns. Another deterrent would be to stop physical presence on the territory opening a path to access to employment and social services, but that would raise the risk of crime and the shadow economy as the only viable alternative.

The wider world

As the UK seeks to shape an effective national migration policy, it has to engage not just with immediate neighbours but also with the wider framework of international human rights law which has grown up over the decades since the end of the Second World War. The 1951 Refugee Convention was a response to the horrific events of the first half of the twentieth century, signed in a very different world of some 2.5 billion people, compared with over 8 billion today. But are we right to accept the current texts and state of international law as immutable, to be obeyed or flouted, but set in stone forever? Migration is a challenge for the whole world and reform should not be unthinkable.

The key text, the 1951 Refugee Convention, is described by the United Nations High Commissioner for Refugees (UNHCR) in the following terms:

In the aftermath of the First World War (1914-1918), millions of people fled their homelands in search of refuge. Governments responded by drawing up a set of international agreements to provide travel documents for these people who were, effectively, the first recognized refugees of the 20th century. Their numbers increased dramatically during and after the Second World War (1939-1945), as millions more were forcibly displaced.

In response, the international community steadily assembled a set of guidelines, laws and conventions aimed at protecting the basic human rights and treatment of people forced to flee conflict and persecution.

The process, which began under the League of Nations in 1921, culminated in the 1951 Convention which consolidated and expanded on previous international instruments relating to refugees and continues to provide the most comprehensive codification of the rights of refugees at the international level.⁴

Alas it still the case today that people are forced to flee conflict and persecution as wars rage around the world. Nevertheless, circumstances in 2024 are in many respects very different from those which prevailed in 1951. People move around and use social media in ways unimaginable then and industries have grown up to assist or exploit them. As legal migration has been limited in rich countries, illegal movements have grown in

⁴ United Nations High Commissioner for Refugees, ‘The 1951 Refugee Convention’, 19 May 2024

response to supply (people wanting to move in the hope of improving their lives) and demand (labour shortages in parts of the economy in countries with low birth rates).

Migration has many virtues and is hardly a new phenomenon in world history. People have moved to strange lands willingly and unwillingly since the dawn of time.

Be that as it may, all over the world migration is controversial and, in Europe at least, political parties promising to stop or limit it are winning elections. It played an important role in Britain's decision by referendum in 2016 to leave the European Union.

Countries of emigration, transit and immigration all have a stake in the orderly management of people across borders, while the moral imperatives of alleviating misery, protecting human dignity and preventing exploitation of the vulnerable are stronger than ever.

Is a new settlement needed?

It is time to ask whether a new settlement is needed.⁵ We take it as axiomatic that any such settlement should uphold the rule of law, including international law, and the highest moral standards. We realise that progress in this area will be hard to achieve, even if it is clear that the systems currently in place are not working well. There are many more questions than answers, but we believe it is time for an open debate, hoping for honesty and humanity on all sides.

If we do nothing now, is there not a risk of seeing once proudly democratic countries, pillars of the post-1945 settlement, lapse into xenophobia, chauvinism and conspiracy theory? Know-nothing, ahistorical notions of blood, race and nativism are polluting political discourse. "Never again" is becoming more a threadbare slogan than a credible commitment. Divisive rhetoric makes it more difficult to achieve a fair and practicable solution to all the complex issues raised by migration pressures.

Before it is too late, perhaps the international community should look again at what needs to be done. Is it not time for an international conference under UN aegis to review and update the 1951 Convention? In accordance with its Article 45, "Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request."

Could the United Kingdom and the European Union bring together a coalition of like-minded nations to request a thoroughgoing revision of the Convention, setting out in a joint memorandum to the UN General Assembly the issues of substance and procedural steps they wish to see addressed?

⁵ The countries participating in the Conference leading to the 1951 Convention were: Australia, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Egypt, France, Germany (Federal Republic), Greece, The Holy See, Iraq, Israel, Italy, Luxembourg, Monaco, The Netherlands, Norway, Sweden, Switzerland (also representing Liechtenstein), Turkey, the United Kingdom, the United States of America, Venezuela and Yugoslavia. Cuba and Iran were observers. Needless to say, 2024 would have a very different lineup.

General principles

Countries of emigration and immigration and those on “transit routes” between them could come together to draw up 21st century rules with clear and workable distinctions between legal and illegal immigration, together with binding principles for the design and implementation of asylum systems, integration of refugees and the immediate and humane return of migrants with no right to asylum to their country of origin.

The dignity and safety of the human being should be paramount considerations, with particular attention to the needs of children, and rules should be included to punish trafficking and exploitation of migrants.

Clear definitions would be necessary to distinguish between:

- Temporary protection
- Asylum
- Migration for personal, family or economic reasons

What could a new Convention say?

Temporary protection

Exceptional temporary protection should be granted by the first safe country reached to people involved in an actual or imminent migration of displaced persons as a result of armed conflict or endemic violence in their country of origin. The UNHCR should manage a financing system to assist the countries granting such exceptional temporary protection. A safe country is one in which the people concerned have no well-founded fear of persecution. Provision could also be made in appropriate cases for temporary protection in a safe region of the same country. A similar system could apply to people fleeing natural or ecological disasters such as earthquakes or oil spills. Climate change should be recognised as a growing source of migratory pressure.

Asylum

Persons who are outside the country of their nationality or habitual residence and are unable or unwilling, owing to a well-founded fear of being persecuted for reasons of ethnic origin, race, religion, nationality, gender, sexual orientation, membership of a particular social group or political opinion, to avail themselves of the protection of that country or are unable or, owing to such fear, unwilling to return to it should be granted asylum in the country in which they are present. Economic distress, such as famine or poverty, climate change and natural disasters cannot lead to a successful asylum claim. Other policy measures are needed for such situations.

Deadlines are crucial. The right to asylum should be determined within a strict deadline, including appeals. During that period, applicants should be allowed to remain in the country in which their status is being determined, but not to work or to receive social security benefits. Basic human needs and health care should be provided. Meanwhile, they should have the right not to be sent to another country while their claim is being processed.

Among possible provisions are the following: successful applicants should be integrated into their host country and suffer no discrimination in relation to citizens and habitual residents of that country. Asylum may be limited in time and subject to review, but after a certain period it should become permanent. Unsuccessful applicants should be returned immediately to their country of origin, which should readmit them and may not cancel or remove their nationality to deny them readmission. UNHCR should monitor their welfare for a certain period after readmission.

Migration

People moving across borders for other reasons, however dreadful or understandable, are migrants and countries should be entitled, at their discretion, to set a limit to the number of such people they admit to their territory, other than successful asylum applicants and those benefiting from temporary protection.

Countries would be able to deny entry to non-citizens seeking to enter their territory who do not meet legal requirements for doing so, except if they apply for temporary protection or asylum or are joining a parent or child already resident in the country concerned.

Countries could deny non-citizens permission to enter their territory with a view to leaving it subsequently to enter another country in which they do not meet legal requirements for entry. Countries could create cooperation mechanisms and share information for these purposes.

A controversial but probably unavoidable issue is whether a fair and supervised emergency brake could be envisaged whereby a country could temporarily refuse asylum seekers if numbers surge beyond a given threshold, while offering emergency relief with support from the UNHCR. People refused the right to asylum in this way could be returned to their country of origin under the supervision of the UNHCR, which would remain responsible for their welfare and reintegration into the country of origin until satisfied that they were not at risk of persecution. A country's threshold could be based on its population and GDP per capita, agreed with the UNHCR and published.

There could be a transitional phase during which successful asylum seekers could be returned in similar fashion if they commit a serious crime in their country of asylum, as long as they have not become naturalised citizens there.

All this would be without prejudice to the closer cooperation between members of regional groupings such as the EU, the Schengen area or the common travel area between the UK, Ireland, the Channel Islands and the Isle of Man.

Negotiation of a new international framework on these lines would be very arduous and success could not be guaranteed. But we have to recognise that migration – legal and informal, economic and political – will be a growing cause of division and even conflict between states in the coming decades. Attempts to manage the issue on a purely national basis have proved inadequate and caused unnecessary suffering. Governments must work together to seek a better way forward.

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European & International Analysts Group

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