

# Open Arms Behind Barred Doors: Fear, Hypocrisy and Policy Schizophrenia in the European Migration Crisis

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**Abstract:** *In 2015, over one million refugees and migrants arrived in Europe, laying bare the limitations of the EU's common border control and burden-sharing systems. This article examines consequences of the EU's disjoint, schizophrenic and, at times, hypocritical responses to what has become known as the European migration crisis. It explains how unilateral, national-level responses have made the EU as a whole particularly susceptible to a unique brand of coercive bargaining that relies on the threat (or actual generation) of mass population movements as a non-military instrument of state-level coercion. After outlining who employs this kind of foreign policy tool, to what ends, and under what circumstances, the article offers an illustration of this kind of coercion in action, by analyzing the March 2016 deal between the EU and Turkey. The article concludes with a discussion of broader consequences of the deal and implications both for the displaced and for the EU going forward.*

## I Introduction

During 2015, more than one million refugees and migrants arrived in Europe, about half of whom were fleeing the civil war in Syria and about one third of whom were seeking political asylum. The question of who should bear responsibility for the new arrivals and how those responsibilities should be shared generated very different, sometimes schizophrenic, policy responses among European Union (EU) member states, with many states prioritizing national interests over European solidarity. These divergent national responses generated fierce political debates over legal and normative obligations to the displaced within and across member states. In many capitals, these debates also (re-)kindled national divisions in ways that redounded strikingly to the benefit of right-wing, nationalist political parties.

The lack of EU solidarity and absence of a collective response to the humanitarian and political challenges imposed by the influx further laid bare the limitations of common border control and migration and refugee burden-sharing systems that have never been wholly and satisfactorily implemented.<sup>1</sup> By year's end, half a dozen members of the Schengen Zone had unilaterally reinstated internal border controls under the 'exceptional circumstances' provision of the Article 26 of the Borders Code.<sup>2</sup> Other states, such as Hungary, erected physical barriers to entry along borders with non-Schengen states.

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<sup>1</sup> S. Fratzke, 'Not adding up: the fading promise of Europe's Dublin system', *Migration Policy Institute Report* (March 2015), available at file:///Users/kgreenhill/Downloads/MPIe-Asylum-DublinReg.pdf.

<sup>2</sup> These countries were Austria, Denmark, France, Germany, Norway and Sweden.

In part in response to these acute stresses and strains on the common European enterprise, in early January 2016, European Council President Donald Tusk declared that the EU had no more than 2 months to save its passport-free Schengen Zone and maybe even the union itself. A failure to find a solution could, Tusk warned, lead to the EU failing as a political project.<sup>3</sup>

Should Tusk's dire prognostications come to pass, it would not be the first time that a mass migration catalysed a fundamental reconfiguration of the international political landscape. The mass exodus of East Germans to Austria through Czechoslovakia and Hungary in the summer of 1989, for instance, impelled the German Democratic Republic to open its western borders, leading to the fall of the Berlin Wall and the subsequent reunification of East and West Germany.<sup>4</sup> While the exodus from East to West did not happen in a political vacuum, it was in the end a mass migration, rather than a military invasion, that destroyed East Germany, sounded the death knell for the Warsaw Pact and prefigured the end of the Cold War and ultimately the collapse of the Soviet Union.

Whether a similar fate could befall the EU is as of this writing an open question. What is certain, however, is that both recent and proposed EU member state responses to the recent unregulated influx—including mass detentions and deportations, unilateral border closures and calls for foreign military action—illustrate anew the potential power of unregulated migration to make people and governments feel insecure and under threat. British Prime Minister David Cameron invoked insects when he warned of a 'swarm' of 'illegal migrants' invading Europe,<sup>5</sup> while Hungarian Prime Minister Viktor Orbán declared that, 'from a European perspective, the number of potential future immigrants seems limitless, [and most new arrivals] are not Christians, but Muslims'. Orbán further added that the refugees entering Europe 'look like an army'.<sup>6</sup> For his part, Polish Law and Justice Party official and former Prime Minister Jaroslaw Kaczynski warned that Muslim refugees would bring parasites and diseases to the local population,<sup>7</sup> while the leader of the Sweden Democrats Jimmie Åkesson declared that that 'Islamism is the Nazism and Communism of our time'.<sup>8</sup>

Against the backdrop of what happened in 1989, these none too novel examples of inflammatory rhetoric, coupled with Tusk's stark warning about the potential dangers facing the EU as a political unit, dramatically underscore the inconvenient, and oft ignored, truth that military assaults are far from the only way to undermine already fragile political bargains and governance arrangements (or to make citizens feel endangered, afraid and reactionary). Fears of irregular (mass) migration can also do so, and do so at great potential cost to states' leaders and to the laws, values and human right norms they are (at least ostensibly) committed to uphold.

<sup>3</sup> 'Tusk gives the EU two months to "save Schengen"', *EuroNews*, 19 January 2016; available at <http://www.euronews.com/2016/01/19/tusk-gives-the-eu-two-months-to-save-schengen/>; 'Schengen to Fail in Months if Migration Crisis not "Under Control", says Tusk', *DW.com*, 19 January 2016; available at <http://www.dw.com/en/schengen-to-fail-in-months-if-migration-crisis-not-under-control-says-tusk/a-18989697>.

<sup>4</sup> Somewhat ironically, it was German reunification and the vibrant German economic engine that allowed the EU to grow into the world's largest economy and such an attractive destination in the decades since reunification.

<sup>5</sup> 'David Cameron insists describing migrants as a "swarm" Wasn't "dehumanising"', *The Telegraph*, 15 August 2015, available at <http://www.telegraph.co.uk/news/politics/david-cameron/11804861/David-Cameron-says-describing-migrants-as-a-swarm-wasnt-dehumanising.html>.

<sup>6</sup> 'Refugees "look like an army", says Hungarian PM Viktor Orban', *The Guardian*, 23 October 2015, available at <http://www.theguardian.com/world/2015/oct/23/refugees-look-like-an-army-says-hungarian-pm-viktor-orban>.

<sup>7</sup> 'Right-wing Polish leader Kaczynski says migrants carry diseases to Europe', *US News and World Report*, 15 October 2015, available at <http://www.usnews.com/news/world/articles/2015/10/14/right-wing-polish-leader-migrants-carry-diseases-to-europe>.

<sup>8</sup> 'Anti-immigrant Sweden democrats now the biggest party, according to poll', *The Telegraph*, 20 August 2015, available at <http://www.telegraph.co.uk/news/worldnews/europe/sweden/11814498/Anti-immigrant-Sweden-Democrats-now-the-biggest-party-according-to-poll.html>.

In some respects, it may seem odd that many within the EU appear to feel so besieged by and fearful of the ongoing influx from the Middle East and beyond. From the dispassionate perspective of absolute numbers, such a reaction can seem overwrought. While significantly larger than the 280,000 who arrived the year before, the one million who came to Europe in 2015 comprise but a tiny percentage of the more than 60 million people displaced around the world.<sup>9</sup> As a percentage of the EU population of circa 509 million, the size of the influx is smaller still. But responsibilities for shouldering the monetary, social and political costs of recent inflows into the EU have not been equally shared, anything but. (As of this writing, Germany has, for instance, absorbed the largest number of refugees in absolute terms, while Sweden has taken in the largest number on a per capita basis. Some other member states have not accepted any refugees at all). At the same time, frontline states along the EU's southern border, such as Italy and Greece, have also been bearing particularly significant burdens. These states have served as the key entry points (and due to the Dublin Regulations, holding and processing areas) for the vast majority of new arrivals. Brussels has been markedly slow in providing much needed aid to frontline states as well as in facilitating promised resettlement of migrants and refugees to other parts of the EU, creating bottlenecks and turning these ill-equipped states into vast holding camps, which Greek ministers refer to as 'a cemetery of souls.'<sup>10</sup> Uncertainty regarding if and when adequate EU assistance will be forthcoming, and what the future might bring in terms of further inflows, has inspired significant migration-related fears and anxieties within frontline states. These same fears have encouraged some within frontline states to ignore Dublin Regulation requirements and allow migrants and refugees to transit through their countries unregistered (and unimpeded) to countries further north, fostering and effectively expediting an informal, alternative method of intra-EU burden-sharing, which has in turn raised anxieties and heightened fears in non-frontline states as well.<sup>11</sup>

In any case, a focus on numbers obscures the fact that what constitutes a threat—be it security, economic, social or cultural—is as much a matter of perception as of objective reality, and that such perceptions can, and indeed frequently are, exploited by enterprising actors willing to play on such fears. Indeed, as first detailed in my 2010 book, *Weapons of Mass Migration: Forced Displacement, Coercion and Foreign Policy*, using displaced people as instruments of foreign policy is a relatively common feature of international politics. This unconventional brand of coercion has been attempted more than 70 times since the advent of the *1951 Refugee Convention* alone, that is, at least one per year on average,

<sup>9</sup> 'Why is the EU struggling with migrants and asylum?', *BBC.com*, 3 March 2016, available at <http://www.bbc.com/news/world-europe-24583286>; UNHCR, Global trends: forced displacement in 2014, available at [www.unhcr.org/2014trends/](http://www.unhcr.org/2014trends/). Also refer to UNHCR, 'UNHCR Warns of Dangerous New Era in Worldwide Displacement as Report Shows Almost 60 million People Forced to Flee Their Homes', 18 June 2015, available at [www.unhcr.org/55813f0e6.html](http://www.unhcr.org/55813f0e6.html).

<sup>10</sup> Quoted in M. Holehouse, 'Greece faces being sealed off from Europe to stop migrant flow in move that creates 'cemetery of souls'', *The Guardian*, 25 January 2016, available at <http://www.telegraph.co.uk/news/worldnews/europe/eu/12119799/Greece-threatened-with-expulsion-from-Schengen-free-movement-zone.html>.

<sup>11</sup> *Ibid.* In September 2015, the European Commission proposed a review of Dublin as well as a quota system aimed at more equitably distributing the burden of refugees and asylum-seekers by relocating new arrivals from frontline states across the EU. (The number of refugees each member state would absorb would depend upon GDP, population size, unemployment rate and asylum applications already processed.) The plan would theoretically relocate 120,000 refugees over a two-year period. However, that numbers comprises only a tiny fraction of the number of refugees and asylum-seekers expected to arrive by the end of 2016. Moreover, the number formally resettled in 2015 was only 190, despite pledges to relocate almost 200,000. R. Goldman, 'No end in sight', *New York Times*, 3 February 2016, available at <http://www.nytimes.com/interactive/2016/02/04/world/europe/migrant-crisis-by-the-numbers.html>.

and it has been undertaken in that time by dozens of discrete challengers against at least as many disparate targets and, by extension, against an equally large number of victimized groups—that is, the displaced themselves.<sup>12</sup> Such episodes include both war and peacetime use, by both state and non-state actors, in the service of objectives as diverse as financial assistance on one end of the spectrum to full-scale military invasion and regime change on the other. Moreover, in approximately three-quarters of all identified cases, coercers have succeeded in achieving at least some of their objectives; approximately 57% of the time, they have achieved most if not all of their stated objectives.<sup>13</sup> But how and why does using people as instruments of foreign policy ever work, and how, if at all, do current events in Europe fit within historical patterns?

In the pages that follow, I briefly sketch the outlines of the theory first presented in *Weapons of Mass Migration* as well as provide capsule descriptions of who engages in this kind of coercion and to what ends. I then offer an illustration of this kind of coercion in action by analysing the March 2016 deal between the EU and Turkey and what drove the EU to concede to a number of Turkey's political and economic demands. I conclude with a discussion of some of the broader consequences of the deal and implications both for the displaced and for the EU going forward.

## II Weaponizing Migration: Who, Why and For What Purpose?

Coercion is generally understood to refer to the practice of inducing or preventing changes in political behaviour through the use of threats, intimidation or some other form of pressure—most commonly, military force. By extension, coercive engineered migration (CEM) refers to those cross-border population movements that are deliberately created or manipulated by state or non-state actors in order to induce political, military and/or economic concessions from a target state or states.<sup>14</sup>

Coercive engineered migration can be exercised by three distinct types of challengers, namely generators, *agent provocateurs* and opportunists. Generators (such as former Libyan leader Muammar Gaddafi<sup>15</sup> and incumbent Syrian President Bashar al-Asaad<sup>16</sup>) directly create, or threaten to create, cross-border population movements unless targets concede to their demands. *Agent provocateurs*, in contrast, do not create crises directly but rather deliberately act in ways designed to incite the generation of outflows by others (as did the Kosovo Liberation Army in inciting attacks by Serb military forces against Kosovar Albanian civilians in the late 1990s).<sup>17</sup> Opportunists (such as Turkey in 2015 and 2016) play no direct role in the creation of migration crises but simply exploit the existence of outflows generated or catalysed by others. Opportunists might threaten to close their borders and thereby create humanitarian emergencies unless targets take desired actions and/or proffer side-payments. They might also offer to alleviate existing

<sup>12</sup> K. M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion and Foreign Policy* (Cornell University Press, 2010), especially chapter 1 and appendix; and K. M. Greenhill, 'When virtues become vices: the Achilles' heel of migration social policy', in G. P. Freeman, and N. Mirilovic (ed.) *Handbook on Migration and Social Policy* (Edward Elgar, 2016), 199–221.

<sup>13</sup> *Ibid.*

<sup>14</sup> Greenhill, *Weapons*, above, n. 12, at 12–13.

<sup>15</sup> N. Squires and D. McElroy, 'Libya to unleash wave of migrants on Europe', *The Telegraph*, 7 April 2011.

<sup>16</sup> A. Little, quoted in the British Broadcasting Company (BBC2) documentary, *Moral Combat: NATO at War*, broadcast on 12 March 2000. Cf. also Greenhill, *Weapons*, above, n. 10, chapter 3.

<sup>17</sup> R. Gladstone and D. Cave, 'Torrent of Syrian refugees strains aid effort and region', *New York Times*, 24 August 2012; D. D. Kirkpatrick, 'Syrian army attacks village near Jordanian border', *New York Times*, 6 September 2012.

crises in exchange for a political and/or financial payoffs. Approximately 60% of all heretofore identified cases of CEM have included political objectives, 30% military objectives and 50% economic objectives (numbers sum to more than 100 because many coercers have multiple goals and issue multiple demands).

Operationally speaking, CEM represents what is commonly known in international relations as a ‘coercion by punishment’ strategy. Challengers aim to create domestic conflict and/or public dissatisfaction within target state or states in an attempt to convince its/their leadership(s) to concede to the challenger’s demands rather than incur the anticipated (domestic and/or international) political costs of resistance.<sup>18</sup> There are two distinct but non-mutually exclusive pathways by which CEM can be affected; loosely speaking, they might be thought of as ‘capacity swamping’ and ‘political agitating’. Simply put, swamping focuses on manipulating the *ability* of targets to accept/accommodate/assimilate a given group of migrants or refugees, while agitating focuses on the manipulating the *willingness* of targets to do so. In both swamping and agitating, coercion is effectively a dynamic, two-level coercive bargaining game in which target responses on the international level to threats issued or actions taken by challengers tend to be driven by simultaneous (or subsequent) actions taken by actors within the target state.<sup>19</sup>

In the developing world, coercive attempts most often focus on swamping and comprise threats to severely tax or overwhelm a target’s physical and/or economic capacity to cope with an influx—thereby effectively debilitating it—if it fails to concede to the coercer’s demands.<sup>20</sup> Challengers anticipate that, in locations where ethnic tensions may already be elevated and where the extension of central government control may be compromised even at the best of times, where essential resources are limited, and consensus on the legitimacy of the political regime is shaky at best, a large influx can present a real and persuasive threat. For instance, in early 2014, Russia threatened to expel many of its Central Asian guest workers if the governments of those states supported a UN resolution condemning the annexation of Crimea (support of said resolution was not forthcoming).<sup>21</sup>

Capacity swamping can also be an effective strategy in the developed world, or ‘the West’, broadly defined. This is particularly true if the incipient crisis is large and sudden because even highly industrialized states need time to gear up to effectively deal with actual or threatened inflows, as events in Europe in 2015 make clear. Advanced industrial societies generally have greater resources to bring to bear in a crisis, however, making (credibly threatening to) their physical ability/ies fundamentally overwhelming to cope harder to accomplish.

In the developed world, therefore, political agitating often supplants capacity swamping as the lynchpin of migration-driven coercion. Challengers on the international level seek to influence target behaviour on the domestic level by engaging in a kind of norm-enhanced political blackmail that relies on *exploiting* and *exacerbating* what Robert Putnam has called the ‘heterogeneity’ of political and social interests within polities.<sup>22</sup> Exploitation of heterogeneity is possible, especially within Western, liberal democracies, because population influxes, such as those created in migration and refugee crises, tend to engender diverse and highly divisive

<sup>18</sup> ‘The hope is that the government will concede or the population will revolt’. R. Pape, *Bombing to Win: Air Power and Coercion in War* (Cornell University Press, 1996), at 21.

<sup>19</sup> R. Putnam, ‘Diplomacy and domestic politics: the logic of two-level games’, (1988) 42 *International Organization* 427–60.

<sup>20</sup> K. Jacobsen, ‘Factors influencing the policy responses of host governments to mass refugee influxes’, (1996) 30 *International Migration Review*, 655–68.

<sup>21</sup> L. Charbonneau, ‘Russia Threatens Countries Ahead of UN Vote on Ukraine—Envoys’, *Reuters.com*, 28 March 2014, available at <http://www.reuters.com/article/us-ukraine-crisis-un-idUSBREA2R20020140328>.

<sup>22</sup> Putnam, above, n. 19.

responses within and across the societies expected to bear the brunt of their consequences. As Marc Rosenblum puts it: 'efforts to bend immigration policy to the national interest compete with pluralistic policy demands originating at the party, sub-national (local and state) and sector- or class-specific levels'.<sup>23</sup> Like immigration and refugee policy more generally, real and threatened migration crises tend to split societies into (at least) two mutually exclusive and often highly mobilized groups: the pro-refugee/migrant camp and anti-refugee/ migrant camp. In the context of supranational entities like the EU, such heterogeneity can (and actually does) divide states into more (e.g. Germany) and less (e.g. Hungary) accepting of refugees and migrants. Thus, a survey fielded by Pew in the spring of 2015 unsurprisingly found not only mixed views within EU member states but also across EU member states:

'Greeks and Italians, whose nations border the Mediterranean and are therefore a natural endpoint for refugees crossing the sea, are also more likely to say immigrants are a burden on society because they take jobs and social benefits. By contrast, people in the UK and Germany are more likely to say immigrants make their country stronger because of their hard work and talents. People in these seven EU countries are less concerned about a possible uptick in crime due to immigration. But 51% of Greeks say immigrants are more to blame for crime than other groups, as do 48% of Germans and 45% of Italians.' 'Regarding refugees in particular, four-in-ten in the EU say their country's policies should be more restrictive, but again this sentiment is particularly strong in Italy (57%) and Greece (56%), according to the German Marshall Fund's Transatlantic Trends Survey in 2014. Greeks and Italians are also the most likely to be concerned about immigration from outside the EU (84% and 76%, respectively, are concerned about this).'<sup>24</sup>

What it means to be pro- or anti-refugee/migrant varies across targets and across crises. Depending on circumstances, pro-refugee/migrant camps may call for relatively limited, short-term responses, such as accepting financial responsibility for settling the migrant or refugee group in a developing country or far more significant—even permanent—commitments, like offering asylum or citizenship. Conversely, anti-refugee/migrant groups may demand that requests for financial assistance be rejected or, more radically, that migrants be interdicted, refugees refused asylum, or, even, in extreme cases, forcibly repatriated. The bottom line is that because targets cannot simultaneously satisfy demands both to 'accept' and 'reject' a given group of migrants or refugees, leaders facing highly mobilized and highly polarized interests on both sides of the divide can find themselves on the horns of a real dilemma—in which it is impossible to satisfy the demands of one camp without alienating the other. Thus, it is not heterogeneity *per se* that make targets vulnerable. Instead, political agitating strategies can succeed because of these competing groups (as well as what might be thought of as competing states in the EU context) that tend to have mutually incompatible interests that they may be highly committed to defending, coupled with the fact that target leaderships may have compelling political, legal and/or moral reasons to avoid running afoul of either of them. Under such conditions, leaders may face strong domestic and, in the case of the EU, supranational incentives to concede to coercers' international-level demands—particularly if doing so can make real or potential migration crises cease or disappear, thereby freeing target leaderships from the proverbial trap between a rock and a hard place.<sup>25</sup>

<sup>23</sup> M. R. Rosenblum, 'Immigration and U.S. national interests', in T. E. Givens, G. P. Freeman, and D. L. Leal (eds.), *Immigration Policy and Security: U.S., European and Commonwealth Perspectives* (Routledge, 2008), 13–38, at 15.

<sup>24</sup> J. Poushter, 'Refugees stream into Europe, where they are not welcomed with open arms', *FactTank: News in the Numbers*, 24 April 2015; available at <http://www.pewresearch.org/fact-tank/2015/04/24/refugees-stream-into-europe-where-they-are-not-welcomed-with-open-arms/>.

<sup>25</sup> As Gearty has observed, what makes the current situation [with regard to decision-making] distinct is that within Europe there now there is pooled sovereignty. 'No longer a disparate collection of institutions, [but rather]... a state, and with statehood comes new kinds of responsibilities'. C. Gearty, 'The state of freedom in Europe', (2015) 21 *European Law Journal*, 706–721, at 708.

The existence of this dynamic and the potential vulnerability to which it can give rise are to a certain extent unsurprising. Despite rhetorical pronouncements to the contrary, most Western liberal democracies have long had a schizophrenic, and arguably even hypocritical, relationship with migrants and refugees. As Marco Scalvini aptly put it in the middle of the 2011 Libyan crisis after then Libyan leader Muammar Gaddafi had once more threatened to ‘turn Europe black’ with migrants and refugees: ‘the anxiety over a refugee invasion from Africa reveals the contradictions present in Europe today, where, on the one hand, the moral imperative of universal emancipation is proclaimed, but on the other, policies and practice continue the trend of refusing a safe haven to the very refugees they have helped to create’.<sup>26</sup>

While the burden borne by the EU represents but a small share of the world’s displacement, in many member states, the flows are clearly considered disproportionately threatening relative to their size, as the rhetorical flourishes delineated at the outset of this article make clear.<sup>27</sup> Pundits, politicians and even some policy makers may argue that migrants who are from different religious, linguistic and ethnic backgrounds than the majority in their newly adopted homelands are a danger to societal security. The post-9/11 environment, in particular, has heightened the salience of negative stereotypes of Arabs and Muslims in European public discourse by equating and sometimes indiscriminately equating and conflating the Middle East, Muslims and terrorism. To such audiences, those arriving on Europe’s shores are not viewed as refugees in need of protection and assistance but rather a liability to national security, societal stability and cultural identity—soldiers in Orban’s ‘invading army’, if you will.

Popular political discourses within the EU draw upon traditional nationalistic sentiments and xenophobic assertions that current waves of migrants and refugees reduce national living standards by siphoning away social resources from ‘real’ citizens, taking employment away from more qualified applicants, bringing tensions from their home state with them and committing a disproportionate amount of crime.<sup>28</sup> The hundreds of sexual attacks and property crimes in Cologne, Germany, on New Year’s Eve in 2015, in which many migrants from North Africa and the Middle East were implicated, only served to feed such narratives and heighten prevailing anxieties.<sup>29</sup>

In the end, while most Western states are normatively, if not legally, bound to offer refuge and protection for those fleeing persecution, violence (and in some cases, privation), at least some segment of the target’s population is usually unwilling to bear the real or perceived economic and social costs and security risks of doing so.<sup>30</sup> Likewise, at the

<sup>26</sup> M. Scalvini, ‘Humanitarian wars and rejected refugees’, *OpenDemocracy.Net*, 17 April 2011; available at <http://www.opendemocracy.net/marco-scalvini/humanitarian-wars-and-rejected-refugees>.

<sup>27</sup> M. Mazower, *The Dark Continent: Europe’s Twentieth Century* (Knopf, 1998), at 346. See also R. Mandel, ‘Perceived security threat and the global refugee crisis’, (1997) 24 *Armed Forces and Society*, 77-103; and ‘Human Rights Watch, Stemming the flow: abuses against migrants, asylum seekers and refugees’, (2006), available at <https://www.hrw.org/reports/2006/libya0906/>.

<sup>28</sup> K. Grayson and D. Dewitt, ‘Global demography and foreign policy: a literature brief and call for research’, (2003) *York Centre for International and Security Studies Working Paper Series*, n. 24, at 9.

<sup>29</sup> ‘Cologne attacks: New Year’s Eve crime cases top 500’, *BBC.com*, 11 January 2016, available at <http://www.bbc.com/news/world-europe-35277249>.

<sup>30</sup> Although the nature and scope of migration-related legal and normative commitments vary across states, generally speaking, the human-rights regime has put two major limits on state discretion as it pertains to policy legitimacy, namely the right of asylum and the principle of racial non-discrimination, both of which have matured into customary international law that is binding on states. The most broadly recognized manifestations of these norms can be found in the 1948 Human Rights Declaration, the 1951 UN Convention on Refugees and the 1967 Protocol Relating to the Status of Refugees.

EU level, despite the fact that the EU as a *supranational unit* prides itself on putting human rights at the forefront of its agenda, *individual* member states (and the citizens within them) are split on how to respond to these refugees, and these splits are growing more acute over time. Right-wing ultranationalists in Europe have responded by taking a hard line on immigration, and unilateral, national level responses are trumping universalistic, supranational ones. This resistance offers coercers a potential wedge through which they can inflict pain that can endanger a leader's relationship with his core supporters or even stimulate general unrest within the target state or states. As Oliver Cromwell Cox summed it up, the 'true democratic principle' is that the people 'shall not be made to do what [they do] not like' (...) It is only necessary that the dominant group believes in the menace of the cultural tenets and practices of the other group; whether or not they are actually harmful or not is not the crucial circumstance'.<sup>31</sup> Thus, regardless of whether refugees and migrants represent a real threat is beside the point; if they are *perceived* as fundamentally threatening to their security, culture or livelihood, anxious and motivated individuals and groups will mobilize to oppose their acceptance.

In societies marked by a heterogeneity of interests and unevenly distributed costs and benefits associated with mass migrations, situations in which only one (or the other) camp mobilizes in the face of a crisis will tend to be the exception rather than the rule (such is also obviously the case within the EU writ large). Thus, in the face of an incipient or ongoing crisis, targets will often find themselves facing highly polarized factions with mutually incompatible interests, and thus, facing a fundamental political dilemma. Resolving such dilemmas can be especially problematic for the EU, where incompatible interests may manifest themselves on both the domestic and supranational levels and where individual member states may try to resolve these dilemmas by engaging in (what may appear to be) individually rational buck-passing and/or embracing beggar thy neighbour policies.<sup>32</sup> This is indeed precisely what we have witnessed in the context of the current EU crisis, with a raft of uncoordinated individual state defections from collective arrangements.

Challengers who engage in CEM recognize the existence of these political conundra and purposefully aim to exploit them for their own political ends. Indeed, would-be coercers often not only seek to exploit extant heterogeneity but also aim to increase target vulnerability over time by acting in ways designed to directly or indirectly catalyse greater mobilization, heighten the degree of polarization between groups and thereby reduce the available policy options open to targets. Challengers can do so by increasing the size, scale and scope of an existing outflow, shifting its character, for example, adding more members of either 'undesirable' or particularly sympathetic groups, making escalatory threats or simply directly lobbying members of pro- and anti-groups.

In short, challengers aim to influence targets by what is, in traditional coercion, known as *force majeure*, that is, a choice dictated by overwhelming circumstances. Targets of course always have a choice, but one that is skewed if they believe that the consequences of non-compliance will be a denial of future choice.<sup>33</sup> This is simply because with fewer policy options available, a target's capacity to reconcile its internal conflicts—and satisfy its competing domestic (and in the case of the EU, regional) interests—becomes far more

<sup>31</sup> O. Cromwell, *Cox, Caste, Class, and Race: A Study in Social Dynamics* (Doubleday, 1948), quoted in A. Bell-Fialkoff, *Ethnic Cleansing* (St. Martin's Griffin Press, 1999), at 48

<sup>32</sup> However, as is frequently the case with collective action-related failures, policies whereby one state attempts to remedy its problems by means that tend to worsen the problems of other states can in turn worsen the problems of the original state, thus heightening the vulnerability of all.

<sup>33</sup> L. Freedman, 'Strategic coercion', in *idem* (ed.), *Strategic Coercion: Concepts and Cases* (Oxford University Press, 1998), 15–36, at 29.

circumscribed. Under such conditions, concession can become increasingly appealing, which is exactly the coercer's intent. This is not to suggest that concession is cost-free, only that, in the face of a threatened or mounting crisis, the anticipation of future pain and mounting costs has to be weighed against the costs and opportunities associated with ending the crisis immediately by conceding to the challenger's demands, which it seems is precisely what happened vis-à-vis the March 2016 deal between the EU and Turkey.

### III The EU–Turkey Migration Deal

Expanding upon a preliminary agreement reached during November 2015, on 18 March 2016, the EU concluded a deal with Turkey to design to help staunch the ongoing migration crisis, prevent further unchecked arrivals and alleviate intra-EU strains on Schengen and the broader European political and economic projects. The EU did so, as one observer put it, 'their backs seemingly against the wall, and in an atmosphere of palpable panic (...) The fact that a group of 28 states with increasingly divergent interests was able to find consensus speaks to the level of concern that leaders have for their own domestic political futures'.<sup>34</sup>

Successful conclusion of the deal came on the heels of a series of threats made by Turkish officials that effectively amounted to 'We're tired of waiting (for help with this problem). Either concede to our array of demands or face the migration-related consequences of failing to do so'. Such threats included Turkish President Recep Tayyip Erdoğan's quip during a speech in Ankara in mid-February that 'We do not have the word "idiot" written on our foreheads. We will be patient but we will do what we have to. Don't think that the planes and the buses are there for nothing'. Erdoğan's blunt statement followed his acknowledgment in the same speech that he had also threatened European Commission President Jean-Claude Juncker at a G20 meeting the previous November that Turkey could send refugees to Europe, [indicating that it could easily] 'open the doors to Greece and Bulgaria anytime and put the refugees on buses'. Erdoğan reportedly further boasted, 'I am proud of what I said. We have defended the rights of Turkey and the refugees. And we told them [the Europeans]: "Sorry, we will open the doors and say goodbye to the migrant"'.<sup>35</sup>

Lest any EU official(s) contemplate backing out of or down from any part of the deal, a month after its official conclusion, then Turkish Prime Minister Ahmet Davutoglu reinforced Turkey's position and signalled its resolve to carry out its threats by announcing at a news conference that 'If the EU does not take the necessary steps, it would be unthinkable for Turkey to do so (...) I don't see much of a possibility of EU taking a step to reverse this process after we have come this far. ...The deal we struck with the EU is very clear. We want this human tragedy to end, our citizens to travel visa free, and the customs union to be updated. [But] if the EU doesn't keep its word, including the migrants deal we will cancel all agreements'.<sup>36</sup>

Consistent with the CEM theory, key EU member states (and the leaders within them) plainly found themselves trapped politically between a rock and a hard place, and the Turks knew it. Germany's particular situation in this regard is illustrative but not unique. In 2015,

<sup>34</sup> E. Collett, 'The paradox of the EU–Turkey deal', *Migration Policy Institute.org* (March 2016), available at <http://www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal>.

<sup>35</sup> 'Turkish president threatens to send millions of Syrian refugees to EU', *The Guardian*, 11 February 2016, available at <http://www.theguardian.com/world/2016/feb/12/turkish-president-threatens-to-send-millions-of-syrian-refugees-to-eu>.

<sup>36</sup> Quoted in Agence France-Presse, 'Turkey threatens to back out of EU migrant deal over visas', *France24.com*, 19 April 2016, available at <http://www.france24.com/en/20160419-turkey-migrant-deal-eu-visa-free-travel>.

German Chancellor Angela Merkel borrowed a phrase, *Wir Schaffen das* (a play on 'yes, we can') from US President Barack Obama's 2008 campaign in support of her open-door policy of allowing up to one million refugees into Germany in 2015. Merkel's unilateral gesture was anticipated to lead to other states following Germany's example, stage one, if you will, of a larger enterprise, intended to catalyse a cascade of European solidarity and burden-sharing. What followed instead was (largely) a cascade of intra-EU buck-passing, emergency defections from Schengen and a significant uptick in the number asylum seekers trying to reach Germany, encouraged by Merkel's publicly proffered welcome. In 2015, the EU reportedly received 1 321 560 asylum claims or about 47 000/EU member state were they actually evenly distributed but of which more than 476 000 were for Germany alone<sup>37</sup>).

A year later, with German public opinion still split but growingly increasingly hostile towards migration and faced with opponents in the elections for regional parliaments in three states, supporters conceded Merkel's *Wir Schaffen das* policy had been a mistake.<sup>38</sup> This was a necessary, if painful, political admission because the election was widely viewed as a sort of litmus test on the controversial policy, especially because migration became the key political issue of the campaign despite the fact that the crisis was only indirectly related to regional state problems. The admission did not suffice to quell discontent. Voters punished Merkel's Christian Democratic Party in all three states—losing control in two of the three—while the anti-immigrant Alternative for Germany Party made noteworthy gains; the Alternative for Germany, already represented in five of Germany's 16 regional assemblies, succeeded in gaining seats in three more.<sup>39</sup> Moreover, as mentioned in the preceding texts, this political state of play was not limited to Merkel's 'refugee welcoming' Germany but rather was by late 2015 a common feature of a variety of EU member state's domestic political landscapes.<sup>40</sup> As Martin Schain put it, because Brussels was 'talking about a distribution directive for bringing these refugees in, [anti-immigrant parties] could pound on Europe [and their domestic pro-refugee counterparts] even harder (...) There's a lot of room for them to have influence over electoral campaigns because European leaders tend to dance around the refugee issue'.<sup>41</sup>

<sup>37</sup> N. Lalwani and S. Winter-Lev, 'Europe's asylum system serves neither the refugees nor the countries. Here's a new way of thinking about it', *Washington Post (Monkey Cage)*, 4 April 2016, available at <https://www.washingtonpost.com/news/monkey-cage/wp/2016/04/04/europes-asylum-system-serves-neither-the-refugees-nor-the-countries-heres-a-new-way-of-thinking-about-it/>.

<sup>38</sup> A poll of 1203 people, fielded from 12–14 January 2016, found that a majority (56%) were dissatisfied with Chancellor Merkel's refugee policies up from 49% in December. A separate survey by the group *Deutschland Trend* for the German state television found that 51% of German adults said that they did not believe Merkel's repeated claim—'we will manage'—that Germany could absorb the inflow, while in October, 48% of respondents had said they had this view. 'Polls show most Germans fear refugee burden too great'. *The Local de*, 15 January 2016, available at <http://www.thelocal.de/20160115/poll-shows-most-germans-fear-refugee-burden-too-great>.

<sup>39</sup> M. Chambers and T. Bellon, 'German voters batter Merkel over migrant policy', *Reuters.com*, 13 March 2016, available at <http://www.reuters.com/article/us-germany-election-idUSKCN0WE0ZQ>.

<sup>40</sup> In addition to Orban's enormously popular Fidesz Party in Hungary, Poland elected one of Europe's most right-wing parliaments in October 2015, and the Danish People's Party captured the second largest block of the Danish vote in June 2015, playing on nationalist sentiment and the promise of preserving benefits for Danish citizens. At the same time, the extreme-right Sweden Democrats—a party founded in the 1980s as a white supremacist group—is now one of if not the most popular party in Sweden. Austria's far-right Freedom Party came second in regional elections in September 2015, and the FPÖ candidate to the May 2016 Presidential elections was a agonistically close second while Greece's neo-fascist Golden Dawn garnered the third greatest share of the vote in both of the country's parliamentary votes in 2015.

<sup>41</sup> M. Schain, quoted in N. Robins-Early, 'How the refugee crisis is fueling the rise of Europe's right', *The World Post*, 28 October 2015, available at [http://www.huffingtonpost.com/entry/europe-right-wing-refugees\\_us\\_562e9e64e4b06317990f1922](http://www.huffingtonpost.com/entry/europe-right-wing-refugees_us_562e9e64e4b06317990f1922).

Fearing a combination of mounting (domestic and supranational) political costs, EU member states found themselves increasingly willing to negotiate and ultimately to accede to a number of what had previously been publicly deemed ‘blackmail’ and ‘outrageous’ Turkish demands.<sup>42</sup> With no end in sight to the influx—and few, if any, realistic options for staunching itself unilaterally—concession became more palatable than the alternative(s). As a commentator in the British periodical *The Spectator* put it: ‘Europe desperately need[ed] Turkey to serve as a migrant waiting room on its borders.... And make no mistake, Turkey [was] well aware of its upper hand in these negotiations’.<sup>43</sup> According to leaked minutes of a meeting between Erdoğan, Tusk and Juncker, Erdoğan said point blank, ‘We can open the doors to Greece and Bulgaria anytime... So how will you deal with refugees if you don’t get a deal? Kill the refugees?’<sup>44</sup> Concession was indeed a choice dictated by ‘overwhelming circumstances’.

In sum, although its instrument of political influence was people not bombs, threats to turn migrants into weapons allowed Turkey to gain valuable bargaining leverage over the EU in a variety of issue areas and to extract a series of concessions related to its previously articulated objectives.<sup>45</sup> While Turkey’s long-sought no-fly zones along the Syrian border have not as of this writing materialized, a number of other concessions were jointly agreed.<sup>46</sup> On the migration front, in exchange for permitting Greece to return to Turkey ‘all new irregular migrants’ arriving after March 20, the EU agreed to assist Turkey in meeting the mounting burden of hosting approximately three million refugees via provision of more than six billion Euros in financial support (up from only three billion Euros on offer in November<sup>47</sup>) and increased resettlement of Syrian refugees residing in Turkey. EU member states will accept one Syrian refugee in Turkey for every one sent back up to a total of 72 000.<sup>48</sup>

European Union concessions were not limited to issues related to migration. Member states also agreed to accelerate visa liberalization for Turkish nationals and to ‘re-energize’ previously moribund talks on Turkish EU membership, with the promise of negotiations

<sup>42</sup> M. Holehouse, ‘EU chief: migrant influx is “campaign of hybrid warfare” by neighbors to force concessions’, *The Telegraph*, 6 October 2015, available at <http://www.telegraph.co.uk/news/worldnews/europe/eu/11915798/EU-chief-Migrant-influx-is-campaign-of-hybrid-warfare-by-neighbours-to-force-concessions.html>.

<sup>43</sup> M. Wilczek, ‘When the EU is no longer able to bribe Turkey, the blackmail will begin’, *The Spectator* (March 2016), available at <http://blogs.spectator.co.uk/2016/03/when-the-eu-is-no-longer-able-to-bribe-turkey-the-blackmail-will-begin/>.

<sup>44</sup> ‘Turkey’s Erdogan threatened to flood Europe with migrants: Greek website’, *Reuters.com*, 8 February 2016, available at <http://www.reuters.com/article/us-europe-migrants-eu-turkey-idUSKCN0VH1R0>. The Turkish leader has since confirmed that he made these remarks; Tusk’s European Council and Juncker’s European Commission declined to confirm or deny the authenticity of the document.

<sup>45</sup> M. Holehouse, ‘Migrant influx is “campaign of hybrid warfare”’, available at <http://www.telegraph.co.uk/news/worldnews/europe/eu/11915798/EU-chief-Migrant-influx-is-campaign-of-hybrid-warfare-by-neighbours-to-force-concessions.html>; V. Pop, ‘EU seeks Turkish president’s help to stop refugee flow’, *Wall Street Journal*, 8 October 2015, available at <http://www.wsj.com/articles/eu-seeks-turkish-presidents-help-to-stop-refugee-flow-1444068094>; ‘EU, Turkey seek better relations at emergency refugee summit’, *AP*, 29 November 2015, available at <https://www.yahoo.com/news/eu-turkey-seek-better-relations-emergency-refugee-summit-164242787.html?ref=gs>.

<sup>46</sup> T. Arango and C. Yeginsu, ‘Turkey seeks buffer zone on the border with Syria’, *New York Times*, 10 October 2014, available at [http://www.nytimes.com/2014/10/10/world/middleeast/turkish-support-of-coalition-fighting-isis-centers-on-border-buffer-zone-.html?\\_r=0](http://www.nytimes.com/2014/10/10/world/middleeast/turkish-support-of-coalition-fighting-isis-centers-on-border-buffer-zone-.html?_r=0).

<sup>47</sup> A figure Turkish officials publicly declared unacceptably modest.

<sup>48</sup> The European Council, ‘EU–Turkey statement’, 18 March 2016, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

on one of five key policy areas to be opened before July of this year.<sup>49</sup> These policy shifts are especially significant because Turkey had been pushing for movement on its EU membership bid for more than a decade to no avail.<sup>50</sup>

The contours of the March agreement also in effect meant that the EU as a whole agreed to recognize and treat Turkey as a safe country of return despite mounting human right violations by the government and crackdowns on the free Turkish press. This decision remains as of this writing hotly contested by human right groups.<sup>51</sup> As Amnesty International's John Dalhuisen put it: 'Far from pressuring Turkey to improve the protection it offers Syrian refugees, the EU is in fact incentivising the opposite'.<sup>52</sup> In short, in addition to economic and political concessions, Turkey gained an international reputational boost—possibly akin, if some critics are correct, to a 'get out of jail free' card—at a time when its government was otherwise subject to increased international scrutiny and criticism as a result of creeping authoritarianism. As a commentator in the *Spectator* opined in early March:

'It is nearly 30 years since Turkey first applied to become a member of the EU. Negotiations in earnest began in 2005, when it was made clear that Turkey would not be admitted until it made serious progress in democratisation and improved its dismal record on human rights. Since then, the country has gone backwards in these respects. Three days before this week's summit, Turkish police raided the offices of the Istanbul newspaper *Zaman*. ... This is just the latest in a series of authoritarian crackdowns: the Turkish state has been imprisoning critics, and turning the screw on Kurdish separatists. Now, if Erdoğan takes the hammer to the Kurds, he can expect the EU to say nothing.' 'Erdoğan's recent behaviour suggests he no longer fears censure from the EU.... The Turkish deal exposes a moral vacuum at the heart of the EU: it is a never-ending compromise between 28 countries who see the world very differently. It is a semi-functioning bureaucracy, driven by panic rather than commitment to any series of beliefs.'<sup>53</sup>

The EU–Turkey CEM-facilitated deal garnered more than the average amount of media coverage, in part because of claims of its illegality and in part because of long-standing hostility to Turkey in some EU member states. However, as suggested at the outset of this piece, the nature of the deal, the coercive bargaining leading up to it and the domestic political dynamics that encouraged the EU to concede to many of Turkey's demands were anything but unique. Not only was this episode far from the first time displaced people (and the fears surrounding their engineered movement) that were used as tools to extract concessions from target states, but it was also not even the first time this dynamic came into play during the contemporary European migration crisis.<sup>54</sup> For reasons I elucidate the next section, it may also not be the last.

#### IV Implications and Conclusions

Weaponing migration is a normatively and materially fraught enterprise, and the costs paid, especially by the true victims of this kind of coercion, the displaced themselves,

<sup>49</sup> D. Robinson and A. Barker, 'EU and Turkey agree deal to return migrants', *FinancialTimes.com*, 18 March 2016, online at <http://www.ft.com/cms/s/0/94314ec0-eca7-11e5-9fca-fb0f946fd1f0.html#ixzz46JWEZ52x>.

<sup>50</sup> 'Q&A: Turkey's EU entry talks', *BBC.com*, 11 December 2006, available at <http://news.bbc.co.uk/2/hi/europe/4107919.stm>.

<sup>51</sup> European Council, above, n.48; Also B. Frelick, 'Is Turkey safe for refugees?', *Human Rights Watch.org*, 22 March 2016, available at <https://www.hrw.org/news/2016/03/22/turkey-safe-refugees>.

<sup>52</sup> 'Turkey "illegally returning Syrian refugees"', *BBC.com*, 1 April 2016, available at <http://www.bbc.com/news/world-europe-35941947>.

<sup>53</sup> 'The EU's deal with Turkey exposes the moral vacuum at its heart', *The Spectator* (March 2016), available at <http://www.spectator.co.uk/2016/03/turkey-is-blackmailing-the-eu/>.

<sup>54</sup> K. M. Greenhill, 'Demographic bombing: people as weapons in Syria and beyond', *Foreign Affairs.com* (December 2015), available at <https://www.foreignaffairs.com/articles/2015-12-17/demographic-bombing>.

can be staggeringly high. There is no gainsaying this uncomfortable truth. Thus, it would be easy to cast Turkey in its role of opportunistic coercer as a singular villain in any narrative of the 2016 EU–Turkey deal. However, it would also be too simplistic to lay the blame for what has transpired in this particular case of CEM solely at Turkey’s door. For several politically expedient but ultimately short-sighted reasons, the EU itself set the stage for, and made itself a prime target in, this latest exercise in CEM—with some help, or more accurately, a paucity of help, from the international community. The deal that was ultimately struck may also not be the end of the story.

As the war in Syria, which began in the spring of 2011, raged on, over time, the refugee camps in Syria’s neighbours grew increasingly overpopulated and undersupplied. According to the UNHCR, about 70% of Syrian refugees in Lebanon were living below the poverty line in 2015, and although fewer in number, more than 85% of Jordan’s Syrian refugees were doing the same.<sup>55</sup> Exacerbating what was for many displaced an already desperate situation, by the end of August 2015, four and a half years into the war, the UN Syria Regional Refugee and Resilience Plan had received less than 40% of the more than \$4.5 billion it said it needed to cover basic humanitarian needs.<sup>56</sup> With limited funding, the UN cut aid provision in many areas, which led to a reduction in essential services, including housing, financial aid, healthcare and food assistance. In the summer of 2015, the World Food Program also announced that it would have to reduce food vouchers given to Syrian refugees in Lebanon by half as a result of funding shortfalls.<sup>57</sup>

In short, worsening conditions in Turkey, Lebanon and Jordan, along with domestic restrictions placed on Syrians living inside and outside camps, contributed to a sense of hopelessness among the refugee populations. This hopelessness in turn fuelled a significant increase in self-driven on-migration from Syria’s neighbours to Europe through Greece’s border with Turkey.<sup>58</sup> According to UNHCR’s Andrej Mahecic, ‘[As] conditions in neighboring countries deteriorated considerably and the protection space [shrunk] rapidly, some Syrians [decided to] to move on [to Europe]’.<sup>59</sup>

For the consequential uptick in numbers arriving in Europe to actually materialize, of course, the Turks had to let the Syrians (and others transiting through Turkey enroute to EU) depart their territory. Yet until flows out of Turkey had reached what became viewed as ‘crisis levels’ inside Europe, the EU and the international community provided few incentives for Turkey or other neighbouring states to stand in the way of on-migration. As international aid organizations routinely lamented, the funding on offer to help defray the costs of hosting upwards of three million refugees (in the specific case of Turkey) was grossly insufficient. At the same time, whenever Turkey or other neighbours closed their borders to those seeking protection, such closures would generate international criticism and opprobrium.<sup>60</sup> So, in effect, Syria’s neighbours were expected to continue to indefinitely provide protection for ever-growing numbers of displaced but without

<sup>55</sup> UNHCR report, 26 August 2015.

<sup>56</sup> H. Grant, ‘UN agencies ‘broke and failing in face of ever-growing refugee crisis’, *The Guardian*, 6 September 2015, available at <http://www.theguardian.com/world/2015/sep/06/refugee-crisis-un-agencies-broke-failing>.

<sup>57</sup> *Idem*.

<sup>58</sup> ‘Time to go’, *The Economist*, 26 September 2015. This assessment has been echoed by M. Kjaerum, Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and former Head of the Danish refugee agency. Discussion with author, April 14, 2016.

<sup>59</sup> S. Erlanger and K. De Freytas-Tamura, ‘U.N. funding shortfalls and cuts in refugee aid fuel exodus to Europe’, *New York Times*, 19 September 2015.

<sup>60</sup> C. Johnston *et al.*, ‘EU urges Turkey to open its borders to Syrians fleeing war-torn Aleppo’, *The Guardian*, 6 February 2016, available at <http://www.theguardian.com/world/2016/feb/06/eu-urges-turkey-to-open-its-borders-to-syrians-fleeing-war-torn-aleppo>.

corresponding credible commitments that they would be assisted in bearing the costs of this increasingly costly endeavour. European leaders finally acknowledged the significance of the funding gap dimension of what was and remains a much larger problem at a EU summit in September 2015, promising an additional one billion Euros to UNHCR and World Food Program to ease the deficit. But by that time, it was arguably far too little, far too late.

Second, while the March 2016 deal seems as of this writing to have significantly reduced the flow of people to Greek shores, its ultimate effect may be less of a staunching than a relocation of outflows and the entry of other coercers into an extended CEM bargaining game with EU member states. By closing off the Greek point of entry, the EU may have simply moved the favoured migration routes eastward up through Bulgaria and westward (back) to Libya.<sup>61</sup> The composition of those departing from Libya at present (a month after the deal was concluded) remains predominantly sub-Saharan African, but that could change. According to Morten Kjaerum of the Raoul Wallenberg Institute, smugglers are already sizing up Libya as an alternative route.<sup>62</sup> Moreover, UNHCR reported, following the EU–Turkey deal that ‘the crossings [from Libya] in March were three times the figure of last year (...) With the door closing on the Aegean, it’s quite possible that numbers will rise,’ and that flows into Italy will rise precipitously in the weeks and months to come.<sup>63</sup>

Ironically, a key driver behind the move to intervene militarily and depose Gaddafi in 2011 was his recurrent threats ‘to turn Europe black’ if the EU did not concede to his own serial migration-related blackmail attempts.<sup>64</sup> However, not only did Gaddafi’s ouster not lead to the end of such blackmail attempts—Libya’s competing government factions have on several occasions made explicit (if latent) threats against the EU<sup>65</sup>—but also led to greater chaos and political destabilization across the region, creating still more displaced people seeking protection and asylum. Libya was a regional hub for migrant labour before the 2011 Arab Spring and the uprising in Libya that grew out of it. Estimates put the migrant worker population in Libya before the 2011 uprising at approximately 2.5 million, including many sub-Saharan nationals. Many labour migrants who initially returned after Gaddafi’s ouster later became trapped as the country fell back into conflict and have opted to try to reach Europe in an effort to escape the growing conflict.

Complicating the situation still further, Gaddafi’s ouster also removed one of Europe’s most effective mechanisms of migration control. As a consequence of a series of (coercively

<sup>61</sup> Keynote address at Suffolk Law School, April 14, 2016; author was a speaker on the same panel.

<sup>62</sup> See, e.g., ‘Italy reports upsurge in migrants crossing from Libya’, *EUObserver.com*, 24 April 2016, available at <https://euobserver.com/migration/132815>.

<sup>63</sup> C. Stephen, ‘Libya faces new influx of migrants seeking new routes to Europe’, *The Guardian*, 9 April 2016, available at <http://www.theguardian.com/world/2016/apr/09/libya-influx-migrants-europe>. As of this writing, at least 100 000 migrants are reportedly already packed into towns and cities along Libya’s western coast, awaiting the end of winter storms and the start of “sailing season.” See also J. Yardley, ‘After Europe and Turkey strike a deal, fears grow that migrants will turn to Italy’, *New York Times*, 16 April 2016, available at <http://www.nytimes.com/2016/04/15/world/europe/after-europe-and-turkey-strike-a-deal-fears-grow-that-migrants-will-turn-to-italy.html>

<sup>64</sup> K. M. Greenhill, ‘Coercive engineered migration: new evidence from the Middle East’, forthcoming, manuscript on file with the author.

<sup>65</sup> C. Freeman, ‘Libya warns it could flood Europe with migrants if EU does not recognise new self-declared government’, *The Telegraph*, 2 November 2015, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/11970313/Libya-warns-it-could-flood-Europe-with-migrants-if-EU-does-not-recognise-new-Islamist-government.html>; B. Garaboli, ‘Libya threatens to open migrant floodgates into Europe’, *The Times* (London), 29 March 2016, available at <http://www.thetimes.co.uk/tto/news/world/middleeast/article4723282.ece>.

obtained) migration and border control agreements signed in the years between 2004 and 2010, Libya effectively served as Europe's coast guard in exchange for the provision of significant financial and in-kind aid. While Gaddafi was a greedy and somewhat unreliable partner in migration management, those who thought that their problems would be solved by his removal from power were unhappily surprised. Not only did his competing replacements pick up where Gaddafi had left off in terms of episodically threatening to flood Europe with migrants and refugees if their demands were not met but also could not be relied upon to guard the Libyan coast and/or punish smugglers under any circumstances.

Furthermore, Gaddafi's removal also created permissive conditions for the Islamic State in Iraq and Greater Syria (ISIS) to move into Libya as well as (at least reportedly) into the migrant smuggling business. Even before the most recent uptick in numbers of refugees and migrants heading Europe, the movement of from the MENA region to the EU had reportedly generated up to \$323 million for the (ISIS) and other jihadist groups.<sup>66</sup> Although the evidence on this front remains sketchy, it has even been suggested that cross Mediterranean migration has proven such an invaluable business opportunity for groups like ISIS that it may launch some of its attacks specifically in order to drive people to flee and then profit from their flight.<sup>67</sup> Moreover, it is worth recalling that in February 2015, ISIS in Libya did itself reportedly threaten to flood Europe with up to 500 000 migrants and refugees were it attacked militarily.<sup>68</sup> Meanwhile, as of this writing, discussions may have begun (anew) to do precisely that.<sup>69</sup>

In sum, while EU chief Donald Tusk hailed the March 2016 deal as the 'end of irregular migration to Europe', this may not be the last exercise in CEM in Europe the world witnesses before the ongoing migration crisis is finally over.<sup>70</sup> Indeed, in attempting to save Schengen and to circumvent a combination of EU- and domestic-level political costs and challenges, member states may have actually made themselves more vulnerable to future migration-driven coercion while at the same time also failing to address either the underlying structural issues or proximate triggers fuelling the migration crisis. As Elizabeth Collett sagely, yet forebodingly, observed:

'The agreement's broader implications are likely too politically remote to seem real to policymakers under pressure.... The idea of returns coupled with large-scale resettlement is beguiling and, from a distance, charmingly simple. But policymakers have viewed the EU-Turkey deal through the lens of the last six months, amplified by concerns over Schengen, rather than the longer scope of the last (and next) five years. The complex and ever-shifting dynamics of migration flows, coupled with the well-documented limitations of existing protection capacity in a broad range of countries (not only Greece and Turkey) suggest the next crisis for the European Union will not be far behind.'<sup>71</sup>

<sup>66</sup> V. Walt, 'ISIS makes a fortune from smuggling migrants says report', *Time*, May 13, 2015, available at <http://time.com/3857121/isis-smuggling/>.

<sup>67</sup> Cited in *ibid.*

<sup>68</sup> Although the sources are sketchy, and should be taken with a grain of salt, see, e.g., Hannah Roberts, 'ISIS threatens to send 500,000 migrants to Europe as a psychological weapon', *The Daily Mail*, 18 February 2015, available at <http://www.dailymail.co.uk/news/article-2958517/The-Mediterranean-sea-chaos-Gaddafi-s-chilling-prophecy-interview-ISIS-threatens-send-500-000-migrants-Europe-psychological-weapon-bombed.html>.

<sup>69</sup> C. Stephens, 'David Cameron under pressure to come clean over plans to send British troops to Libya', *The Guardian*, 16 April 2016, available at <http://www.theguardian.com/world/2016/apr/16/libya-cameron-government-uk-troops-deployment-questions>; E. Schmidt, 'Pentagon has plan to cripple ISIS in Libya with air barrage', *The New York Times*, 9 March 2016, available at [http://www.nytimes.com/2016/03/09/world/middleeast/pentagon-considers-military-options-against-isis-in-libya.html?\\_r=0](http://www.nytimes.com/2016/03/09/world/middleeast/pentagon-considers-military-options-against-isis-in-libya.html?_r=0).

<sup>70</sup> 'Days of irregular migration to EU are over, says Tusk', quoted in *SkyNews.com*, 8 March 2016, available at <http://news.sky.com/story/1655412/days-of-illegal-migration-to-eu-over-says-tusk>.

<sup>71</sup> Collett, above, n. 32.

Choosing to privilege short run, domestic political imperatives over supranational ones can be politically appealing, even unavoidable, especially in times of heightened threat and public anxiety, such as in the aftermath of terrorist attacks such as those in Paris and Brussels. Nevertheless, engaging in what seems like individually rational behaviour can result in suboptimal political, economic and social outcomes both within and across EU member states, especially if and when other individual states follow suit. Pooled sovereignty arrangements impose shared costs in times of adversity as well as confer shared benefits in times of abundance and, if they are to function, members must agree to bear those collective costs. As suggested above, it is easy to blame Turkey for forcing the conclusion of what has been referred to as the ‘pact of shame.’<sup>72</sup> But, as indicated at the outset, such deals are anything but unusual in international politics. Moreover, Turkey has not been alone in engaging in opportunistic coercive bargaining during the ongoing EU migration crisis.<sup>73</sup> It is also, at least arguably, not the only state that has engaged in political reputation burnishing and domestic political games in its (proposed) policy responses to the crisis.<sup>74</sup>

As the Middle East and North Africa region remain mired in conflict and widespread unrest, irregular migration can only be expected to increase in months and years to come—and similar humanitarian and political crises will perforce follow if underlying EU policies and burden-sharing arrangements and, indeed, if the mentality undergirding EU decision-making writ large does not do so. As prognostications about the dangers confronting the Union make plain, individual and collective responses to the current influx are symptomatic of a larger set of underlying political and normative and ethical tensions within and across EU member states. Despite its violent and nationalistic history—marked by devastating wars, ethnic cleansing and genocide—modern Europe is supposed to be a ‘zone of peace’ and a bastion of universalistic liberal norms, a protector and promulgator of human rights and a purveyor of an inclusive, cosmopolitan European identity. Yet when push has come to shove in recent years, EU members have turned on each other, blaming the Union, blaming other Member States and, when not prevented from doing so, eschewed with marked alacrity in many cases their communitarian commitments to liberal norms and humanitarian obligations.<sup>75</sup> Though it has been popular at times to argue otherwise, nationalism in Europe is a fire that has never been fully extinguished. While the ongoing migration crisis has provided more fuel for said fire, it had already been stoked back to life by the Great Recession, the Eurozone crisis and myriad other stresses and strains on the common European project. Whether the EU will emerge stronger and more unified, as could well happen, whether it will simply trundle along, moving from crisis to crisis, as could also happen, or whether the ongoing migration crisis really does pre-empt, as some have suggested, the beginning of the end, lies in the hands of member state leaders and their heterogeneous and increasingly restive publics.

<sup>72</sup> I. Oliveira, ‘Sanchez Wants EU-Turkey “Pact of Shame” Altered’, *Politico.com*, 11 March 2016, available at <http://www.politico.eu/article/sanchez-rajoy-turkey-eu-deal-refugees-migration-crisis-illegal-pact-of-shame/>.

<sup>73</sup> See, e.g., ‘Six Ways the EU as Tried and Failed to Solve the Migrant Crisis’, *The Telegraph*, 27 January 2016, available at <http://www.telegraph.co.uk/news/worldnews/europe/eu/12124225/Six-ways-the-EU-has-tried-and-failed-to-solve-the-migrant-crisis.html>; I. Traynor, ‘Italy Threatens to Give Schengen Visas to Migrants as EU Ministers Meet’, *The Guardian*, 16 June 2015, available at <http://www.theguardian.com/world/2015/jun/15/italy-threatens-to-give-schengen-visas-to-migrants-as-eu-dispute-deepens>.

<sup>74</sup> See, e.g., C. Schnee, ‘Why the Refugee Crisis May Sweep Angela Merkel to a 4th Election Victory’, *The European*, 11 February 2016, available at <http://www.theeuropean-magazine.com/christian-schnee/10721-german-politics-in-the-refugee-crisis>.

<sup>75</sup> See, e.g., the discussion of the power of hypocrisy costs in, *Weapons*, above, n. 10, Chapter 1.