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Current Problems of the European Union Immigration Policy

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The increased number of deaths of migrants in the Mediterranean Sea who try to make their way from the coast of Libya to the southern EU states outraged the international community and demanded immediate action from the European Union. The EU Commission is trying to resolve the crisis by using not only immigration policy tools, but the Common Security and Defense Policy (CSDP) as well. The differences between the Member States prevent finding a proper solution in a timely manner.

Events and debates around the "new" EU program – the "European Agenda on Migration" – have demonstrated that the EU institutions lack sufficient leverage and resources to resolve the issues, which require a comprehensive and integrated approach. The process of development, revision and implementation of immigration laws has revealed all sorts of obstacles to achieving meaningful results. Meanwhile, the immigration problem has been recognized by the EU Commission to be of such high importance that it was detached from the common portfolio of Justice and Home Affairs indicating the EU intention to resolve the problem by various political tools. Politicians and experts began to speak of the immigration policy "failure" due to more frequent, since 2013, cases of deaths of asylum seekers trying to cross the Mediterranean Sea. However, such statements appear to be unjustified. In fact, the EU immigration policy has to employ available means to struggle with the consequences of the ill-considered actions of the European Union in North Africa and the Middle East. This

is why the task of solving migration problems by pulling together the development policy, the CSDP and other, is of particular relevance.

Priorities for Action

The Extraordinary European Council, which met on April 23, 2015, discussed the tragic deaths of migrants in the sea off the coast of Libya and adopted an Action plan, submitted by the Commission, as a starting point for further work. The EU leaders of state and government invited Federica Mogherini, the EU High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission (HRVP), to develop proposals on capturing and destroying the vessels of smugglers before they can be used to transport humans.

The summit participants relied on the Eurostat data on the unprecedented growth in 2014 of asylum requests that were submitted mainly in five EU countries. Italy became the record holder, where the number of applications for the year has increased more than twofold. This number increased significantly also in Germany, Sweden and Hungary.

The situation off the coast of Mediterranean Europe gradually deteriorated following the Arab Spring events and the military operation in Libya in March, 2011. Silvio Berlusconi, the then Prime minister of Italy, warned his EU colleagues of the consequences of strikes on Libya for the immigration situation in the Mediterranean region and the EU in general. However, the expected benefits from overthrowing the Gaddafi regime appeared more appealing than the fear of the influx of immigrants. Earlier, the EU had to make great efforts to achieve cooperation with Libya, which after long negotiations in 2007 finally took on the responsibility to curb illegal immigration from the interior regions of Africa. Following the death of Gaddafi, the gateway opened and an uncontrolled flow of illegal immigrants headed towards the European shores. A few years later the tragedy off the island of Lampedusa had struck, which soon repeated several times and led to a sharp deterioration of the immigration situation and increased criticism of the European Union. Libya gradually became a place for organizing the smuggling of people across the Mediterranean. As of today, 80% of the illegal activities of human smugglers and traffickers start on Libyan shores. They prefer the Central Mediterranean route as the shortest to Malta, Lampedusa and Sicily, despite the fact that migration routes across the Mediterranean are considered to be the most dangerous in Europe.

Following the conclusions of the summit, the Commission has presented on May 13, 2015 the "European Agenda on Migration", which included such measures as securing EU external borders to prevent illegal border crossing; saving lives in the Mediterranean Sea; improving the policy of integration of legal migrants; reforming the asylum system. A month later only one of the above problems can be considered as resolved – the rescue of drowning people in the Mediterranean. As for the quite reasonable proposals by Jean-Claude Juncker, President of the Commission, to improve the efficiency of legal channels to attract immigrants (which Member States still require), – this part of the "Agenda" was, unfortunately, postponed, since these plans seem to the EU untimely in the current crisis situation.

Relocation of asylum seekers and refugees in the EU countries

The main point of the "Agenda" became the relocation of migrants in need of international protection across all EU countries. It was assumed to use art.78.3 of the Treaty on Functioning of the EU for this purpose in order to activate the "temporary protection" mechanism. The Commission developed the criteria for relocating 40 000 asylum seekers from Italy and Greece further in the Member States. It was proposed to determine the number of migrants in relation to 40% of the size of the population of the country, 40% of its GDP, 10% of the unemployment rate and 10% of past numbers of asylum seekers and asylum applications which have already been accepted by the Member States. In accordance with such an approach, the first contenders to receive immigrants became Germany, France and Spain followed by Poland, the Netherlands, Sweden, Belgium, – i.e. those countries which are already under strong migratory pressure. The Commission emphasized that only those applicants will be relocated who really need international protection, which mainly are citizens of Syria and Eritrea. Those, who will not obtain a refugee status, will have to return home. The rest of them will have to hope for the good will of Member states' governments who will volunteer to host a certain number of asylum seekers and ease the burden of their reception, unbearable for Italy and Greece. The Commission is ready to pay 6,000 euros for the relocation of each asylum applicant.

The European Parliament called the proposal on relocation quotas as "historic". However, its implementation encountered obstacles. The main one is the discontent by some of the Member States with the system of relocation of asylum seekers. It is clear that those countries, where the share of asylum applications is already the greatest, are reluctant to accept more applicants.

The plans for the relocation of asylum seekers, agreed at the summit in Brussels on June 25-26, 2015 after emotional debates, revealed serious differences between the Member States and the EU Commission on the procedure of relocation. Meeting strong opposition from a dozen of countries the original proposals of the Commission have been adjusted. The summit conclusions did not mention "mandatory" relocation. At the same time, the EU countries agreed in principle with the quotas, but were strongly against their compulsory implementation, considering this as an infringement of their sovereignty. Refusal to adopt the mandatory relocation system essentially diluted the proposed "Agenda on Migration". The program for voluntary resettlement of refugees had been put into action in the EU in 2008, but so far has failed to produce meaningful results despite the appeals of the Commission for solidarity of the Member States.

The struggle with smuggling humans in the Mediterranean Sea

Following the instructions of the April summit, on May 18, 2015 the Council of Ministers of Foreign Affairs and Defense decided to deploy the EUNAVFOR Med military crisis management operation. Its stated goal was to destroy the business of traffickers and smugglers, carrying people across the Mediterranean to Europe. However, until the very start of the operation, the strategy, the prospects of obtaining the mandate, as well as the

practical implementation of the operation were not clarified. According to the plan, the operation is to consist of three phases. The first phase is – "reconnaissance, gathering information and intelligence" on the routes of the ships and their capacity as well as the smugglers by means of sea and air reconnaissance. The second phase is – "detention and examination of vessels", if there are reasons to believe that their owners are engaged in smuggling migrants. For this purpose it is proposed to get on board the ship, search the vessel, capture it and turn it round in the opposite direction when the ship is on the high seas without a flag or under the flag of the country that has agreed to such actions. The second phase also includes activities in the territorial waters of Libya. This requires the consent of Libyan authorities or a UN Security Council resolution under Chapter 7 of the UN Charter that permits the use of force. During the third phase of the operation, as Federica Mogherini explained, the vessels will be "neutralized", they will become "unfit for use".

She reiterated that the objective of the operation is not so much to destroy the vessels, as to disrupt the "economic model" of the smugglers' organization, for which purpose it is necessary to deprive the smugglers of their means of transportation. At the same time, the crisis management concept refers to "a wide range" of means, including sea, air and land: exploration, tracking, reconnaissance; teams of inspectors, landing resources, means of destruction – sea and air, including special services units. Moreover, the press quoted the document, prepared by the External Action Service of the EU, which warns of the high risk of "collateral" damage, including loss of life. In addition, the "operation is a potential threat to the economic activities of the population of Libya, and may also damage the reputation and image of the EU in the world, if human lives will be lost".

Since it was assumed to carry out reconnaissance on the high seas and airspace, there were no obstacles to start the first phase of the operation upon receipt of the official confirmation of the Council. The second and third phases, however, require compliance with international law and cooperation with the Libyan authorities, which has been specifically emphasized by the HR/VP. The High Representative did not foresee much political resistance from the Security Council members. She repeatedly stressed in her interview that she had discussed this issue with representatives of Russia and China, and that that is why she hoped for a speedy adoption of the resolution. However, Mogherini's hopes did not come true. The discussion of this issue in the UN Security Council dragged along as it proved problematic to obtain the consent of the Libyan authorities to carry out the second and third phases of the operation. The EU decided to seek cooperation not only of the recognized Libyan government in Tobruk, which was considered sufficient for the operation, but with the government in Tripoli, the Misrata and municipal authorities as well, which could have facilitated the passage of the resolution. However, even the Tobruk government did not give immediate consent to the operation. Khalifa al-Goveyl, the head of the unrecognized government in Tripoli, rushed to declare that the EU forces will be rebuffed if they cross the country's territorial waters. Ban Ki-moon, the UN Secretary General, also spoke against the operation supporting his disagreement by the fact that the destruction of the local people vessels will completely deprive them of their livelihood.

Capturing and destroying human trafficker's vessels can provoke armed retaliation that may be supported by those who are somehow involved or have a stake in this criminal business. Therefore it is difficult to reconcile the EU's actions during the operation in the territorial waters or on the coast of Libya in detail since there is a risk that they could further destabilize the political situation in the country, threaten the lives of people, their occupations, and make the impression of supporting one or the other side of the conflicting parties¹.

These considerations are of high importance in the protracted debates over the resolution of the UN Security Council. Russia, in particular, insists on preventing dual interpretation of the mandate in order to avoid repeating the fuzziness of the resolution that has allowed to launch military intervention in Libya in 2011. This circumstance is stressed by Russia's Foreign Minister Sergei Lavrov. He believes that the resolution being prepared must be reconciled to the smallest detail, so that there is no way to violate it, as it had happened previously. At the same time, Russia is keenly interested "in international cooperation on legal regulation of the problem of refugees" to combat the "unscrupulous organizers of this criminal business". Russia is ready to cooperate within the UN to address the migration crisis in the Mediterranean. Vitaly Churkin, Russia's Permanent Representative to the UN, declared that to resolve the situation cooperation was needed in the first place with the countries of the African Union. The latter are not very much inspired by the idea of destroying vessels off the coast of Libya.

Conclusion

Apparently, the EUNAVFOR Med operation will be limited by the first phase which began on June 22 – i.e. gathering information on the smugglers' criminal networks. The prospects for obtaining the mandate to continue the operation will be very bleak provided the UN Security Council really intends to prevent military actions in Libya. Furthermore, even if the smugglers' resistance will be suppressed on the coast, the criminal business will just move to the south. The EU-NAVFOR-ATALANTA operation experience cannot be used in full too, since this time not only pirates and criminals may become the targets, but civilians as well. The crisis is expanding in a conflict-ridden area of chaos and instability neighboring with Europe and this is only the beginning of the crisis. The situation in Africa and the Middle East will not be improving. The region is under very strong demographic pressure, distressed with poverty and competition for natural resources. The influence of terrorist organizations under the banner of the Islamic State is growing².

The Commission's proposal on the quotas forced to participate in the debates on finding a solution those countries, which previously acted as if what was happening did not concern them. The migration crisis and the debates around it revealed the indisputable fact that the EU needs to strengthen legal migration channels, which, handled properly, can bring a positive effect to the economy. Heads of state and government will have to decide what

¹ Faleg G., Blockmans S. EU Naval Force EUNAVFOR MED sets sail in troubled waters. 26.06.2015

² Migrant crisis is just beginning. <https://euobserver.com/opinion/129298>

number of migrants their countries are able to accept. Those failed asylum seekers who are being expelled from EU countries need to return somewhere. The problem of the growing influx of migrants cannot be resolved without stabilizing the situation in the neighboring region. In addition to the immigration policy, the EU will have to use the tools of common foreign policy, development policy, employment, education. The EU will have to draw financial resources in the strife-torn region. Only then can we talk of a "new" immigration policy, which is not limited to the Justice and Home Affairs, but includes virtually all areas of activity of the European Union and its Member States.

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