New 2023 preface to What boundaries do we need?

Refugees and the 2021 German Coalition Treaty

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"An ethical judgment that is no good for practice must equally suffer from a
theoretical defect, for the whole purpose of moral judgments is to guide practice."
Peter Singer, *Practical Ethics*

Since the end of the 1940s, Germany, Austria and Switzerland have not taken in as many
refugees in any year. In 2022, Germany granted protection to one million Ukrainians who fled
to Germany after Russia's attack. Furthermore, in 2022, about 100,000 asylum seekers,
including more than 75,000 from Syria and Afghanistan, already received protection at first
instance. Others were granted protection by the courts in the second instance and in 30,000
cases, most of them Afghans, a ban on deportation was established in 2022.

Thus, in 2022, Germany was again among the leaders of all countries worldwide in the granting
of protection. Austria was even ahead of Germany, with Switzerland close behind. The Lake
Constance countries thus remain a crucial pillar of international refugee protection.

This brings challenges for municipalities, authorities and policy-makers. These require
innovative action to preserve as broad a consensus as possibile for the right of asylum in
Europe's democracies. That is what this book is about.

A necessary revolution

The coalition agreement of the German traffic light (*Ampel*) government, presented in autumn
2021, calmly announces a huge ambition: "We want to shape a new beginning in migration and
integration policy that does justice to a modern immigration country. For this, we need a
paradigm shift."

When the philosopher Thomas Kuhn popularised the term paradigm shift in the 1960s, it was
about revolutions in thinking. Kuhn wrote about the change from a geocentric to a heliocentric
view of the world. About the transition from Newton's theories to those of Einstein. It was about
discarding old approaches and about real ruptures.

A paradigm shift is a revolution in thinking. This book also argued for a paradigm shift when
it was first published in autumn 2020, one year before the German federal elections. Twelve
months followed, in which I tried to convince people in positions of responsibility of the ideas
and advice presented here. A positive media response and invitations to appear on some well-
known German television programmes helped. Nevertheless, these are never any substitutes for

face-to-face conversations that allow one to address the critical questions of those who do not only have to support a new policy but would also have the responsibility to implement it.

The first politician in Berlin to whom I was able to present this book in a Bundestag canteen in autumn 2020 was Anna-Lena Baerbock. I visited the then Secretary General of the CDU, Paul Ziemiak, in the Adenauerhaus in Berlin, Minister President Armin Laschet near Bielefeld, ministers of the Bavarian state government in Nuremberg and Munich. I spoke with the former Minister of the Interior of Lower Saxony, Boris Pistorius, in his office in Hanover and with the then Integration Minister of North Rhine-Westphalia, Joachim Stamp, in Düsseldorf. From Lörrach to Wuppertal, from Saarbrücken to Dresden, I discussed migration and asylum with politicians, civil servants and parliamentarians, in state parliaments and in the Bundestag, with sea rescue workers, in churches, at universities and in companies.

Everywhere I began by describing a dramatic situation at the EU's external borders, a status quo which should be unbearable for every citizen of Europe. I then made the appeal that you will find in the introduction to this book: for a "new generation of migration agreements", needed to preserve the core of the 1949 *Refugee* Convention, the "non-refoulement imperative" (*The Swiss Border and Refoulement,* page 54) and to restore the orientation of state policy towards human dignity also at the external borders of the European Union.

Migration agreements are the politically most important alternative to a policy of violence and pushbacks at Europe's external borders. They are the key to combining "freedom of movement and security, freedom and control": "Successful politics must always present solutions that convince majorities. Not sometime, but now; not somewhere, but at all the EU's external borders, from the Western Mediterranean to the Aegean, off Lampedusa as well as in the mountains of the Balkans".

After the Bundestag elections in September 2021, coalition negotiations took place. Coincidentally, I had spoken at length several times with many of the negotiators on the topic of migration in all three traffic light parties - with Boris Pistorius, Joachim Stamp, Frank Schwabe, Erik Marquart. Now, to my surprise, I was invited at short notice by all three parties as an expert to their negotiations. The email noted that I was to address the issue of migration agreements, "mainly the possibilities of extending the EU-Turkey deal as well as a readmission agreement with Tunisia and the issue of transfers of migrants coming to the EU via Belarus to Ukraine and Moldova."

I prepared a background paper with my colleagues in the ESI office in Berlin-Kreuzberg, entitled: "Proposals to Save the Refugee Convention." I brought copies of it to the windowless room of the Baden-Württemberg State Representation in Tiergartenstraße on the morning of 5 November 2021, where the twelve representatives of the three parties were sitting and negotiating and drafting the migration chapter.

The ESI paper quoted the just released exploratory paper of the traffic light negotiators: "We acknowledge the humanitarian responsibility that arises from the Basic Law, the Geneva Refugee Convention and the European Convention on Human Rights. From this we derive the task of making efforts with our European partners to end the deaths in the Mediterranean as well as the suffering at Europe's external borders ... Agreements with third countries on migration should help in this."

But how were such goals to be achieved? In the year of the coalition negotiations, from January to August 2021, more than 1,200 people had already died in the Mediterranean. Reducing this

horrendous death toll, while respecting all valid human rights conventions, required a completely new strategy. And this had to be done without delay.

In a short presentation, I referred to the experience of the EU-Turkey declaration of 2016, when the number of deaths in the Aegean fell from over 1100 in the twelve months *before* 18 March 2016 to less than 100 in the twelve months after. The turning point that led to a thousand fewer deaths in one year was a simple press statement on 18 March 2016.

Of course, reducing the number of deaths has never been the only goal of a humane border policy. Inhumane reception conditions, as they existed in the hotspots on the Greek islands, as well as systematic violence and pushbacks of asylum seekers in the Aegean Sea by border guards since March 2020, also violate elementary human rights, human dignity and can claim human lives.

The crucial question in the Aegean was then and remains now: how can the number of deaths there be permanently reduced to zero, *without* deterrence through horrific reception conditions, and *without* suspending the right of those who arrive to make an asylum application and to see it fairly examined? Which proposals on this are capable of gaining majority support?

This, I went on to explain, was politically challenging. A coalition built around Germany had to make Turkey a new offer that was attractive enough to get the government in Ankara to actually become a true *Safe Third Country* for those to be returned, and this not just on paper. Turkey was not there in autumn 2021. The goal of German and European policy had to be to change this by making attractive offers to Turkey. At the same time, Greece had to be persuaded to stop its pushbacks and all illegal violence at its external borders.

Humane control, fewer deaths, achieved without *refoulement*: these goals could only be achieved through successful migration diplomacy. This is true at all borders. Concrete steps were needed everywhere to reduce the number of deaths in the entire Mediterranean from thousands to "less than 100 per year."

It was necessary to convince the Italian government to resume the coordination of the rescue of shipwrecked people in the central Mediterranean through its competent Maritime Rescue Coordination Centre (MRCC) in Rome. In order truly to reduce the suffering of migrants, it was necessary to stop the cooperation with the Libyan coast guard, on which Italy had relied since 2017. It was also necessary to actively support state and private sea rescue again, including directly by the German state.

But why would an Italian government agree to all this? Only if, at the same time, this approach also succeeded in reducing the number of people crossing the sea in boats. For this, it was crucial to reduce irregular migration across the Mediterranean. The experience in the central Mediterranean from 2014 to 2017 was clear:

> "Never before have there been so many rescue ships and so many rescue operations coordinated by the Italian coast guard; in 2016 alone, more than 181,000 people were brought to Italy. And yet once again, the strategy to prevent deaths failed. The number of drownings reached a tragic high: the deadliest six months from May to October 2014 were joined by the deadliest year in 2016, with 4581 deaths, and the deadliest two years from May 2015 to April 2017. From these figures, an obvious conclusion follows: the more people put themselves in rickety wooden boats or inflatable dinghies, the more people died." (page 23)

In the Aegean Sea, the aim was thus once again quickly to return arrivals to a Turkey that was a safe third country, after a cut-off date and following an inadmissibility procedure, in order to discourage others from boarding boats in the first place. In the central Mediterranean, the aim was quickly to return arrivals to a safe third country after another deadline and an individual assessment, and not, even indirectly through the Libyan coast guard, to Libya, which had become the EU's most important partner in migration control since 2017.

Finally, I called for countering the brutal blackmail policy of the regime in Belarus on the eastern border of the EU, which began in the summer of 2021, *not* through pushbacks and violence, but also through cooperation with other safe third countries. Countries ready to accept those who reached Poland via Belarus in autumn and winter 2021 for asylum procedures. This proposal was then picked up by German politicians in autumn 2021. It found its way into the coalition agreement. Nevertheless, it never came to pass. No serious negotiations with possible safe third countries were started and no offers were made.

The dreaded alternative was already obvious at the time of the coalition talks. The Polish government was as determined as the Greek government had been to react with force, violence and pushbacks to the irregular migration to the EU initiated by President Lukashenko. This had often fatal consequences for migrants at the Polish border, which was described as the "Hell of Bialowieca" (*Die Zeit* in November 2021). In this way, Poland's border with Belarus became a crime scene: here pushbacks, *refoulement of* men, women and children, were openly practised by a member state of the EU, without any criticism from other states or the Commission. Thus, a dangerous idea gained support: that it is also possible in the EU to simply ignore valid conventions, laws and court rulings at EU external borders. That the human dignity of migrants and asylum seekers is no longer sacrosanct.

There was a consensus among the negotiators of the coalition agreement in November 2021 that such a development had to be avoided. That it was necessary to focus instead on migration agreements, rather than illegal pushbacks; on strategic transfers to Safe Third Countries to discourage irregular migration, rather than violence; on fast asylum procedures at the EU's external border wherever *such agreements existed*, rather than deterrence through inhumane centres. It was about offering an alternative to the status quo of violence. And thus safeguarding the foundation of the EU as a community of values and human rights.

All this raises big questions. Is any strategy whose goal is to reduce irregular migration morally defensible? Is such a strategy ever implementable? Was it right to recommend migration agreements on the EU's eastern border in autumn 2021, and to advise talking about them with Ukraine, Moldova or Georgia? Is it realistic to rely on returns to Safe Third Countries in the Mediterranean as an alternative to the already existing cooperation with Libya? Are there any safe third countries in the world anywhere outside Europe?

The success of the German coalition government depends on the answers to this question. After all, the agreed coalition agreement set a clear goal: to reduce irregular migration through migration diplomacy. Will it succeed?

The paradigm shift in the 2021 coalition agreement
in extracts

"We want to shape a new beginning in migration and integration policy that does justice to a modern immigration country. For this we need a *paradigm shift* ...

We will reduce irregular migration and enable regular migration.

We stand by our humanitarian responsibility and the *obligations* arising from the Basic Law, the Geneva Refugee Convention (GRC), the European Convention on Human Rights (ECHR) and European law ...

We want to conclude new practical and partnership-based *agreements* with key countries of origin in compliance with human rights standards.

These agreements are to include an *overall concept* such as the expansion of economic cooperation, technology transfer, visa facilitation, qualification measures for the German labour market, job exchanges and cooperation on the return of rejected asylum seekers ...

The federal government appoints a *special representative to* shape such migration agreements."

Then the goal of reducing arrivals is highlighted a second time:

"We want to *effectively reduce irregular migration* and combat the causes of life-threatening flight. We want to *end* illegal refoulement and *the suffering at the external borders ...*

We want to prevent people from being instrumentalised for geopolitical or financial interests. That is why we advocate *for migration agreements with third countries* based on the *rule of law* and within the framework of European and international law.

To this end, we will examine whether it is possible to establish protection status *in third countries in* exceptional cases while respecting the Refugee Convention and the ECHR.

On the way to a common functioning EU asylum system, we want to lead the way with a *coalition of* receptive member states and actively contribute to other EU states taking more responsibility and complying with EU law ...

It is a civilisational and legal obligation not to let people drown. Civilian sea rescue must not be hindered. We strive for a state-coordinated and European-supported sea rescue in the Mediterranean and want to further develop measures such as the Malta mechanism with more countries.

We strive for a fair sharing of responsibility between the Mediterranean littoral states in sea rescue and want to ensure that people are taken to *safe places* after rescue ...

We will strengthen orderly *resettlement* procedures based on needs reported by UNHCR."

The reality of asylum and deportations

The vast majority of those who applied for asylum in Germany in 2022, as in the years before, were either granted asylum or came from countries to which all European countries including Germany hardly ever deport anyone, regardless of whether the Ministry of the Interior in Berlin was headed by Thomas de Maiziere, Horst Seehofer or Nancy Faeser.

The vast majority of asylum applications, more than 80 per cent, were filed in Germany in recent years by citizens from the same 10 countries: Syria, Afghanistan, Iraq, Turkey, Georgia, Somalia, Eritrea, Iran, Nigeria and Russia.

In 2021, 120,000 people from these ten countries submitted one of 150,000 asylum applications in Germany. In 2022, there were 180,000 out of 220,000 applications. The increase in applications between 2021 and 2022 is almost entirely explained by the growth in asylum applications from citizens of these 10 countries. At the same time, however, there were and are almost no deportations to these countries.

Among these countries, there is one that stood out: Georgia. This country, which benefits from visa-free travel to the EU for its citizens, cooperates in the readmission of its citizens. There were just over 1,000 deportations to Georgia in 2021. There were not many more to the other 9 countries combined.

What, then, might any promise of a "deportation offensive" as in the Coalition Treaty actually mean? That not 52 (as in 2021) but 152 people would be deported to Iraq in 2023? That the number of repatriations to Somalia would increase from 13 (2021) to 130 (2023)? In 2021 there were still a few controversial deportations to Afghanistan, 167, but these have ended since the Taliban seized power. The same applies to deportations to Russia since the Ukraine war.

Even a fivefold (!) increase in deportations to these most important asylum-seeking countries would only be a few thousand people a year. In view of the large number of people who received protection in Germany in 2022 (especially from Ukraine), this would not relieve any burden on German municipalities.

Of course, on the one hand an asylum system in which final asylum decisions have no consequences does not make much sense: in that case, one could dispense with procedures, as the EU did with Ukrainians in 2022 for good reason. However, at the external borders this would have the foreseeable consequence of reinforcing the systematic pushbacks that already existed in Poland or Greece. But if some deportations are necessary, those who call for them must remain realists.

The argument in favour of strategic deportations is that these - within the framework of migration agreements limited to the deportation of convicted criminals or to new arrivals afrer cut-off dates - could reduce actually life-threatening irregular migration across the sea and thus save lives without relying on human rights violations. When negotiating migration agreements, the task of the new Special Representative Joachim Stamp, appointed at the beginning of 2023, includes the aim to deport convicted criminals. The second goal, however, would be to reduce future irregular migration, for example across the Mediterranean.

Today, most discussions on deportations as a response to the historic refugee crisis that Europe is currently experiencing turn out to be confused and unfocused, reminiscent of the proposals to close the so-called "Balkan route", made by Viktor Orban and Sebastian Kurz in 2016.

Some then suggested that the EU agency Frontex should be sent to the borders of the Western Balkans to stop migrants there. This remains absurd, since even today almost all states in the EU are pushing for Bulgaria and Romania to join the Schengen area as soon as possible, resulting in there no longer being any border controls between Greece and Germany. What would Frontex officials do on the green border between northern Macedonia and Serbia if there are no more borders all around the EU-enclosed Western Balkans? In fact, the opposite strategy would be more promising: to focus only on the EU's actual external borders with Turkey, to negotiate agreements there through migration diplomacy and to present all Western Balkan states with a roadmap to join the Schengen area soon, after carrying out the required reforms.

Anyone in Germany and Europe 2023 who suggests today that more deportations would noticeably relieve the burden on municipalities, in a situation where 9 out of 10 refugees admitted in 2022 came from Ukraine, is thus raising expectations that are unrealisable. This only helps those populists who are already driven by fear and anger against allegedly traitorous elites. No democratic party in Germany can want that.

What would be needed instead? A message that helps centrist politicians arm themselves against populists. Measures that actually help. A concrete vision for the future, as contained in the coalition agreement of the Ampel.

The most important message in 2022 should therefore be that this historic refugee crisis in Germany and Europe was 80 percent a result of Putin's war. The only way to prevent this crisis from getting worse was to support Ukraine. Then Ukrainians would no longer be forced to flee in even greater numbers.

An important measure would therefore be a better distribution of Ukrainian refugees still to come. By the end of 2022, Baden-Württemberg had taken in more Ukrainians than the whole of France, and the Czech Republic more than France, Spain and Italy combined. One way to change this would be to support families in France, Spain, Italy and elsewhere by paying them a monthly gratitude lump sum (of about 500 euros) for taking in and privately accommodating refugees, as is already done in Ireland and the UK. Germany, under the leadership of the German Chancellor, should lobby for this at an EU migration summit: to launch a Europe-wide initiative with the French President to mobilise private, state-supported reception.

A second measure would be to accelerate the asylum procedures for all those who hardly have a chance to get asylum *and* whose countries of origin have an incentive to immediately take back citizens from Germany obliged to leave the country: this holds for both Georgia and Moldova. The concrete goal: there should be hardly any asylum applications from these countries by the end of 2023.

And finally, there should be attractive offers to the most important transit countries at the European border, Morocco, Tunisia and Turkey, to motivate them to take back asylum seekers arriving irregularly via the Mediterranean Sea following cut-off dates. The UNHCR could then carry out the asylum procedures for the returned asylum seekers there.

This would reduce life-threatening irregular migration. In parallel, legal mobility and the admission of refugees through resettlement should be expanded, as also envisaged in the German coalition agreement. It is a vision for the future already outlined in the coalition agreement: to reduce irregular migration and promote legal migration. Germany should then also work to expand legal mobility with African countries. More controlled and legal mobility

from partner countries in Africa would make geopolitical sense and would strengthen the common interest in reducing irregular migration in return.

Instead of pushing people into the asylum system, the EU should also prepare for a transition to full free movement for Ukrainians - after the end of temporary protection - as well as for people from the Western Balkans, Moldova and Georgia.

Today, in the face of record numbers of refugees and asylum seekers in Germany and elsewhere in the EU, deportations are only a blunt instrument. If we want to solve problems, restore the rule of law at the EU's external borders, and not give populists further ammunition, we need migration summits that propose practicable solutions based on facts. For this, we need a grand coalition of reason for humane control, in Germany as well as in Europe.

A breakthrough in the English Channel?

Is it *moral to* want to reduce irregular migration to the EU in this way? Is it in line with refugee law? And, even if it is, is it *realistic*? Or is the talk of safe third countries, of rapid repatriations and of a new migration diplomacy in the end naïve at best, and a cover-up for policies of violence already practised at the EU's external borders at worst? Because, as I am told by many serious critics, there simply are no safe third countries in Africa, the Middle East or the entire non-Western world that would be willing to cooperate with the EU on such a strategy.

Let's start with morality and law. And let's discuss them on the basis of a concrete proposal about one of Europe's borders in 2023: the English Channel between France and the United Kingdom. The numbers here are remarkable, and they have been rising fast. In 2018, fewer than 300 irregular migrants crossed the English Channel from France to the UK. In 2022, there were 46,000. The number continues to rise and could reach 60,000 or more this year.

Irregular boat crossings in the English Channel

Year	People
2018	299
2019	1.843
2020	8.466
2021	28.526
2022	45.756

Behind these numbers lies a dangerous reality. Two European democracies are unable to exercise control over a border that has turned into a veritable crime scene under their very eyes. Smugglers, demanding thousands of euros, put men, women and children in unstable rubber boats, sometimes in bad weather. Hundreds of British and French police, border guards and coast guards try to stop them. Caught in between are people like Maryam Nuri Mohamed Amin, a 24-year-old woman from a peaceful town in northern Iraq, who put her life in the hands of such smugglers early one morning in November 2021, drowning in freezing water as her boat sank.

Maryam's motive was love: after obtaining a visa for Italy, she wanted to move in with her fiancé, who lived in the UK.[1] Instead, her dead body was returned to grieving relatives in Iraq.[2] That day, French Interior Minister Gérald Darmanin spoke of an "absolute tragedy that fills us

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[1] BBC, "Canal disaster: Kurdish woman identified as first victim", 28 Novermber 2021.
[2] France 24, "In Iraqi Kurdistan, family mourns victim of deadly shipwreck in English Channel", 29 November 2021.

with rage".[3] 31 people died in an accident.[4] In other ways this was "a day like any other" (Darmanin) on the English Channel. 780 French police officers were monitoring the coastline that Wednesday.[5] The British Maritime and Coastguard Agency was alerted 90 times that day and 250 people crossed the Channel in rickety boats.[6] Since then, the situation has spiralled out of control. In August 2022, almost 1,300 people crossed the English Channel in a single day. In 2022, many more people crossed the English Channel to get to the UK than crossed the Atlantic and Western Mediterranean to get from Africa to Spain. In January and February 2023, about 3,000 people crossed the Channel. This was more than twice as many as in the same period last year.[7] If nothing is done to change the situation in 2023, many more people will cross the channel and even more people will die.

But if there is one external border of the European Union where it should be possible to show immediately *how* humane control of irregular migration could work, it is here, in the English Channel. Both the UK and France are prosperous democracies based on the rule of law and safe for asylum seekers. What is missing is the right plan. This would be the first test for German migration diplomacy.

In late 2022, my ESI colleagues and I presented a plan in European capitals. We called it the Channel 40,000 Plan.

[3]   New York Times, "At least 27 dead after migrant boat capsizes in English Channel", 24 November 2021.

[4]   The Guardian, "A timeline of migrant channel crossing deaths since 2019", 14 December 2022.

[5]   The Telegraph, "The day our luck ran out: How the migrant tragedy unfolded in the English Channel", 24 November 2021.

[6]   New York Times, "At least 27 dead after migrant boat capsizes in English Channel", November 2021.

[7]   UK Home Office, migrants spotted in small boats crossing the English Channel

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The English Channel 40 000 Plan

This outlines an agreement between the UK and France that would have an immediate impact and reduce the number of crossings of irregular migrants and asylum seekers across the Channel. It aims to restore control while fully respecting international law and the European Convention on Human Rights.

We propose negotiations between the UK, France and other interested EU Member States to reach a declaration on the Channel based on the following principles:

- The UK is offering to take in up to 40,000 recognised refugees or asylum seekers a year over the next three years who have (family) ties in the UK. It should be possible to apply for these legal routes to the UK from France and other EU countries.

- France agrees to readmit to the United Kingdom all persons leaving its territory irregularly as of a certain date. It is up to the UK authorities to take decisions on inadmissibility that take into account the fact that France is a safe third country. The aim of these returns is to remove all incentives to attempt irregular entry into the UK, in compliance with UK and international law.

- Germany and other member states that support such an arrangement - such as the Netherlands, Belgium and Denmark - should be able to join this declaration.

Such cooperation is in the interest of the UK, France, Germany and other EU countries, as well as the UNHCR and refugee rights organisations.

When will the paradigm shift come?

So far, the paradigm shift announced in the coalition agreement - less irregular, more regular migration - is only on paper. The challenge now is to implement this, save lives, reduce irregular migration and preserve the important human rights conventions. It is about migration agreements, more actual Safe Third Countries, and more legal admissions. It is also about sustainably reducing the number of deaths in the Mediterranean and restoring the rule of law at the EU's external borders.

Until that happens, I hope this book will continue to provide readers with arguments, facts and examples to help them advocate for humane borders in our democracies.

There is a lot at stake.