

The governance of forced migration is driven primarily by concern for the human rights of the displaced. Discuss

Owing to increasing regional conflict, natural disasters, and state human-rights violations the migratory movement has presented challenges to host nations within the international society (Farahat, & Markard 2016, 924) and revealed discrepancies in the governance of forced migration. Before addressing our criteria, it is important to consider the parallels in the relationship between the governance of forced migration and the norms, values and principles that shape it. As such, in this discussion, the EU will be evidenced as an international society whose asylum policy encompasses these competing interests – namely the pluralist/solidarist debate. This response will, thus, draw on the English School approach to support that solidarist principles of protecting the human rights of the displaced (to sustain EU cosmopolitan values of social justice) are engaged in an ensuing tension with pluralist incentives that optimise the agency of states to further their national interest (to maintain the security of EU borders and citizenry). Ultimately, due to the evolving nature of these socially constructed norms, the governance of forced migration into the EU cannot be driven by one concern, instead the society experiences transitional periods in which the pluralist or solidarist motives are given certain emphasis. Accordingly, the Covid-19 pandemic will be used to demonstrate this shift, whereby EU member states have prioritised the public health of their citizens (Eminoglu, Unutulmaz, & Özerim 2020, 61) rather than subscribing to the commitments under international law – particularly the non-refoulement policy. Hence, the structure of this discussion will show that whilst initial solidarist and cooperative norms pledges were institutionalised into international refugee law and diplomacy, presently, motivated to deny the ‘sharing of the burden’ pluralist tendencies have developed via reinstating norms of sovereignty and citizenship – reflecting governance that attends to the concerns of state interest.

A plausible argument to support the solidarist prevalence in the EU’s governance of forced migration is the members’ adherence to international refugee law, particularly the principle of non-refoulement as outlined in the 1951 Convention and the 1967 Protocol (UNHCR, 2007). Here, under a common understanding of protecting the rights of refugees, the EU encompasses the cooperation between state and non-state actors and institutionalises this norm by certifying its commitment under The Tampere European Council 1999 (Haddad 2008, 191). By legally binding member states to these statutes, the normative ethical

aspiration to protect the human rights of the displaced became legitimised and formed a critical part of an international society which placed special value on justice for the individuals within. However, as the population of forced migration increases and places more social, political, and economic pressure on the receiving nation, EU member states' interests have instead shifted towards concerns for their domestic politics. Essentially, international law has become exposed to this dynamic of changing norms and cannot guarantee to uphold the initial normative principles of the society since its efficacy is constrained by the agency of states. For instance, the EU's response to the Covid-19 crisis witnessed a disengagement with the resettlement, protection, and human rights of asylum seekers in light of a new objective that prioritised the public health of the state's citizens against the COVID-19 pandemic (Eminoglu, Unutulmaz, & Özerim, 61). Notably, Unutulmaz and Özerim provide evidence of how these concerns were implemented into EU policy and hence, how they defy the legal commitment to the non-refoulement of asylum seekers. For instance, "Italy's closure of some ports assigned to rescue ships carrying asylum-seekers" and "the shutting down of reception centers and suspension of interviews by Belgium on March 18" demonstrate that international law can be manipulated by a prioritisation of state interests and its normative values, and thus, cannot enforce refugee governance based on primary solidarist concerns (Eminoglu, Unutulmaz, & Özerim, 61).

Similarly, whilst the reproduction of solidarist principles through engaged state cooperation within diplomatic institutions reflects the EU's initial commitments, the solidarist underpinnings of these pseudo-institutions have also become susceptible to normative changes. Principally designed to support the UN's commitments to social justice, which Knudsen suggests functions supplementarily to the EU's solidarist agenda, the EU's reification of these values through "diplomatic dialogue and legal codification" (Knudsen 2019, 179) indicates that governance of migratory movements had intended to provide humanitarian protection (Knudsen, 179). However, despite these intentions, the social construction of these norms means that principles within the society are unable to remain fixed and can instead be replaced by evolving values and interests among members. This is particularly relevant in multilateral organisations, where diplomatic discourse greatly influences the direction of asylum policy. Hence, owing to the multitude of secondary institutions, diverging political dialogues have reduced coordination efforts and instead, made state divisions become "too pronounced for them to act as a basis for developing habits of global cooperation" (Newland 2010, 337). This is evidenced by the European Commission's

failed attempt to reinstate solidarist initiatives through the Pact on Migration Asylum 2020 whereby member states “can sponsor a refugee return, or ‘help’ receiving states with expertise or practical help” (Freedman 2021,7). Rather, a greater consensus was established to tighten EU border controls and deflect asylum responsibility. Multilateral governance thus became limited in its objective to protect the human rights of the displaced, owing to competing interests within the organisations.

Thus, facing increased pressure from the rising numbers of asylum seekers within their borders, the national interests of states have not only dominated the discourse surrounding EU migration governance, but they have also led to the reinstatement of state sovereignty in a crucial attempt to maintain order in the Union. Consequently, solidarist principles of ‘sharing the burden’ between states have been overshadowed by some EU member states committing to more pluralist and unilateral ventures via introducing restrictive measures against asylum seekers (Farahat, & Markard, 925). Such measures have constituted a securitisation of migration (Bello 2022, 1327-13144), where EU states have implemented a “restrictive, control-oriented approach” (Haddad, 196) in order to hinder migratory movement into their borders and have ultimately refrained refugees from claiming their right to asylum. Additionally, ensuing from budgetary constraints and as a result of The Dublin Convention (1990), southern European “frontier” (Trauner 2016, 315) states have been placed in a disproportionate position of responsibility to process the refugees upon their first point of arrival to Europe (Trauner, 313). These circumstances have heightened the importance of state agency and became particularly pronounced in 2015 with the ‘domino’ effect of reintroduced border controls within the Schengen area (Byrne, Noll & Vedsted-Hansen 2020, 874), following the “spontaneous and involuntary” (Farahat, & Markard, 924) migration of Syrian refugees. The character of this forced migration thus, motivated states (notably frontier countries) to adopt a realist approach of ‘self-help’ – revealing an “absence of sincere cooperation” (Byrne, Noll & Vedsted-Hansen, 877-88) with solidarist frameworks such as the Common European Asylum System (CEAS), The 1990 Dublin Convention and essentially, EU *acquis* (Byrne, Noll & Vedsted-Hansen, 877-88).

Crucially, states’ assertion of their sovereign right to defend their borders rather than focusing on the processing of asylum seekers became more profound during the response to the Covid-19 pandemic and exposed the ensuing tension between the EU’s cosmopolitan values (the freedom of movement within its internal borders) and the state’s pluralist incentives. This

normative shift justified by defending territorial control became legitimised via the implementation of “non-entrée policies” (Byrne, Noll & Vedsted-Hansen, 876) including carrier sanctions that focused on maintaining border security against refugee inflow (Byrne, Noll & Vedsted-Hansen, 876). Additionally, by adopting the spread of the virus as a threat to their citizenry, member states began to externalise their border controls (Müller-Funk, Fröhlich, and Bank 2020,6) and shifted asylum responsibility and resettlement to neighbouring states – further weakening the observance of humanitarian norms. Consequently, disregard for commitments aimed at protecting asylum seekers became apparent during the pandemic, witnessed either by the heightened insecurity faced by refugees in between borders or their risk of greater exposure to contracting the virus (Freedman 2021, 94). Claims for sovereign control of their territory and borders to protect state interests and maintain internal order within the EU, therefore, precipitated a restrained governance of forced migration that disadvantaged the protection of asylum seekers during the Covid-19 pandemic.

Furthermore, owing to these evolving norms, the shift towards pluralist-centred approaches can be explained by the influence that perceptions and categorisations of migrants have had on the way that forced migration is currently governed. As we have seen, there has been an increasing emphasis placed on domestic concerns and national interest which have discredited the solidarist principles that the humanitarian institutions (UNHCR for example) seek to uphold, and which have led to a dismissal of the human rights owed to the displaced. This has largely been due to the politicising discourse centred around the growing pressure felt by receiving nations - particularly the less financially stable countries which have experienced lower standards of living following the 2007-2008 Financial Crisis (Trauner, 313). Consequently, asylum seekers have been disadvantaged by the process of categorisation, led by state-endorsed perceptions representing them as either security threats (Madel 1997, 80) or economic migrants seeking to take advantage (Crawley & Skleparis 2018, 49). Thus, this negative discourse has encountered a process of legitimisation in the form of exclusionary citizenship – entailing restrictive governance that defies the EU’s cosmopolitan values and commitments that aim to protect the human rights of the displaced. Not only has this categorisation affected the interaction of EU citizens and migrants (evidenced by the “rise in xenophobia, racism and violence” towards migrants (Trauner, 313)), but it again reveals how institutions can be manipulated to satisfy states' interests. Hence, despite the legal definition of a ‘refugee’ being conserved by the 1951 Convention,

“prejudicial narrative(s) of migration” (Bello, 1328) produced by damaging media narratives (based on preconceived notions of European identity) has transpired into discriminatory asylum policies based on differing interpretations of between a ‘refugee’, or an economic ‘migrant’ (Crawley & Skleparis, 49). This subjectivity of legal terminology has allowed states to implement exclusionary asylum policies based on norm-driven categorisation and ultimately, has denied groups of refugees the right to resettlement or protection (Crawley & Skleparis, 49). The mutually constitutive relationship between perceptions and categorisation has, therefore, resulted in restrictive and exclusive governance of forced migration which reflects a “simplistic dichotomy” (Crawley & Skleparis, 52) that instead challenges the traditional EU solidarist norms of an “open, tolerant and multicultural society” (Mandel, 86).

In conclusion, the current governance of forced migration into the EU demonstrates the competing tension between “normative aspirations and national interests” (Müller-Funk, Fröhlich, and Bank,6) through which the Covid-19 pandemic and the rise in migration has heightened the shift towards the adoption of pluralist strategies. Although initial commitments to protecting the rights of refugees remain under international law (as institutionalised by the 1951 Convention and the 1967 Protocol) and whilst they are further engaged within secondary institutions, the role of normative values takes precedence in the implementation of state asylum policy. State divisions, refusal to ‘share the burden’, and restrictions based on a perceived threat have therefore revealed the “liberal paradox” (Hollifield 2004, 885) within the EU’s cosmopolitan-driven society. Thus, whilst normative principles privileging the human rights of the displaced are maintained by the “pillars of the existing system” (Trauner, 317), the extent to which states value their national interests affects the direction of asylum governance. Governing forced migration in an international society is therefore multifaceted and contends with a tension that attempts to balance international order and social justice – “with order claimed as a solution to the ‘first’ problem of political life, and justice as the ‘first virtue’ of social institutions” (Macdonald 2023, 65).

Bibliography

1. Brems Knudsen, T. (2019). Fundamental Institutions and International Organizations: Theorizing Continuity and Change. In: Brems Knudsen, T., Navari, C. (eds) *International Organization in the Anarchical Society*. Palgrave Studies in International Relations. Palgrave Macmillan, Cham: 175-202.
2. Byrne, R., Noll, G., & Vedsted-Hansen, J. (2020). Understanding the crisis of refugee law: Legal scholarship and the EU asylum system. *Leiden Journal of International Law*, 33(4), 871-892.
3. Crawley, Heaven & Skleparis, Dimitris (2018) Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe's 'migration crisis', *Journal of Ethnic and Migration Studies*, 44:1, 48-64.
4. EMİNOĞLU, Nihal, K. Onur UNUTULMAZ, and M. Gökay ÖZERİM. "International Society and Its Institutions in Refugee Protection during the COVID-19 Pandemic: Revisiting the Solidarism / Pluralism Debate in English School." *Uluslararası İlişkiler / International Relations* 17, no. 68 (2020): 55–72.
5. Farahat, Anuscheh, and Nora Markard. "Forced Migration Governance: In Search of Sovereignty." *German Law Journal* 17, no. 6 (2016): 923–48.
6. Freedman, J. (2021) Immigration, Refugees and Responses. *JCMS: Journal of Common Market Studies*, 59: 92– 102
7. Haddad, Emma. "The External Dimension of EU Refugee Policy: A New Approach to Asylum?" *Government and Opposition* 43, no. 2 (2008): 190–205.
8. Hollifield, James F. "The Emerging Migration State." *The International Migration Review* 38, no. 3 (2004): 885–912.
9. Macdonald, Terry (2023) Political justice in a complex global order: rethinking pluralist legitimacy, *International Affairs*, Volume 99: 1, pp61- 79.
10. Mandel, Robert. "Perceived Security Threat and the Global Refugee Crisis." *Armed Forces & Society* 24, no. 1 (1997): 77–103.
11. Müller-Funk, Lea, Christiane Fröhlich, and André Bank. "State(s) of Negotiation: Drivers of Forced Migration Governance in Most of the World." *German Institute of Global and Area Studies (GIGA)*, 2020.
12. Newland, Kathleen. "The Governance of International Migration: Mechanisms, Processes, and Institutions." *Global Governance* 16, no. 3 (2010): 331–43.
13. Trauner, Florian (2016) Asylum policy: the EU's 'crises' and the looming policy regime failure, *Journal of European Integration*, 38:3, 311-325.

14. UN High Commissioner for Refugees (UNHCR), Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007. available at: <https://www.refworld.org/docid/45f17a1a4.html>
15. Valeria Bello (2022) The spiralling of the securitisation of migration in the EU: from the management of a 'crisis' to a governance of human mobility?, *Journal of Ethnic and Migration Studies*, 48:6, 1327-1344.