

## The European Union, migration and global justice



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### Summary

As a global and transnational phenomenon, migration requires global multilateral responses. Being a quasi-post-Westphalian, multilateral entity that has mainstreamed the respect of human rights in its policies, the EU would in principle be well suited to contribute to a just global governance of migration. On the contrary, an evaluation of the implementation of the EU Migration System of Governance (EUMSG) on the basis of multiple criteria for justice reveals a weak performance which risks damaging the EU's credibility significantly. A list of recommendations are identified to cope with these shortcomings.

Migration is a global phenomenon with global and regional roots that requires global and regional responses shaped in multilateral settings and including all affected actors. However, migration is one of the areas where multilateralism is lacking, both at the regional and the global level. Moreover, in this policy area, arrangements achieved often eschew co-determination and significant voices are unheard.

As for Europe, immigration pressure is expected to stay high due to trends in the economic, social, political and technological realms. At the same time, the European region is expected to suffer ageing populations and a demographic decline with deep implications on social and economic sustainability in the case of zero net migration. Despite this, European countries have undertaken measures to fight irregular immigration, strengthen the external border and reduce the ratio of accepted asylum claims, especially after the migration crisis of 2015 and in the current socio-economic situation. At the same time, these countries have not adopted significant measures to increase regular migration or enhance migrant workers' rights. On its side, the EU, has adopted policies aimed at reducing the number of arrivals, rather than finding long-term multilateral responses to a phenomenon which would also contribute to Europe's demographic and socio-economic needs.

The gap between migration policies and demographic trends in the European Union Migration System

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of Governance (EUMSG)<sup>1</sup>, however, is not the only suboptimal result of the governance of migration in the EU. The image of the EU as an international actor capable to contribute to global justice also suffers a negative effect as a result of these restrictive migration policies. This policy brief aims at showing how and why this is the case by evaluating the performance of the EUMSG since the 2015 ‘crisis’ through the categories of justice proposed in the GLOBUS project<sup>2</sup>. In other words, this policy brief aims to respond to the following question: Is the current EU’s contribution to the global and regional management of migration ‘just’, and under which criteria of justice? It does so by drawing some conclusions from the research conducted within the project Reconsidering European Contributions to Global Justice – GLOBUS (2016-2020).

## What migration justice for a coherent EU?

Migration is a complex phenomenon that sits at the border of spheres of rights (citizens’ rights; cosmopolitan human rights; specific rights of people in need of special protection). It is also at the crossroad between the justice claims of different stakeholders (the host communities, the migrants,

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<sup>1</sup>Migration policy in the EU is the result of a complex system of governance which includes EU institutions and the states part to the Schengen area. For an explanation of the actors and competences in the EUMSG, see Lucarelli, S. (2020) “The EU Migration System and Global Justice: An Introduction”, in Ceccorulli, M., Fassi, E., Lucarelli, S. (eds) (2020) *The EU Migration System of Governance - Justice on the Move*, Palgrave, in print; Fassi, E., Lucarelli S. (eds) (2017) *The European Migration Systems and Global Justice. A First Appraisal*, GLOBUS Report 1, ARENA Report 2/2017. ISBN 978-82-8362-010-8.

<sup>2</sup>Eriksen, E (2016) ‘Three Conceptions of Global Political Justice’, [GLOBUS Research Paper 1/2016](#); Sjursen, H. (2017) ‘Global Justice and Foreign Policy: The Case of the European Union’, [GLOBUS Research Paper 2/2017](#).

the countries of origin). In the case of the governance of immigration in the EU, the web of justice claims is made even more complicated by the participation in the multilevel governance of states with different historical experiences, variegated legislative frameworks, distinct statuses in the EU, and different migration flows. All these elements contribute to different sensitivities when it comes to the justice claims of different stakeholders.

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Despite this complexity, there are two elements that, on paper, would put the EU in an ideal position to combine the justice claims of different subjects: its multilateral character, and the focus on human rights in all its policies.

The EU is itself a multilateral entity in which the meaning and practice of internal borders and citizenship have significantly changed. One would therefore expect the EU to be particularly well equipped to deal with migration in a multilateral manner, attentive to different claims in terms of rights, equal partnership and proper recognition, thereby contributing to the advancement of political institutions and procedures allowing appropriate regional and global governance.

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At the same time, the centrality of human rights, as one of the mainstreamed policy aims of the EU, would in principle work as a guideline in case of possible clashes between different justice claims.

Hence, on the basis of the EU's long term self-representation and practices (upon which its credibility has been constructed), we argue that a just migration policy on the side of the EU would imply the ability to combine four core elements:

1. The avoidance of forms of domination over other states' sovereignty ('justice as non-domination');
2. The respect for human rights ('justice as impartiality');
3. Due respect of specific needs of migrants and third countries ('justice as mutual recognition');
4. Preference for multilateralism<sup>3</sup> over bilateral or ad hoc arrangements.

## **EU and non-domination: any justice advanced?**

From the perspective of justice as non-domination, a migration policy is just to the extent that it respects other countries' sovereignty and does not lead to interferences or subjugation of control over other states. The justice claims of citizens in the host community have the priority over other claims. How has the EU performed according to this justice criterion? Has the EU given priority to EU citizens' justice claims and avoided domination over third

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<sup>3</sup> According to John Ruggie, multilateralism is 'an institutional form which coordinates relations among three or more states on the basis of 'generalized' principles of conduct [...] without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence' (1993, 'Multilateralism: The Anatomy of an Institution' in Ruggie, J.G. (ed.) *Multilateralism Matters: The Theory and Practice of an Institutional Form*, New York: Columbia University Press, 11).

countries?

Since 2015, the EU has launched a new and much needed phase of cooperation with third countries (enhancing in particular partnerships with Sub-Saharan countries), providing new impetus to the external dimension of migration with both short and long-term measures. However, as these agreements have been driven mainly by a concern for reducing irregular immigration, they have aimed at short-term and high impact results, with the main objective being to reduce pressures on European shores. As a consequence, the external dimension has been mainly geared at protecting the internal community, with cooperation with third countries framed accordingly. The preoccupation with the protection of the integration achievements (Schengen) and of the internal community has hence mainly driven the external dimension, emphasising non-domination as a justice criteria. Third countries have thus been considered as equal partners essential for properly coping with migration.

Overall, this raises three main points. First, the EU has disbursed funds and strengthened cooperation with supposedly reliable partners even when cooperation displayed the potential for major outbursts. The cooperation with Turkey serves as a case in point. Recently (March 2020), Turkey threatened to flood the EU with asylum seekers in what was described as blackmail by several EU member state representatives.<sup>4</sup> Incidents like this have only underscored the problems with the EU's wish to fix 'once and for all' unwanted arrivals through agreements with 'questionable' third countries.

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<sup>4</sup> <https://www.reuters.com/article/us-syria-security-eu-turkey-exclusive/exclusive-eu-fumes-at-turk-migration-blackmail-mulls-more-money-for-ankara-idUSKBN2oQ2EK>

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Second, the urgent need to show effectiveness on cracking down irregular immigration has resulted in a proliferation of informal settings of cooperation. These settings have been criticised in terms of policy design, implementation, budget allocation and overall transparency. The EU-Turkey Statement of March 2016 and the Joint Way Forward between the EU and Afghanistan of October 2016 are examples of such informal arrangements.

Third, equality with the EU's partners is questionable at best: conditionalities (for example in the projects financed by the EU Trust Fund for Africa) only add to the clear subordinated positions of third partners. For most of them, cooperation with the EU on many dossiers (political, economic, military, development aid) is paramount and unavoidable (such as in the case of cooperation with Libya and Afghanistan).

To summarise, although largely inspired by an understanding of justice as non-domination, the EUMSG has put some third countries in a position where they are dominated. At the same time, it has added to the asymmetric power relation with third countries in exercising pressure to enhance border control and reduce arrivals to Europe.

### **Human rights above all? The EU and justice as impartiality**

The second type of global justice – impartiality – adopts a cosmopolitan perspective that puts individuals at the centre stage: men and women are the ultimate units of moral concern. In the field of migration, impartiality would imply the acceptable treatment of migrants and asylum seekers mainly according to international (and EU) laws and conventions and on non-discrimination with respect to EU or member state nationals.

The positions adopted and policies undertaken by the

EU in the last years have clearly reduced the number of irregular arrivals by sea and land, but they have also caused other problems. The policies have raised concerns over the destiny of stranded migrants (in the Balkans, in the Greek islands or at the border with Croatia and Bulgaria) and over the conditions of refugees and of migrants kept in official and informal detention structures in transit countries (such as in Turkey, Libya but also Niger). They have also raised concerns over the fate of smuggled, or of likely-to-be smuggled migrants, and of those who never make it to cross the national borders. Further, the EU's criminalisation of NGOs from the migration crisis onwards is also shading a dark light on the Union. This approach seems to disregard the fundamental humanitarian role performed by these actors. The ambiguous approach to the new naval operation EUNAVFOR MED Irini, to be deployed in the Mediterranean after the discontinuation of Sophia (opposed by some for its potential role as magnet on migrants), seems to blur EU's commitment to 'save lives' first.

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Likewise, cooperation with third countries is pursued as if human rights protection could be delegated by simply disbursing funds or building-up capacities to increase protection standards abroad. To the contrary, the efforts to increase legal channels of



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entrance have been poor. Such legal channels of entrance could have responded to the need to reduce irregular immigration, and to allow easy entrance for persons in need of protection (who often and quite paradoxically escape from countries whom the EU engage with, such as Libya). Against this background, initiatives taken to implement European humanitarian corridors under the advice of countries that have already experience large migration flows (such as Italy) are to be applauded and encouraged.

To summarise, the performance of the EUMSG has been poor if evaluated through the lenses of justice as impartiality. This externalisation of migration has exposed migrants to vulnerable and uncertain conditions and has jeopardised the legitimacy of EU migration policy.

### **A chorus or a solo? The EU and justice as mutual recognition**

Justice as mutual recognition implies considering migrants as agents and not simply spectators in the governance of migration; it implies recognising their subjectivity.

In the EU migration governance, the voices of migrants have remained mostly unheard. Opportunities to enhance the stakeholders' subjectivity have been missed. For example, the missed reform of the Dublin Regulation in the direction called for by the European Parliament in 2017<sup>5</sup> has wiped out an opportunity to provide migrants with full recognition of their agency and autonomy. Furthermore, a stark discrepancy has proven to exist between asylum seekers' own perception as refugees and EU's effort at categorising them somewhere between genuine asylum seekers and irregular immigrants. For example, Afghan

<sup>5</sup>The suggestions by the European Parliament would de facto overcome the first country of arrival rule allowing a greater role to asylum seekers on the choice of the preferred country.

asylum seekers are increasingly categorised as not in need of international protection, despite their own self-representation as refugees.

In a similar way, the EU has had difficulties recognising the specific context-based needs of its partners. Hopes to promote context-sensitive institutional frameworks taking into account specific social, political and economic dynamics have been overshadowed by the necessity to produce immediate (although short-term) effects. Consequently, context specificities and related needs have often been disregarded. A case in point are the projects funded under the EU Trust Fund for Africa, where African countries rather seldom have a say over project decisions, or in the case of the EU's approach against smuggling networks in Libya, which is advanced regardless of the complex reality on the ground and of potential local backslides.

All in all, the EUMSG does not score well from the perspective of justice as mutual recognition, neither with respect to migrants, nor with respect to other actors involved in or affected by its policies.

### **Evaluating the EUMSG according to support of multilateralism and global governance**

Global governance and multilateralism are weak in the area of migration, with a regime existing only in the refugee domain (and often working poorly), and a loose, fragmented, polarised and not comprehensive forms of cooperation in the broader mobility area. However, the adoption of the Global Compact for Safe, Orderly and Regular Migration and the one for Refugees signed in December 2018 have been important steps in the direction of an enhanced global management of migration in favour of a 'human development' approach.

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The EU is not only a recognised pillar of multilateralism, but represents a case of successful multilateralism. It is precisely for this reason that the recent inabilities of the EU to contribute to the global multilateral management of migration represents a major setback to its credibility as a norm-maker.

The enthusiasm that accompanied the UN-led effort (The Global Compact for Migration) and the EU's aim at speaking with a single voice through the European Union External Action Service (EEAS) clashed with Member States' (Hungary foremost) reluctance to yield to Brussels on migration governance. The failure to participate in the Global Compact as a single entity was the symptom of underlying problems for the Union. Internal discrepancies over the interpretation of fundamental values, such as the possible and peaceful coexistence of different cultures, and over the positive contribution of migration to sustainable development, have not gone by unnoticed.

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We could also add, more pragmatically, that for a Union that aims to be enmeshed with geopolitics, the absence at the UN negotiating table has taken away the opportunity to reaffirm itself as key and proactive global actor. The abstention and the negative vote of many member states to the final document

clearly underlined the lack of that geopolitical vision necessary to cope with a reality of ever increasing mobility.

Hence, also from the perspective of multilateralism, the EUMSG's performance has not met the expectations of the EU as a contributor to global justice in the area of migration.

## Conclusion and recommendations

Evaluated from the perspective of global justice, the EUMSG's recent performance has been poor. The only exception is the perspective of justice as non-domination, which has only partially been respected. The cost of this is high for a polity like the EU that has constructed its international role and legitimacy around the idea of being a post-Westphalian actor, prioritising the cosmopolitan respect of human rights, and contributing to the strengthening of the global multilateral governance.

The von der Leyen Commission has given wide coverage to the field of migration, for example through new initiatives, such as the New Pact on Migration and Asylum. Consequently, it is important that the EU and member states make changes to the European system of migration governance.

The EU should make efforts to enhance internal solidarity. Solidarity is indispensable for the EU not to collapse, as the other recent crises that the EU has undergone (economic and Covid-19) have shown. Insistence on solidarity as the backbone of the EU's project could work against the lack of impartiality shown above. A regionalisation of rescue efforts in the migration field would be a first effort and a major step in the right direction.

The EU should also de-securitise the field of migration. The securitisation of migration,

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undertaken particularly by some national governments, underscored by the media and by some EU migration practices, has complicated the issue of migration and has made the reception of migrants in European societies more difficult. This has led to a push for quick solutions that are not necessarily sustainable.

Further, the EU should launch a comprehensive plan aimed at managing migration rather than simply stopping it. At least, two fundamental steps should be taken. First, the EU should start re-working the revision of the Dublin Regulation in a way that puts migrants at the centre and that entices internal solidarity. Migration and asylum should be discussed in an all-encompassing manner rather than in interior ministries of member states only. Second, the EU should entice legal channels of entrance in the EU as key component of the external dimension to migration. This dossier is by far the most underfunded and overlooked among the measures proposed by the 2015 Agenda on Migration. Concurrently, the next EU-budget (2021-2027) should envisage appropriate dedicated funding.

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The EU should further engage at several levels of the multilevel global governance. In particular, the EU should enhance its contribution to the global governance of migration. It would be essential to renew commitment to truly multilateral efforts attentive to all the stakeholders. When needed, a variable geometry format for decision-making is to be

allowed. The EU should also reframe its cooperation with third states. The EU should avoid delegation of protection and should apply a ‘human-development’ approach to migration in line with the intent of the Global Compacts for Migration and Refugees and the 2030 Agenda for Sustainable Development. More funds have to be put into the overall external dimension of migration, while their use should have ‘human -development’ as rationale.

Finally, the EU should not compromise on human rights. The EU must ensure protection of migrants and asylum seekers’ fundamental rights both in the EU and in third countries. In March 2020, the EU failed to do this during a new surge of arrivals at the borders of Greece. The EU has also been ambiguous when it comes to member states using the pandemic as a reason for restrictive migration policies. The need for change is urgent also because the Corona-crisis and its effects may stay with us for quite some time.<sup>6</sup>

At stake is the credibility of the global liberal governance and the EU itself.

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<sup>6</sup> Ceccorulli, M. (2020) ‘The EU and Covid-19: Overcoming the lockdown mindset on migration’, [Global Justice Blog](#).

## Further reading

- Ceccorulli, M. (2019) 'Back to Schengen: The Collective Securitization of the EU-Free Border Area', *West European Politics*, 42(2), 302-322.
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- D'Amato, S. and Lucarelli, S. (eds) (2019) *Talking migration: Narratives of Migration and Justice Claims in the European Migration System of Governance*, Special Issue of *The International Spectator*, 54(3).
- Fassi, E., and Lucarelli S. (eds) (2017) *The European Migration Systems and Global Justice. A First Appraisal*, [GLOBUS Report 1](#).

## Policy recommendations

We suggest that the EU

1. Enhances internal solidarity as the backbone of the European project
2. De-securitises migration in order to ensure better conditions for migrants and long-term solutions
3. Launches a comprehensive plan aimed at managing migration rather than simply stopping it. This should be done through reforming the Dublin Regulation and enticing legal channels of entrance to the EU
4. Engages in the global governance of migration
5. Reframes its cooperation with third states to avoid delegation of protection and to ensure a 'human development' approach
6. Ensures protection of the human rights of migrants and asylum seekers both in the EU and in third countries.

Reconsidering European Contributions to Global Justice (GLOBUS) is a research project that critically examines the EU's contribution to global justice.

GLOBUS studies the contents and conduct of the EU's external policies with a focus on climate justice, migration, trade and development, peace and conflict resolution, gender and human rights.

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