70 Year Protecting People Forced to Flee

Short regional panel reports

Region: Europe

Hosting/organising institution: ASILE Network

Session Title: Unpacking EU Asylum Policy in light of The UN Global Compact on Refugees: The Impacts of Containment on Trust and Refugee Protection

Context/Background of the panel:

The UN Global Compact on Refugees (GCR) constitutes a unique world-wide framework of cooperation on refugee protection to assess and examine EU asylum policies.

The adoption of the New Pact on Migration and Asylum by the European Commission reveals the continuation of previously existing asylum policies focused on containment, including through the conclusion of non-legally binding arrangements with third countries and the mobilization of EU external funding to support initiatives aimed at fostering protection in the regions of origin of refugees.

Simultaneously, the Pact promises increased refugee mobility by promoting resettlement and complementary pathways to protection.

This Session assessed the most recent developments in EU Asylum Policy through the lens of the UN GCR core guiding principles: international refugee protection and human rights. It examined the ways in which EU policies focused on 'contained mobility' affect trust in internal and external EU asylum policies. Particular attention was paid to the ways in which refugee voices and agency could be better reflected in EU asylum decision-making dynamics.

This Session falls within the scope of the [Horizon 2020 Project ASILE](#) (Global Asylum Governance and European Union's Role).

Major points arising from speakers and discussions:

Roberto Cortinovis introduced the session by stressing how EU policy developments on asylum over 2020 have been influenced by evidence of systematic and often violent rejections of asylum seekers at EU borders – so-called 'pushbacks'. In parallel, the outbreak of the Covid-19 pandemic has led to the introduction of border controls and travel restrictions, which have made increasingly difficult for people in need of protection to seek asylum in Europe.

Against this backdrop, the European Commission presented its new Pact on Migration and Asylum last September. The Pact legislative proposals aim to establish more effective and integrated asylum and return procedures at the border and envisage a new system of internal solidarity within the EU. He concluded by pointing to the need to analyse relevant policy and legal developments in Europe through the lens of the UN GCR.

Rosemary Byrne addressed the issue of solidarity and fair sharing of responsibility in EU asylum policy in light of the principles and commitments made in the GCR. The principle of solidarity in the GCR highlights international community's commitment to support both refugees and their host communities; this dual objective is very important and it is important

to ensure that one is not at the expense of the other. She mentioned that Europe is central to a lot of discussions concerning the application of the principle of solidarity because it has a very developed regional system which can become a focal point for other countries or regions. The New Pact adopts a flexible approach to solidarity, which gives member States alternative ways to contribute rather than relocation, including by providing assistance to each other in carrying out return of migrants with no right to stay. However, this approach could be seen as diluting the 'spirit' of solidarity. Prof. Byrne suggested that the focus on the Pact on limiting access to asylum in the EU has an impact on neighbouring countries of transit, which risk becoming 'buffer' States forced to accept asylum seekers who are refused entry into the EU. She mentioned the humanitarian disaster in Lipa camp in Bosnia and Herzegovina as a situation that underlines the negative effects and limits of current EU policy responses.

Jens Vedsted-Hansen addressed in his intervention whether current EU asylum policies under the New Pact are in line with the GCR principles and objectives. He underlined the need to uphold key protection standards when designing effective asylum procedures. He highlighted the potential negative impact of some measures envisaged by the New Pact protection standards. The is a significant risk that the expanded use of safe country notions may become a 'self-fulling prophecy' , in particular when this notions are automatically applied in the case of asylum seekers coming from countries with low a recognition rate. Proposals to establish a pre-entry screening and border asylum procedures raise a number of issues concerning respect of procedural rights of applicants. The expanded use of border procedures may also lead to systematic and large-scale detention of asylum seekers. All these elements highlight quite clearly the risk of diluting protection standards in the context of the procedures proposed under the New Pact.

Audrey Macklin drew a comparison between the Canadian and EU asylum models, Canada being a State which is both praised and criticized for its asylum practices. Unlike the EU, Canada is geographically isolated from refugee-producing countries, does not have a regional or multilateral framework on human rights or asylum, and immigration is part of the national narrative, and considered as a necessary and vital component to economic and social development of Canada. Canada has a bilateral safe third country agreement with the United States, which is based on the same logic of the EU Dublin system. The agreement has been challenged as violation of Canada's Charter of Rights and Freedoms before Canada's Federal Court, in the same way the Dublin system has been challenged before the Court of Justice of the EU.

Under the GCR, Canada supports Refugee Status Determination (RSD) processes in Central America, refugee self-reliance, and complementary pathways. Canada's resettlement practices have been widely praised, but resettlement is based on voluntary commitments which can be turned off at any moment. Prof. Macklin also remarked that private sponsorship programmes run the risk to 'privatize' resettlement, it also holds the potential to foster solidarity between private citizens and refugees.

Meltem İneli Ciğer contrasted the GCR and its model of cooperation with the language of the EU Pact. The GCR speaks of offering better protection to refugees through solidarity with refugees and states hosting large number of refugees. On the contrary, the EU Pact proposals place emphasis on return, readmission, efficient and fast procedures, even redefining solidarity to include cooperation in the field of returns. This erodes the meaning of solidarity and cooperation. Solidarity should be about protecting refugees and the displaced, not about return. Return has become a central theme in European migration management. She gave

the example of the 2016 EU-Turkey Statement which raises legal and humanitarian issues. She stressed that if the EU really wants to align its policies with the GCR, it needs to rethink its understanding of solidarity and cooperation with third countries by focusing on protecting, not returning, people.

Mohammed Badran addressed the need for meaningful refugee participation in policy making processes. He spoke of the spike in solidarity in 2015 in response to the emergence of photos (including of Alan Kurdi). Since then, the solidarity has changed, has underlined by the lack of attention to the situation in Moria. He pointed out that the GCR dedicates four paragraphs to meaningful refugee participation. Meaningful refugee participation is essential and should feature in any policy which aims to improve lives of refugees on the ground, as it is the first step needed to achieve self-reliance of refugees, as well as better cooperation between different stakeholders. He ended by stating that if we don't take refugee voices seriously, if we don't see them as active agents, we will create vicious cycles of ineffective policies that repeat themselves without bringing about the expected improvements.

Anila Noor emphasised Objective 4 of the GCR - return in safety and dignity - in light of strategy formulated by the EU policy in new Pact. She argued that the EU Pact is not seen by the refugee community as actually assessing refugee needs, but rather as a tool to force communities to return. She questioned how the concept of "voluntary" return is being developed without properly addressing the needs of refugees and asylum seekers. What is needed is a proper understanding of what means "safety" and constitutes "voluntary" in the context of return. Refugee voices are needed to achieve an adequate understanding of what these concepts mean. She stated that the human element is missing from the EU approach, as policy language becomes more complex. Narratives need to change, as migrants are still seen as burden.

Nikolas Feith Tan addressed the main features and key issues of EU arrangements with third countries of transit in field of asylum. He suggested that, while EU third country arrangements clearly overlap with some of the GCR objectives, so far those arrangements do not reflect a significant engagement or substantial alignment with the Compact. He highlighted a clear informalization trend in EU cooperation with third countries since 2015, which raises questions of transparency and accountability within the EU legal order. The strong focus on containment of the EU approach means that although mobility opportunities is present in some of these arrangements, they remain small in scale and ad hoc in nature. This makes access to international protection even more pressing in transit countries and there are several questions concerning the actual availability of adequate protection in those countries. He ended by suggesting that more research is needed to explore the legal limits of EU arrangements with third countries and on the applicability of international refugee law, human rights law and EU law standards in the external dimension of EU arrangements.

Recommendations/Conclusions on the way forward *(These should be actionable and directed to specific actors where possible):*

To policy-makers: there is a need for actual meaningful refugee participation in policies which affect refugees, in particular those aimed at improving the quality of protection and improve self-reliance.

Warnings on dangers of EU policies driven by containment approach that may dilute protection standards. Also, a voluntary and flexible approach to solidarity may lead EU States to 'pick and choose' responsibilities. GCR should be used as lens to test whether implementation of Pact is in line with the Compact guiding principles, grounded in international refugee law, and its overall objective to enhance solidarity with refugees and their host communities.

Concerns that the priority of containing and limiting refugee mobility to and within the EU could lead to repetition of humanitarian disasters (as in the case of Lipa or Moria)

The emphasis on increasing the number of returns in the EU pact needs to better consider what is meant by "voluntary" and "safe" by including refugee voices in their understanding of these terms.

To academics and researchers: there is a need for further research on the applicability of international refugee law, human rights law and EU law standards in the context of EU arrangements with third countries.

Top two quotations from the session:

Mohammed Badran: "If we don't take refugee voices seriously, if we don't see them as active agents, then we will have vicious cycles of policies that repeat themselves without improvements."

Rosemary Byrne: "Solidarity is central to the Global Compact on Refugees… Solidarity as applying to both refugees and host states. This dual objective is very important - one cannot be at the expense of the other."

Meltem İneli Ciğer "If the EU really wants to align its asylum law and policies with the GCR, it needs to rethink its understanding of solidarity, its cooperation with third country and focus on protecting, not returning, people."

Acknowledgments: