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External ambition, internal tensions: the EU's justice contribution to the Global Compact for Migration

This is the final peer-reviewed author's accepted manuscript (postprint) of the following publication:

Published Version:

Michela Ceccorulli (2022). External ambition, internal tensions: the EU's justice contribution to the Global Compact for Migration. Abingdon : Routledge [10.4324/9781003026341-9].

Availability:

This version is available at: <https://hdl.handle.net/11585/883633> since: 2022-05-01

Published:

DOI: <http://doi.org/10.4324/9781003026341-9>

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(Article begins on next page)

This is the final peer-reviewed accepted manuscript of:

Michela Ceccorulli, *External ambition, internal tensions: The EU's justice contribution to the Global Compact for Migration*, in *The EU's External Governance of Migration Perspectives of Justice*, 1st Edition, 2022, Routledge, pp. 153-168

The final published version is available online at : [10.4324/9781003026341-9](https://doi.org/10.4324/9781003026341-9)

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9 External ambition, internal tensions

The EU's justice contribution to the global compact for migration

Michela Ceccorulli

Introduction

A key attempt at cooperation in the realm of global migration governance, the Global Compact for Safe, Orderly and Regular Migration (GCM) evolved from a joint declaration signed in New York in 2016 to the final document endorsed by United Nations (UN) Member States in December 2018, as a pioneering instrument for the coordinated management of human mobility (United Nations, 2018). The achievement of the so-called Migration Compact is all the more important if one considers the lack of political and institutional arrangements/structures/procedures at the international level safeguarding the governance of migration (and migrants themselves) against arbitrariness and hence the potential absence of any form of global justice in the realm of migration (Sjursen, 2017). This chapter investigates the EU's contribution to the advancement of specific justice conceptions. While participation in this multilateral effort can be rightly interpreted as a foreign policy exercise, this work tries to uncover the EU's different prioritizations with regard to the concerns of justice and migration (Sjursen, 2017) and to provide insight into the nature of the EU's foreign policy on migration.

Global political justice as here intended is typified by three different (albeit coexisting) definitions (see the introduction to this book): non-domination aims to prevent practices of arbitrary interference and limits itself to defining how states should relate to each other to attain the status of 'equals' and which collective projects should emerge as a result of their interaction as equal parties (Sjursen, 2017). According to this conception, states are the ultimate agents and referents of justice in the field of migration (Fassi and Lucarelli, 2017); while not diminishing the importance of human rights, it is believed that states are better placed to provide full enjoyment of the same, and non-interference is hence a justice prescription (Sjursen, 2017: 7). Much more demanding from a political, institutional and procedural point of view, justice as impartiality puts individuals (migrants in our case), their autonomy and their rights at the centre and hence contemplates the likelihood of collective projects able to bypass states' sovereign prerogatives in favour of a supranational authority, when needed to redress human rights abuses. Contrary to the indiscriminate application of impartiality as justice criterion, mutual recognition insists on the necessity of a due hearing for affected actors

(ibidem): collective efforts should hence promote institutional mechanisms that are sensitive to specific contexts and situations, which may invariably represent those of specific groups of migrants, those of destination societies or emigration countries' local communities, for example (see Ceccorulli and Fassi, this book).

The work unpacks the Global Compact for Migration process into different phases: its launch, the phase of consultation and negotiation and the adoption of the document on the safe, orderly and regular movement of migrants. Each phase provides insights into the EU's intended aims and its internal dynamics affecting the different stages of discussion. That is, the work acknowledges the foreign policy of the EU as buttressed by dynamics not so dissimilar to those described by Robert Putnam (1988), whereby policymakers move between games being played at different levels (national and international). By emphasizing this double dynamic, the chapter shows how the EU's internal challenges exerted a major role in weakening the contributions regarding justice that it could have provided. The fact that ultimately the EU did not formally participate in the negotiations does not prevent an in-depth analysis: a deep commitment is shown by the many talks on the process and by the EU's de facto informal participation. Furthermore, in and of itself, the EU's empty chair adds to the justice evaluation as well as its ability to turn migration into a foreign policy tool to achieve its own interests and values.

The chapter analyses the different phases of the process in three sections: the first considers the EU's expectations regarding this new governance opportunity and then considers how internal elements have affected these expectations. Subsequently the chapter looks at which specific proposals were supported and advanced by the European Union (EU) during the consultation and negotiation phase of the GCM and explains the EU's simultaneous interchange with two audiences (the international community and Member States). Thirdly, the chapter examines the extent to which, notwithstanding its non-participation in a formal sense, the final approved document reflects the EU's proposals, as well as the role played by some Member States which distanced themselves from the EU's common approach. Finally, the chapter reflects on the EU's justice contribution and on whether this latter has been somehow affected by Member States' vote against or abstention from the GCM.

The Global Compact for Migration: an opportunity to take

The EU interpreted both the New York Declaration of 2016 and the launch of the Global Compact for safe, orderly and regular migration as great opportunities. Federica Mogherini, then High Representative for Foreign and Security Policy of the EU, affirmed that the launch of the process was to be interpreted as the international community's answer to the *European* refugee crisis (Mogherini, 2018a). Starting in 2014, in fact, the number of arrivals on the EU's shores had soared, peaking in 2015 when more than 1 million people tried to cross European frontiers. Although somehow predictable given the looming war being fought in Syria and hotbeds around its periphery, the large arrivals caught the EU by surprise,

ill-equipped to properly manage the phenomenon, and producing reactions that included raising shields to ‘protect’ its own survival (Ceccorulli, 2019). Alongside this short-term reaction, a longer-term approach had matured in the idea of migration as a key domain in relations with third states. The opportunity offered by the Global Compact for Migration was hence not to be missed: the EU could concretely advance some of the governance tools already set in motion to deal with the migration crisis, contained in the Agenda on Migration of 2015 and other provisions (the European External Action Service, 2018).

Against the backdrop of scant cooperation at the international level in the field (the Global Compact being a brand-new attempt at the global governance of migration) this was truly an opportunity to ‘Europeanize’ some of the solutions for handling human mobility (Mogherini, 2018b). As reported by the European Parliament, the concept of the ‘Compact’ as a comprehensive package of measures was not new to the EU: the Global Compact was offering the opportunity to ‘transpose’ the EU’s experience ‘to a global scale’ (European Parliament, 2017). In particular, it could pave the way for true governance of the matter by all actors involved, that is, full acknowledgement by all that in order to mutually reap the benefits of safe, orderly and regular movement, migration needed governance, full commitment and shared responsibility. Sovereignty implied ‘responsibility’ and hence had to be actively promoted by strengthening the institutional, administrative and technical capacities of concerned states (European Parliament, 2017). Proper engagement of all actors was thus to be promoted: to that end, the DG International Cooperation and Development (DG DEVCO) allocated a substantial amount of money to improve consultations but also to ensure the participation of developing countries, impacted communities and civil society. The aim was to support learning and research on migration and to monitor the process (European Parliament, 2017: 6), thus scoring positive points with regard to justice as mutual recognition.

Much like the dictate of the New York Declaration of 2016, the governance to be experimented had to go beyond traditional approaches to the matter, beyond the established donor-recipient relationships based on old categories and cooperation settings, and towards more ‘co-ownership’, building on the link with United Nations Sustainable Development Goals (whose objective 10.7 gave name to the same Compact) and the acknowledgement that every country had become a place of origin, transit and destination at the same time. Also because of this acknowledgement, the Union was strongly engaged since the beginning of the process. Key to performing a leading role was to sit at the table with a single voice, an opportunity that would have increased the EU’s leverage and shown the EU’s defined foreign policy on the matter. That task could be undertaken by the European External Action Service (EEAS), that would have reported the common position achieved by the Member States to the co-facilitators appointed by the President of the United Nations General Assembly to facilitate the overall process, so as to shift the discussion from the realm of internal politics (and related ministerial competences) to that of external affairs. As a matter of fact, a concrete EU position could easily be presented on all the existing *acquis* on migration and asylum, already

subscribed to by the Member States. The United States' retreat from the Compact after the strong commitment advocated by Barack Obama in 2016 – interpretable as a severe setback for multilateralism – was seen from the EU's perspective as an effective chance to drive the process (Avramopoulos, 2018).

However, this idea was not well received in the Council environment or by some Member States, which refused to give the EEAS a full and clear mandate. The attempt of the EEAS to speak for the Union was definitely blocked by Hungary, which dismissed the option out of hand. Undoubtedly, that was the first 'political' issue to emerge in the context of the Global Compact, which was partially solved with a solution 'to save the EU's face' at the negotiating table but which had already sowed the seeds of 'internal' disagreement: Austria, soon to have the Presidency of the Union, would speak for the Presidency and for the 27 Member States except Hungary.

Indeed, the lack of a single EU voice at the international level added to its already proven inability to define a shared position on migration issues, as demonstrated by the failed reform of the Common European Asylum System, and the ineffective management of significant arrivals during 2015, leading to the partial reintroduction of controls at internal borders (Ceccorulli, 2019). The missed opportunity also seemed to negatively affect the promotion of an internal consensus regarding the 'foreign policy instruments' conceived by the EU at the margins of the crisis, such as the Partnership Frameworks, and related funding mechanisms such as the EU Trust Fund for Africa (see Pallotti in this book), which Member States largely continued to disdain and underfund. Against this backdrop, the EEAS was still able to participate and speak at non-official meetings, also thanks to the concession granted by the co-facilitators appointed to ease the process. Thus, from the very beginning it was expected that the final document would not retreat from the *communitarian acquis*, although the EU's empty chair did not pass unnoticed. If anything, also thanks to strong cooperation with some of the delegations including that of the Holy See, efforts were made to ensure that the document to be approved acquired the value of a 'political document', apt to introduce new bases for cooperation among states, and the necessity of which was bound to rise in the near future (Link, 2007, 2018). The aim was hence to set new bases to overcome the traditional 'donor-recipient' approach in favour of 'a political partnership of equals', where "we listen to each other's needs, aspirations and desires, and shape the form of our partnership together" (Mogherini, 2018c), insisting hence on non-domination and mutual recognition as key justice understandings to be promoted. According to Dimitris Avramopoulos (2018), EU Commissioner for Migration, Home Affairs and Citizenship from 2014 to 2019, international cooperation frameworks to be developed in the Compact "will serve as a platform to build new partnerships and to forge new alliances": in this sense, "it is clearly in the European interest to negotiate two strong and ambitious compacts" (the one on migration and the one simultaneously being negotiated on refugees). Negotiating at the Global Compact table with third countries was key to gaining that respect and credibility necessary to discuss crucial issues of extreme importance for the Union, such as the return and readmission of irregular

immigrants (Link, 2007, 2018). In spite of this false start, it was still believed that a document could be endorsed including many positions which the EU deemed key for the governance of migration.

The EU's message: between external and internal interlocutors

As seen earlier, despite the difficulties, from the very beginning of the process the EU tried to provide a definite position on the different matters discussed. Examining this position is relevant to assessing the EU's intention and the inherent message contained in the EU's proposals. In this respect, not only the pure negotiation phase (which ran from January to June 2018) but also, and probably much more so, the consultation phase within the thematic sessions, lasting from April to December 2017, revealed the EU's specific contribution to the multilateral effort.

The thematic sessions opened up a broad and multi-stakeholder discussion on key themes drawn from the New York Declaration (UN, 2017a) on the basis of specific issue briefs. These themes concerned the human rights of migrants, the drivers of migrations (in particular those occurring 'out of necessity'), international cooperation, the social and economic impact of migrants, the trafficking and smuggling of migrants, irregular immigration and regular channels of access. Among these themes, some were particularly sensitive for the EU. In the session on the human rights of migrants, for example, the EU was highly supportive all throughout the consultation (and then the negotiation) phase. Mainstreaming migrants' rights to education, health care, access to justice and language training was a key point in this sense (Sørensen, 2017a). However, the EU's posture with respect to irregular immigrants seemingly remained firm, and the understanding of rights was much more restrictive for this latter category. In the same thematic session, parallel emphasis was put on the rights and responsibilities of states with respect to the control of borders and the observance of international law prescribing the return of irregular immigrants. In dealing with migrants' rights, detention was certainly one of the most contentious issues. If some delegations bluntly came out against the practice as a violation of basic human rights, this was not the case of the EU, which, in accordance with its legislation, considered the detention of migrants acceptable, albeit of last resort.

Regarding thematic session two on the 'drivers' of migration, the EU's position focused particularly on resilience, a concept contained in the UN Declaration and stressed by the Special Representative for International Migration Louise Arbour in her presentation of the issue brief (Arbour, 2017a). In particular, the EU mentioned some of its recent initiatives such as the European Investment Plan or the Emergency Trust Fund for Africa as examples of efforts to promote resilience (European Union, 2017a). But Arbour's elaboration of the 'drivers' was certainly more detailed and comprehensive than the EU's explanation of the phenomenon. Firstly, the argument started from the assumption that drivers were not to be addressed to stop migration tout court, but only movement occurring 'out of necessity' which, mostly irregular, would negatively impair migrants' situations (UN, 2017b). Secondly, if attention was given to resilience in countries of origin,

similar attention was needed to increase legal paths of migration in destination countries. On this second aspect of the issue, though, the EU remained silent.

The thematic session on international cooperation was of key importance to the EU to emphasize the two principles guiding its conception of migration governance, that is, solidarity and shared responsibility (Sørensen, 2017b). Here again, the EU drew on some of the measures recently implemented such as the Partnership Frameworks with African States. But the EU insisted particularly on states' responsibilities: responsibilities with respect to the control of one's own borders (need for support, assistance and capacity-building in this sense were particularly emphasized) and also in terms of existing international obligations on return and proper readmission. Overall, the EU recognized third states' participation as inevitable and insisted on points which would advance its objectives. Discussion of the economic and social impact of migrants (thematic session 4) was a breakthrough with respect to mainstream discourses: while it was mostly agreed that origin countries were not to be adversely impacted by emigration, the recognition of a positive effect of migration on destination countries was not easily accepted by many delegations. The EU underlined the positive impact of safe, orderly and regular migration on sustainable development and the importance of integration measures, keeping the focus on regular immigrants, while remaining largely vague on irregular immigration (EU, 2017b).

Smuggling, discussed in thematic session five, was of particular interest for the EU. Indeed, the EU recently framed its strategy against irregular immigration as addressing the business of smugglers: coherent with its approach, hence, attention was mainly paid to criminal networks rather than to the different determinants of the phenomenon (Lenoir, 2017), some of which, as emphasized by Arbour, are to be found in the lack of legal channels of entrance to destination countries (Arbour, 2017b). Regarding the position recently taken by some Member States if not of the EU itself, key was the discussion of the risk of criminalizing humanitarian operators and the recommendation to avoid conflating their mission with attempts to facilitate irregular immigration (UN, 2017c). Finally, in the last thematic session (the sixth) on irregular immigration and regular pathways, the EU reiterated reference to the possible challenges of irregular immigration on hosting societies and hence the necessity to prevent them (Hallergard, 2017). This thematic session was thus another occasion to remind states of their responsibilities and in parallel to underline sovereign rights. Irregular immigration was not related to the absence of regular pathways and regularization processes, an argument supported instead by the African group. If regular pathways had to be opened, that would depend on market needs in destination countries. In any case, opening up more legal paths was never considered by the EU a due responsibility of destination countries.

The points raised in the consultation phase became a matter of intense discussion (and sometimes contention) during the negotiating phase, which took place from January to June 2018. Issues that were broadly agreed upon included gender responsiveness, the best interests of children and the recognition of migrants' vulnerabilities (especially women's vulnerabilities), clearly positive points in the assessment of specific needs. In contrast, participants strongly disagreed on other issues such as

the opportunity to increase legal pathways of migration (aimed for by origin countries while mainly disregarded by destination ones), the question of return (to be voluntary according to origin states), regularization of irregular immigrants (overlooked by Western states), detention and criminalization of humanitarian assistance and access to services for migrants (ambiguously treated by receiving states), and the issue of firewalls, intended as the provision of social services without the obligation to report the irregular status of migrants to relevant governmental agencies, a point also emphasized in the New York Document. On all these issues the EU's position was contrasted sharply with origin states and in particular with the African Group, whose remarks, according to the EU, remained rather rigid (at least during formal negotiations). Notably, the EU's activities at the margins of formal negotiations (meetings with civil society, regional actors, small groups of countries and informal meetings with delegations) were important because they provided common ground for discussion, again a sign of the intention to encompass as much as possible the different voices and to reach a politically relevant result.

The EU's 'piece de resistance'

Overall, the EU proposed itself as an actor attentive to human rights' issues, albeit with some caveats. It emphasized the importance of fair, ethical recruitment and 'decent work' conditions for *regular* migrants, in line with its and Member States' non-adherence to the Convention on the Protection of the Rights of all Migrant Workers and Their Families. The EU's position on irregular immigrants' rights remained ambiguous, as confirmed by its stance on the issue of firewalls: their introduction would have conflicted with the logic of the 'whole of government' approach of strict cooperation among government institutions. The issues of regularization and voluntary return as only options were also considered contrary to the aim of the pact to promote 'safe, regular and orderly migration'. In line with EU's approach to the matter, the language on smuggling continued to focus mainly on addressing criminal organizations, also strengthening partners' capabilities in this sense. The EU insisted on including 'the support of alternatives' to detention, while not discarding the practice, so as to ensure flexibility. It repeatedly referred to international cooperation as being guided by shared responsibilities, for example, in the realm of saving migrants' lives, to be considered the responsibility of destination origin and transit countries. The EU's rigidity on irregular immigration, which remained a 'challenge' in the overall narration, denoted a clear preoccupation with the impact of the phenomenon on the Union and was the key issue of discussion in the broader cooperative effort. The Global Compact, it was specified, included concrete actions that would support states in reducing irregular immigration through cooperation on addressing the drivers of migration, fighting trafficking and smuggling phenomena, managing borders and facilitating return (European External Action Service, 2018).

The use of clear language on human rights was appreciated by other delegations, and it contributed to emphasizing the EU's adherence to international obligations in this sense (the process being characterized by constant reference to

the conventions and international law protecting human rights). The Compact should be informed not only by interests but also by values according to the EU (Avramopoulos, 2018). The Union was one of the few delegations to insist on the explicit citation of the principle of *non-refoulement* – absent in the draft document prepared on February 2018 – and on explicit mention of unaccompanied minors among vulnerable categories, in this sense scoring positively with respect to conceptions of justice inspired by impartiality and mutual recognition.

On other issues, the EU's position aimed at keeping a balance between more progressive views on migration and Member States' concerns: for example, migration's positive contribution to inclusive growth and sustainable development was supported, albeit in parallel with a simultaneous concern for the complex challenges for host societies (European Parliament, 2017). Also, if the possibility of opening legal channels of entry was maintained, their affordability was accorded on the basis of countries' labour force situations and needs (Avramopoulos, 2018) included absorption capacity. Other points that were advanced could be interpreted as attempts to assuage Member States' concerns. As reported by the European Parliament (2017), some of the key issues discussed during the Global Compact regarded how to strike the balance between liberty and security, an inherent concern for the Union and its Member States. Hence, emphasis was, for example, on the distinction between regular and irregular immigrants in terms of their access to services, with the latter category only entitled to basic services, while integration measures were to be provided only to regular migrants in the same vein as the portability of earned benefits. Moreover, the distinction between refugees and migrants was emphasized, the former being covered by international obligations. The distinction was made between smuggling and trafficking as different crimes with different implications (the first being a crime against a destination state and the second a crime against individuals). Family-reunification preconditions as a means of legal access (such as a certain income or language requirements) had to be kept in accordance with some Member States' law. Similarly, a contentious issue for the EU was the criminalization of humanitarian assistance other than pure life-saving, in that in many Member States' legislation the line between humanitarian assistance and the facilitation of illegal entry is in fact blurred. Along the same lines, the pact should not a priori determine that illegal entry does not constitute a criminal offence, as prescribed by some Member States' legislation. Continuous reference was made to sovereignty as implying both rights and obligations: that of deciding whom to admit (as for rights) and that of readmitting the own nationals irregularly present abroad (as for obligations), among others. The Global Compact, it was reiterated, "does not entail any transfer or restriction of national sovereign rights or competences", nor could it change competences between the EU and Member States (European External Action Service, 2018). Its nature as a non-binding document was also emphasized together with the fact that "no human right to migrate" was inserted or implied (Stylianides, 2018). As mainly an international cooperation effort, it was not in its nature to encourage or discourage migration (*ibidem*).

The success and failure of the EU's international effort

The EU's points and the final text

The European Union emphasized that the final Global Compact document (approved July 2018) largely reflected its objectives (European External Action Service, 2018; Stylianides, 2018). Indeed, many of the adopted points come close to the EU's positions. Sovereignty principles were not only confirmed but possibly strengthened in the final version: this was the case, for example, for border management, to be coordinated with other states to counter irregular immigration. Respect for national sovereignty and the necessity to abide by international obligations stressing sovereign responsibilities was reiterated (see, for example, objective 11 of the final text adopted). Insistence on the national responsibility to readmit one's own nationals was emphasized while 'voluntary return' lost priority over 'forced return' in the final text. The difference between regular and irregular migrants was kept: services and assistance to be provided to 'all' migrants were restricted to education and health care, while objective 19 on the commitment to create the conditions to contribute to sustainable development was not referring to 'all migrants' ('migrants' in the final text, remaining vague on irregular migrants). Also, the establishment of 'firewalls' between public and immigration enforcement services was eliminated in the final version of the Compact. Regularization as a way to partly solve irregularity was not inserted in the final text although it was discussed in the consultation phase. Specific protection of irregular migrant workers was also not mentioned, matching the EU's position on the Convention protecting the labour rights of all migrants, thus emphasizing the divide between the rights of regular and irregular immigrants (Farcy and Saroléa, 2018). In a similar way, some of the Member States' specific (and often restrictive) approaches found parallels in the final text: hence, for example, the relationship between humanitarian assistance and the possible facilitation of illegal entry was hinted at, while the non-criminalization of irregular entry ended up as a second-order concern (Gauci and Partipilo, 2018). The final text accorded relevance to the fight against smuggling as a way to saving human lives by means of strengthened capacities and international cooperation: thus, coordination with third states and improving their capacity to intervene as a sovereign responsibility was implied in the final text.

Despite the EU's reiterated insistence on sovereignty, concerns relative to the protection of human rights were also advanced. Indeed, it was mainly due to the EU's insistence that *non-refoulement* obligations were reported in the final text – although specific reference to *non-refoulement* does not appear (Majcker, 2018).

From failure to success and back again

Despite the text reflecting the EU's positions, some Member States obstructed the process and further constrained the EU's potential contribution to the Global Compact. Hungary, Poland and the Czech Republic joined the United States and

Israel in voting against the Global Compact (152 states approved it). Some other European states, namely Romania, Latvia, Italy, Austria, Bulgaria and Slovakia, abstained from voting (along with six other states). Thus, many European states joined the group of ‘sceptics’ regarding the achievement of the international effort. For some scholars, this was highly predictable: for Nina Hall (2018), the most surprising aspect was that most Member States did sign the Compact. Both hostility towards multilateral fora and the sensitivity of the issue of migration in national debates account for such behaviour. As a matter of fact, the leaders of Belgium and Slovakia ended up resigning as a consequence of internal quarrels over the Global Compact, while the Italian government decided to postpone the decision to keep alive the coalition in power (Pastore, 2019).

The hostility of some Member States revolved around the alleged inclusion of points such as the human right to migration, the issue of migrants contributing to sustainable development, handing over national prerogatives by international imposition, and a general evaluation of the Global Compact for Migration as either being not of interest or being against the interest of Member States. According to Hungary, the EU’s position at the UN was only feebly supported, while other delegations advancing opposite interests (such as the African Group) were much more incisive (Tebano, 2018). At the beginning of March 2018 in response to the publication of the zero draft of the Global Compact in February, the Hungarian government delivered a 12-point plan titled ‘Security First’. The plan opposed many of the principles underpinning the draft version of the Global Compact, but also some of those supported by the EU such as the acceptance and protection of different cultures coexisting in a country. According to Hungarian Minister for Foreign Affairs and Trade Péter Szijjártó, migrants’ flows were not to be managed but blocked (Veronese, 2018). According to the Minister the pact was largely unbalanced in favour of immigration, which was erroneously considered a human right (Tebano, 2018). “The UN wants everyone to accept that immigration and its facilitation make a positive contribution to economic growth and prosperity,” explained Hungarian Prime Minister Viktor Orbán (2018) in his State of the Union address; however, he continued, “[I]t’s like saying that a flu epidemic is a good thing, because it makes a positive contribution to people’s health and well-being” (ibidem). Perceiving Hungary as being singled out for its fence policy at the border, Orbán made clear that the content agreed at the UN level would impair the country, which therefore had the moral duty to eschew international agreements imposing it to accept migration (ibidem). According to Andrej Babis, Prime Minister of the Czech Republic, the Global Compact blurred the lines between legal and illegal immigration (Zalan, 2018). For Austria it could limit sovereignty (Gotev, 2018) while for Poland the security of citizens and control over migration flows were not supported by the Pact, hence going against the country’s priorities. Italy’s empty chair at the Marrakesh intergovernmental conference for the adoption of the final text was staggering: it was the only Mediterranean state to not have endorsed the document. For the right-wing newspaper *Libero*, the pact had the effect of ‘erasing borders’ (Senaldi, 2018), while an analyst close to the then yellow-green government (Northern League and Five Stars Movement) judged

the pact as ineffective at curbing both immigration and the burden of reception, Italy's main concerns (Sacino, 2018). For then Minister of the Interior Matteo Salvini, the Compact did not do enough to differentiate between 'economic' immigrants and refugees (Bongiorni, 2018).

The EU's reaction to gradual withdrawals and votes against the Compact was quite outspoken. Distancing itself from these positions, the EU reiterated its understanding of migration as a global challenge and its commitment to coping with the challenge of cooperation.

Concluding remarks: justice and the EU's foreign action

Specific arguments supported by the EU allow us to grasp the justice conception(s) advanced in the framework of these multilateral negotiations. At the same time, the consequences of the EU's internal dynamics with respect to the Compact have an impact on its contribution to political justice and the nature of the foreign policy informing it. This double lens is the subject of this concluding section.

From the point of view of justice, there is no doubt that the European Union has strongly promoted principles aimed at strengthening states' capabilities to exercise sovereign prerogatives and responsibilities. International cooperation in the field of migration has been clearly interpreted as a 'co-ownership process', whereby states of origin, transit and destination coordinate actions to manage the phenomenon. The new trigger of cooperation had to depart from an approach separating 'categories' of countries: states today are simultaneously of origin, transit and destination, and hence all aspects of the phenomenon are of interest to every country. Also, linking migration to human sustainable development was believed to meet the priority of every state. Thus, a conception of justice as non-domination seems to have been largely advanced, whereby states are considered key in the governance of the phenomenon precisely because they absolve their sovereign responsibilities, which entail rights and obligations. Words such as 'sovereignty' find ample space in the EU's position papers, while 'resilience' and 'co-ownership' summarize the determination to strengthen state capacities and responsibilities.

This is not to say that a conception of justice as impartiality was not advanced altogether: all throughout the process the EU has supported the 'human rights approach' of the Compact, it has reiterated the relevance of existing international laws and principles, and, along with a few others, it has insisted on the introduction of the reference to *non-refoulement* as a key principle. However, some points are to be underlined: if the human rights of all migrants are to be supported, those of irregular immigrants are understood to be quite limited compared to regular ones. This 'restricted' logic of human rights has a further impact, as it may well lead to potential practices of marginalization and hence potential domination: germane here is the point on firewalls or the lack of support for regularization processes. This logic is then applied to migrants' economic and social contribution: only regular ones are part of the equation. As such, irregular immigration ends up remaining in the sphere of challenges against which the EU has to fight.

The EU's attention to Member States' internal legislation further jeopardizes the second category of justice: detention is not considered a human rights violation; voluntary return should not be the only option; illegal entry may not simply be recorded as an administrative offence; and the behaviour of actors in the field of humanitarian assistance should be subject to close monitoring, limitations and potential sanctions.

Perhaps, the single most important element that tilts the balance to the detriment or the outranking of a human rights approach to the Global Compact is disregard for the nexus between irregular immigration and the lack of regular pathways for migration. With this connection missing, the EU's approach has largely insisted on strengthening those prerogatives aimed first and foremost at deterrence or prevention of irregular flows (emphasis on border protection, on return, priority given to cooperation on rescue activities with states regardless of their credentials, readmission obligations and the fight against smuggling). No mention is made by the EU of the necessity to increase legal pathways independently of economic needs, while the need to reduce the drivers of migration extends to all migrants and not only those migrating 'out of necessity'. For the supporters of a 'human rights approach' to migration, the effective control of borders can only be achieved through the opening of new regular, safe and orderly channels. This approach does not deny the sovereign prerogatives and responsibilities of states: borders can be controlled and irregular immigrants returned, but full respect of human rights prerogatives in these processes is at the forefront. If that is true, for example, cooperation on rescue activities would undoubtedly depend on the state with which coordination is attempted, hence excluding some debatable countries such as Libya, with whom the EU is currently cooperating on the matter.

If justice as mutual recognition is considered, the EU seems to give due relevance to third states as key engaged actors. This is suggested by the willingness to create true partnerships and is hinted at in the concept of resilience, which focuses on local solutions according to actual specificities and extends attention to local affected communities. However, aside from a widely reiterated focus on vulnerable categories, generally conceived as minors and women, less evidence emerges over the recognition of migrants as actors with voices to be heard. As seen before, an approach which seeks to limit all migration overall runs contrary to such an understanding. Similarly, an approach which makes a clear distinction between irregular and regular migrants and their rights seems to neglect the issue of agency and the specific motivations each person may have for leaving a country.

Moreover, adding to the analysis is a specific evaluation related to internal disagreement which accounts for the EU's justice contribution and the EU's ability to deliver through foreign policy. From a justice point of view, internal disagreement has had a further negative effect. In fact, the progressive opposition of some Members of the European Union has contributed to reinforcing the inherent limitations of the Compact. For example, Louise Arbour described these "reluctant" positions as "regrettable" in that "a human right to migrate" was not included in the text, while sovereignty remained a key principle to espouse (Rankin, 2018). Hence some of the enthusiasm towards the positive narration on migration was

resized in favour of a state-determined approach on the matter. Even more alarming, Member States' withdrawal may well have hampered the advancement of any conception of justice. The refusal to sign a Compact reiterating existing (not new) convention and international obligations on human rights calls into question these states' commitment to uphold those human rights obligations (rescuing migrants at sea is increasingly being questioned as a primary right in some Member States such as Italy). Their staunch resistance to considering migration as an issue for cooperation has downplayed even the conception of justice as non-domination as a tool available to Member States; "[M]igration has to be blocked, not governed," recalled Hungarian Minister for Foreign Affairs.

The EU's ability to deliver on foreign policy has received a further blow. On the one hand, the impression has been given that the EU's position on the Compact was decided not in EU's own institutions but somewhere else (in the Member States), which underlined the 'artificial' nature of a foreign policy dimension and raised the question of the sense of having any discussion at all about a common foreign policy stance. On the other hand, the 'adequacy' of the EU's foreign role has been called into question. From the very early stages of the process, the lack of unity has removed the leverage of credibility over commitment towards third states. Ultimately, the lack of a common position has also crippled the only 'willing and able' actor to invest in a strategy for Africa on migration and development after the withdrawal of the United States (Pastore, 2017). The Global Compact for Migration has hence provided another test case evidencing the impact of internal fractures and unresolved puzzles on the EU's overall external performance. For an actor such as the EU, the advancement of justice (possibly a balanced blend among the three conceptions mentioned earlier) is the sine qua non for still having a chance to shape and influence world affairs. Anything acting as an obstacle should be hence thoroughly bypassed.

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