

The Fragility of Europeanness: understanding Crimmigration in the European Union as a result of a security- focussed transnational identity

MA-Thesis International Relations in Historical Perspective

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Abstract

Transnational processes of policy-development are often highly influenced by collective identities. In the case of the European Union, this identity is based on shared ideas on security. As a result, European policy frameworks contain securitised policies. The practices of migration and asylum have been included in the security framework. With the establishment of the Schengen-Dublin system, the European Union has institutionalised and criminalised their approach towards migration and asylum. During the last two decades, the European Union has used these criminalised policies as tools for the strengthening of its security identity. In 2020, the European Commission presented the New Pact on Migration and Asylum, as a response to the many critiques from scholars and political actors regarding its criminalised and failing migration framework. Although this new approach does demonstrate some positive developments, it should be considered a continuation of existing policies.

Keywords: Transnational identity, European Union, policy-development, Crimmigration, New Pact on Migration and Asylum

Introduction

“The future will be what we make it. And Europe will be what we want it to be. So let’s stop talking it down. And let’s get to work for it. Let’s make it strong.”¹

This statement was made by President of the European Commission Ursula von der Leyen, during the 2020 State of the Union. President von der Leyen presents the European Parliament an outline of the Commission’s new ideas and approaches, all of which aim at building a stronger European Union (EU). The New Pact on Migration and Asylum (NPMA) is introduced as one of these new approaches.² With this Pact, the EU intends to set the tone for a new era of European cooperation on matters of migration and asylum, whereby a focus on humanity is underlined.³ In an effort to strengthen and harmonise the EU’s frameworks on security in general, and on migration and asylum specifically, the Pact serves as a fresh foundation for the construction of policies.⁴ Additionally, the Pact is supposed to help the EU solve the problems of the faulting Schengen and Dublin mechanisms, which have come to the fore since the early 2000s, but have really been apparent with the rise of migration flows since the start of the Arab Spring in 2011.⁵ Subsequently, the Schengen-Dublin system collapsed in 2015, as a result of the refugee crisis.⁶ Many critics have since questioned the efficacy of the migration policies, and reproached the EU with unequally distributing costs and responsibilities amongst its member states.⁷ Scholars are now evaluating the Pact, to see whether or not it will be able to achieve its main objective of strengthening the Union.

The NPMA is considered a development in policy-making, which can be understood when we investigate the construction of the EU’s transnational identity. According to International Relations scholar Thomas Risse, “one cannot begin to understand EU foreign policy without taking identity politics into account”.⁸ Identity formation should also be regarded an important tool for the analysis of the development of migration and asylum policies. Therefore, this research will answer the question of how the European Union’s constructed transnational identity has influenced the development of its policies regarding migration and asylum.

Historiography

Already in 1958, decades before the establishment of the European Union as we know it today, Ernst B. Haas wrote about the concept of European political integration. Resulting from such integration, is the establishment of a political community, which he describes as “a condition in which specific groups and individuals show more loyalty to their central political institutions than to any other political authority, in a specific period of time and in a definable geographic

¹ “State of the Union Address by President von der Leyen at the European Parliament Plenary.” European Commission, Brussels, 16 September, 2020.

https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_20_1655.

² Ibidem.

³ Ibidem.

⁴ Ibidem.

⁵ Marie de Somer, “Dublin and Schengen: A tale of two cities.” *European Policy Centre, European Migration and Diversity Programme Discussion Paper* (2018): 4-5.

⁶ Ibidem.

⁷ Ibidem, 3-7.

⁸ Thomas Risse, “Identity Matters: Exploring the Ambivalence of EU Foreign Policy,” *Global Policy* 3, no. 1 (2012): 87.

space”.⁹ The impact of Haas’s work was immense, and many scholars after him have shaped their theories on his conception of community-building. Adding on to Haas’s hypothesis that a community can have multiple loyalties, Risse states, that the European identity is shaped as a collective identity, that does not deny the continuation of national identities.¹⁰ A collective identity according to Risse, is most of all a social construction.¹¹ The European identity is constructed “in the discourses of various political and social elites, usually with references to particular historical memories and national symbols”.¹² Additionally, this identity has defined the boundaries of the European community, thereby differentiating between an us-group and a them-group.¹³

Risse approaches the process of European identity formation from the perspective of constructivism.¹⁴ This research will follow the notions of constructivism as outlined by Alexander Wendt.¹⁵ Wendt argues, that social structures are the key variables that shape identities and interests.¹⁶ The process of identity- and interests-formation will then influence the social construction of international politics. From these statements follows the main argument of this research: identity is not a solid condition, which means that political activities are prone to change over time. Lisbeth Aggestam argues, that role analysis can be used as an efficient tool to study the evolving political activity of the EU.¹⁷ She states, that the conception of identity is reflected in the agent’s self-assigned roles.¹⁸ These roles are “constructed, sustained and changed in foreign policy”.¹⁹

Methodology

Following the notions of constructivism, this research will be able to investigate the connection between the European identity and its developing policies. In order to render an overview of this development, the following chapters will analyse EU Council regulations and official communications between EU agencies on the realisation of policies. Chapter 2 will first establish an understanding of how the European transnational identity has been constructed in the 1990s and early 2000s. By analysing the Treaty on European Union, the foundational aspects of Europeanness will be revealed. The chapter will furthermore show how the EU has strengthened its identity throughout the last three decades, by studying various documents regarding European security frameworks, such as the Common Security and Defense Policy and the Dublin Regulation. Secondary sources include literature by Jennifer Welsh, who writes about what it means to be a Union citizen, and Philip Schlesinger, who expounds on the construction of

⁹ Ernst B. Haas, *The Uniting of Europe. Political, social, and economic forces 1950-1957* (Notre Dame, Indiana: University of Notre Dame Press, 1958), 5.

¹⁰ Thomas Risse, “Neofunctionalism, European identity, and the puzzles of European integration,” *Journal of European Public Policy* 12, no. 2 (2005): 304.

¹¹ Thomas Risse, “Identity Matters: Exploring the Ambivalence of EU Foreign Policy,” *Global Policy* 3, no. 1 (2012): 88.

¹² *Ibidem*.

¹³ *Ibidem*.

¹⁴ Risse, “Neofunctionalism, European identity, and the puzzles of European integration,” 292.

¹⁵ Alexander Wendt, “Constructing International Politics,” *International Security* 20, no. 1 (1995): 81.

¹⁶ *Ibidem*.

¹⁷ Aggestam, “Role theory and European foreign policy: a framework of analysis,” in *The European Union’s Roles in International Politics. Concepts and analysis*, ed. Ole Elgström and Michael Smith (London, New York: Routledge, 2006), 25.

¹⁸ *Ibidem*, 11.

¹⁹ *Ibidem*.

transnational consciousness. Chapter 3 will reveal what kind of policy framework resulted from the European transnational identity, and how this framework has shaped the EU's approach towards migration and asylum management. An analysis of the Common European Asylum System and FRONTEX will reveal, that in order to strengthen its transnational identity, the EU has encouraged some alarming policies that deal with the issues of migration and asylum. Literature by Jef Huysmans will be used to explain the connection between migration and security. Referring to the merging of migration law and criminal law, this chapter adopts the concept of 'crimmigration', as coined by Juliet Stumpf. Chapter 4 will present the New Pact on Migration and Asylum, as a case-study on the EU's latest policy-developments. Additionally, this last chapter will use secondary literature of authors such as Petra Bendel and Sergio Carrera, who have evaluated the Pact on matters of Human Rights and crimmigration.

Relevance

Many scholars have already researched the connection between the European identity and its foreign policies. However, especially since the rise of migration flows in the last decade, it seems to be a trend to study the relationship between the European identity, or Europeanness, and the development of migration and asylum policy. With the coming about of the New Pact on Migration and Asylum, expounding this relationship is more important than ever. Does the EU indeed enter a new era of cooperation, or does the Pact merely encourage a continuation of existing policies? Investigating the European transnational identity, will establish an understanding of the deep rooted foundations from which the EU constructs its policy. Exposing this, will help contextualise the EU's self-declared change in policies.

Chapter 1: Connecting identity-formation and policy development

Introduction

In order to better understand policy developments within intergovernmental organisations, such as the European Union, this chapter will expound some of the core ideas on constructivism. By applying a constructivist approach, this research will be able to uncover the relation between agent and behaviour. When we consider policies as behavioural outcomes, and regard the European Union as the main agent responsible for these outcomes, policy development can be studied as socially constructed results of the aforementioned relation between agent and behaviour. In sum, this chapter, and consequently the whole research, emphasises the idea that who we are and what we do are deeply connected.

Applying a constructivist approach

In accordance with neorealism and neoliberalism, constructivism acknowledges the existence of an international system that, to some extent, influences the behaviour of agents.²⁰ However, while the former adhere to the rationalist claim that the circumstances of the international

²⁰ Alexander Wendt, "Anarchy is what States make of it: The Social Construction of Power Politics," *International Organization*, 46, no. 2 (1992): 391-392.

system are the sole variable of behavioural process, constructivists argue that behaviour is mainly constructed through identity- and interests-formation.²¹ This nuanced perception enervates the idea that agents within the system are subdued by the conditions of anarchy and self-help. According to Alexander Wendt, identity and interests should be considered endogenous to the agent, and therefore the main dependent variables when researching the behaviour of said agent.²² He additionally claims, that anarchy and the consequential idea of self-help are institutions, and that the agent's interpretation of them is dependent on its constructed identity and interests.²³

For the benefit of this research, two aspects of Wendt's constructivist approach will need further explanation. First, if we want to understand the development of policies, we should consider them as social outcomes, inherent to and resulting from material conditions, interests and ideas. These elements are part of what Wendt calls "the structure of any social system," a three-layered structure that constantly changes.²⁴ It is important to weigh in the influence of material conditions, for they represent reality, or, the base from which ideational structures and structures of interests follow.²⁵ However, material conditions alone do not explain social outcomes, such as the establishment of policies. This research therefore mainly looks at the relation between the ideational structure and the structure of interests within the agent's social system. In accordance with Wendt, this research understands interests as constructed through ideas.²⁶ These ideas are created within the conditions of social, political and economic contexts.²⁷ Opposing the materialist view that these environmental contexts directly alter the agent's interests, Sabine Saurugger claims, that a changing environment first changes the agent's "understanding of [its] changing world".²⁸ As a result of these changing understandings, or ideas, agents recalculate their priorities and construct appropriate interests.²⁹

The second constructivist claim that we need to consider for the sake of this research, is that structures of interests interact with and reflect the agent's identity. According to Wendt, "social identities and interests are always in process during interaction."³⁰ The agent's identity, its conception of the "self", is thus constructed, and should be regarded as reflexive through the changing dynamics of the structures of an agent's social system.³¹ When referring to the changes within these social structures, Wendt uses the term "cultural change," thereby underlining the idea that behaviour, as well as the agent responsible for the behaviour, are both results from process and interaction.³² He explains this choice, by saying that "once understood as a culture it

²¹ Wendt, "Anarchy is what States make of it: The Social Construction of Power Politic," 391-392.

²² 393-394.

²³ 394-395.

²⁴ Alexander Wendt, "Structure, agency, and culture," In *Social Theory of International Politics*, ed. Alexander Wendt (Cambridge: Cambridge University Press, 1999), 139.

²⁵ Ibidem.

²⁶ Ibidem.

²⁷ Sabine Saurugger, "Constructivism and public policy approaches in the EU: from ideas to power games," *Journal of European Public Policy* 20, no. 6 (2013): 890.

²⁸ Ibidem, 890-891.

²⁹ Ibidem.

³⁰ Alexander Wendt, "Identity Formation and the International State," *The American Political Science Review* 88, no. 2 (1994): 386.

³¹ Alexander Wendt, "Process and structural change," in *Social Theory of International Politics*, ed. Alexander Wendt (Cambridge: Cambridge University Press, 1999), 313-314.

³² Ibidem.

is hard to sustain the argument that the deep structure of international politics has never changed.”³³

Building the European transnational identity

Contrary to more traditional constructivist research, this research does not study the behaviour of the single-unit nationstate. The European Union is an intergovernmental organisation, consisting of a large number of member states. It would therefore seem impracticable to apply a state-centric approach, and more logical to opt for a community- or culture-centric analysis. However, when we consider state power a structure of political authority, and detach ourselves from the idea that everything external to the state's territory should be considered a non-state variable, we can work with constructivism and apply a state-level analysis. The European Union should nevertheless not be regarded an international state, for its sovereignty does not equally meet that of the nationstate. We can, however, regard the European Union as a result of the growing internationalisation of political authority. In this way, we accept the structural transformation of the traditional Westphalian state-system, without rejecting the continuing relevance of the nationstate.³⁴ According to Wendt, the emergence of internationalised political authority can be explained by looking at the constructing of collective identities.³⁵ For this theory, the author uses the same approach as when analysing single-unit agents. This research follows the idea that collective identity is formed through rhetorical interaction and the process of discourse among parties.³⁶ Because of repeated efforts of cooperation, the actor will learn to see itself as the other does. At the same time, the actor will try and sustain the conception of the self. Wendt argues, that “by engaging in cooperative behavior, an actor will gradually change its own beliefs about who it is, helping to internalize that new identity for itself.”³⁷ He further explains, that the coming together of collective identities, and consequently collective action, occurs as a result of intersubjective systemic structures.³⁸ These structures include shared understandings, rules and ideas, but also common threat perceptions. These are key variables for the construction of identity and interests.³⁹ The newly formed collective identity, which should be seen as a result of the growing interdependence among nationstates and the transnational merging of domestic values, enables the relocation of individual state actors' sovereignty to transnational authorities.⁴⁰ Henceforth, states will not just benefit from interdependence of social outcomes, but will actually be able to strive towards collectivity. A collective identity is a social identity that is constructed through the process of discourse between and within social elites. When a social identity is well connected to the members of the community, a “sense of collective we” can be established.⁴¹ According to Thomas Risse, a collective identity portrays what is distinctive about a community, and consequentially sets the boundary between that community and the out-group, or “other”.⁴² By regarding the EU a collective identity, constructivism's core idea –i.e. the conception that social outcomes are

³³ Wendt, “Process and structural change,” 314.

³⁴ *Ibidem*.

³⁵ Wendt, “Identity Formation and the International State,”

³⁶ *Ibidem*, 390-391.

³⁷ Wendt, “Identity Formation and the International State *Ibidem*,” 390.

³⁸ *Ibidem*, 389.

³⁹ *Ibidem*.

⁴⁰ *Ibidem*, 393.

⁴¹ Risse, “Identity Matters: Exploring the Ambivalence of EU Foreign Policy,” 88.

⁴² *Ibidem*.

constituted through identity- and interests-formation– can be used as the theoretical framework from which to analyse the EU’s behaviour. Chapter 2 of this research will elaborate on the EU’s efforts in constructing a transnational identity by establishing intersubjective systemic structures through the processes of rhetorical interaction and internal discourse.

Conceptualising the process of policy development

Following the constructivist claim that behaviour is a result of identity- and interests-formation, this research understands policy development as a constructed behavioural outcome. Saurugger emphasises, that “collective understandings of social facts [serve] as the primary source of political behaviour”.⁴³ The author’s stance on social behaviour correlates with the idea that agents establish policy according to ‘the logic of appropriateness’.⁴⁴ This theory of action states, that the agent’s policy-making processes are in line with previously determined criteria and rules of appropriate behaviour legitimised by the agent, thereby stressing the idea that policy is a social construct.⁴⁵ The agent’s behaviour should not simply be reduced to a consequence of rational assessments on costs and benefits, it should be understood as a result of identity-driven conceptions of what is considered appropriate.⁴⁶ The agent will act to fulfil the duties belonging to its identity. When we approach the agent this way, the rationality of its actions can be understood as “embedded in specific cognitive frames”.⁴⁷ If we want to interpret the agent’s behaviour, we thus first need to understand its internal ideational structures. According to Saurugger, if the agent acts according to the logic of appropriateness, policy development occurs in a twofold manner. First, through the act of socialisation, collective understandings become internalised and are, consequently, codified.⁴⁸ When a group of agents enjoys a shared understanding on policy problems and solutions, it is able to collectively construct the issues that enter the policy agenda.⁴⁹ Additionally, the agent’s shared understandings on norms and ideas are used to ‘frame’ policy issues as legitimate.⁵⁰ Whereas the process of socialisation helps to construct the agent’s policy agenda, the process of framing influences the content of specific policy proposals. Because policies are considered behavioural outcomes, established as a result of internal ideational structures, and influenced by processes of socialisation and framing, they can be seen as consciously constructed. This helps us understand how and why agents strategically use ideas for the establishment of policy, and consequently even as an identity-building tool. Saurugger states, that on a European level, ideas have been used, for example, in order to legitimise policies that tackle the issue of the democratic deficit, thus underlining the belief that ideas can act as “discursive tools” for the shaping of policy imperatives.⁵¹ Chapters 2 and 3 of this research, will show how, following the notion of the logic of appropriateness, the

⁴³Saurugger, “Constructivism and public policy approaches in the EU: from ideas to power games,” 891.

⁴⁴ Ibidem.

⁴⁵ Ibidem.

⁴⁶ James G. March & Johan P. Olsen, “The Logic of Appropriateness,” in *The Oxford Handbook of Political Science*, ed. Robert E. Goodin (Oxford University Press, 2018), 4.

⁴⁷ Saurugger, “Constructivism and public policy approaches in the EU: from ideas to power games,” 891.

⁴⁸ Sabine Saurugger, “The constructivist turn in EU public policy approaches,” in *Handbook of European Policies. Interpretive Approaches to the EU*, ed. Hubert Heinelt and Sybille Münch (Cheltenham, UK: Edward Elgar Publishing, 2018), 23-24.

⁴⁹ Saurugger, “Constructivism and public policy approaches in the EU: from ideas to power games,” 891.

⁵⁰ Saurugger, “The constructivist turn in EU public policy approaches,” 25.

⁵¹ Saurugger, “Constructivism and public policy approaches in the EU: from ideas to power games,” 895-896.

European Union has used shared ideas to construct and strengthen its policies on security and migration in a similar manner.

There are, however, more ways to interpret behaviour in International Relations. Scholars who adopt a more rationalist approach to their research often argue in favour of the 'logic of consequentialism'. According to this theory of action, which is embedded in rational choice theory, the agent pursues strategically selected goals, that aim at maximizing its own preferences.⁵² Contrary to the logic of appropriateness, the logic of consequentialism does not acknowledge a coherence between agents and structures, making it a seemingly impracticable theory for constructivists to adopt.⁵³ However, putting aside strictly theoretical thinking, in practice the agent does face the dilemma of balancing both types of logics.⁵⁴ James G. March and Johan P. Olsen state that, "political actors are [x] likely to be held accountable for both the appropriateness and the consequences of their actions."⁵⁵ The dichotomy between the two types of logic can nevertheless be overcome when we assume that ideas –whether they are on what is rational or on what is appropriate– are used strategically by the agent in the process of policy development. This research follows Saurugger's claim, that there is no "simple linearity between interests and outcomes".⁵⁶ This makes it possible to approach the agent as acting in accordance with appropriateness as well as with rationality. Behavioural outcomes such as policies are therefore dependent on the context of specific situations, and are a result of the agent's assessment of whether to use ideas strategically to pursue rational interests or interests of appropriateness. Chapters 3 and 4 of this research expose the EU's struggle of balancing both types of logic in the development of its policies.

Conclusion

Collective identities, such as the European identity, are formed through repeated efforts of cooperation. These identities are constructed, and should thus be approached from a constructivist perspective. The creation of common threat perceptions and shared ideas on various matters, are an important part of the identity- and interests-formation processes. Political behaviour, such as policy-making, should be considered an outcome of the collective, or transnational identity of the European Union. From this perspective, the following chapters will be able to contextualise the formation of Europeanness and the development of EU policies.

Chapter 2: Constructing the European identity

Introduction

By implementing the earlier established constructivist framework on identity formation, this chapter will give a more profound understanding of how shared ideas have played an important role in the constructing of the Euro-identity in the early 1990s. This chapter will demonstrate, that the core of Europeanness insufficiently enrapures a collective identity, and that it is mainly

⁵² Herald Müller, "Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations," *European Journal of International Relations* 10, no. 3 (2004): 397.

⁵³ Saurugger, "The constructivist turn in EU public policy approaches," 20.

⁵⁴ March & Olsen, "The Logic of Appropriateness," 12.

⁵⁵ Ibidem.

⁵⁶ Saurugger, "Constructivism and public policy approaches in the EU: from ideas to power games," 901.

linked to ideas on security. As a consequence of this, security policies have been used as tools for the strengthening of the EU's security identity, thereby establishing the EU as a securitising agent. The establishment of a common European security framework and the realization of the Schengen-Dublin system, display how the European identity has manifested itself through discourse, but also as a result of policy-making.

Shaping the Euro-identity: the establishment of Union citizenship

With the establishment of the European Union after the signing of the 1992 Treaty on European Union, also known as the Treaty of Maastricht, the issue of creating a common consciousness became an increasingly important topic of debate, among scholars as well as within the European community.⁵⁷ In the early years after the Treaty was signed, the issue mainly revolved around what it meant to be a citizen of the Union. Philip Schlesinger reflects on the Treaty of Maastricht, and wonders “what points of identification [it] can come to offer its peoples?”, ‘it’ referring to the pluri-ethnic character of the newly formed European Union.⁵⁸ The author then presses the reader to rethink the essence of the nationstate, which he characterises as “a political, economic and cultural entity that is identity-conferring”.⁵⁹ Schlesinger does not problematise the creation of the former two on a European level, for this can be realised by establishing a political union and common economic policy.⁶⁰ He argues, that both political and economic restructuring is enabled by the growing interdependence between European states and the impact of economic internationalisation.⁶¹ The idea of creating a cultural entity on a European level, on the other hand, raises the question of what the common basis of “Euro-identity” might be.⁶² According to Jennifer Welsh, the Treaty of Maastricht presents the idea of European identity rather obscure. She states, that “it does little to reflect or develop a sense of shared goals and values among European peoples”.⁶³ In order to establish a solid sense of Europeanness, there needs to be a distinct and grounded conception of what constitutes the European citizen and the non-citizen; it is about differentiating between *us* and *them*. Welsh claims, that the Treaty does strengthen the understanding of European political and legal citizenship, because it institutionalises earlier community rights and presents new ones.⁶⁴ However, according to Welsh this will not sufficiently encourage a sense of common European identity.⁶⁵ Schlesinger too is quite pessimistic about successfully constructing a transnational consciousness. The author states, that “the possibility of constructing a European identity within the community is rather slim”.⁶⁶ The issue of a lacking common culture is a determining factor for Schlesinger. He additionally argues, that rising regionalism –for example in Scotland and Catalonia– poses a serious challenge for the establishment of “Europeanism”.⁶⁷

⁵⁷ “Treaty on European Union,” Official Journal of the European Communities. 29 July, 1992.

⁵⁸ Philip Schlesinger, “Europeanness – a new cultural battlefield,” *Innovation: the European Journal of Social Science Research* 5, no. 2 (1992): 15.

⁵⁹ *Ibidem*, 17.

⁶⁰ *Ibidem*, 14-19.

⁶¹ *Ibidem*.

⁶² *Ibidem*, 15.

⁶³ Jennifer M. Welsh, “A Peoples’ Europe? European Citizenship and European Identity,” *European Cultural Studies* 93, no. 2 (1993): 1-2.

⁶⁴ Welsh, “A Peoples’ Europe? European Citizenship and European Identity,” 7.

⁶⁵ *Ibidem*, 8.

⁶⁶ Schlesinger, “Europeanness – a new cultural battlefield,” 17.

⁶⁷ *Ibidem*, 18-19.

If we look closely at the contents of the Treaty of Maastricht, Schlesinger and Welsh, who both published their works in the wake of the signing of the Treaty, were right to be somewhat sceptical. The Treaty reflects two major deficiencies of European thinking about community collectivism. Firstly, it lacks a proficient description of what it means to be a Union citizen. The document states, that “every person holding the nationality of a Member State shall be a citizen of the Union”, yet it passes on the opportunity to specify if and how this can lead to unification and integration of the European peoples.⁶⁸ Instead of explaining how citizens should identify with their new role as transnational citizen, the Treaty discusses the issue of citizenship rather briefly and mainly elaborates on voting rights and the right to stand as candidate in elections. Secondly, besides its lacking understanding of Union citizenship, the Treaty offers a limited, and fairly one-sided, specification of the European identity. One of the main objectives of the Union, as presented in Article B of the Treaty, refers to the European transnational identity on an international level, and states the following:

“The Union shall set itself the following objectives: [x] to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defense policy, which might in time lead to a common defence”.⁶⁹

The Treaty does not offer additional interpretations of Union identity. It solely expounds on the Euro-identity on the international stage, and links identity with creating common foreign, security and defence policies. The Treaty elaborates on this objective, in Article J.1:

“The Union and its Member States shall define and implement a common foreign and security policy, governed by the provisions of this Title and covering all areas of foreign and security policy [x] to safeguard the common values, fundamental interests and independence of the Union”.⁷⁰

Whatever these common values and fundamental interests include, is not specified, but can be assumed from reading the document. Throughout the Treaty a focus is put on democracy, security and commerce. But what about the deeper level of cultural values that Schlesinger indicates as a determining factor in creating a common identity? The abovementioned articles from the Treaty indicate that the common base of Euro-identity relies on ideas about security. This is confirmed in the Treaty’s additional agreement on Western European Union (WEU), where it states that the WEU members need to develop “a genuine European Security and defence identity” with the perspective of creating a “common defence policy within the European Union”.⁷¹ In the document, the WEU is framed as an alliance for the development of foreign and security policy in accordance with the Atlantic Alliance, which is not striking, considering it was originally established as a military pact in the early Cold War.⁷² However, one should take into account the effect of further strengthening the security ideals within this agency, on the identity formation process of the European Union. The declaration on the WEU

⁶⁸ “Treaty on European Union,” 7.

⁶⁹ *Ibidem*, 4.

⁷⁰ *Ibidem*, 58.

⁷¹ “Treaty on European Union,” 105.

⁷² Europa Nu, “West-Europese Unie (WEU).” Accessed May 17, 2021. https://www.europa-nu.nl/id/vg9xnycy1hy2/west_europese_unie_weu?ksel=n3.

also presents the question of why it is even necessary to keep this agency intact, instead of dissolving it into the new political structures of the Union. Having a separate, exclusive union for Western European interests could prohibit the institutionalising of common European goals and values, and makes it harder for future member states to identify with the Euro-identity.

The Treaty also offers little insight in how the Union will serve as a cultural entity. In article 128, the Treaty addresses, again very briefly, the importance of preserving and promoting culture, by stating the following:

“The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”.⁷³

The article mentions that the Union intends to improve “the knowledge and dissemination of the cultures and history of the European peoples”, thereby highlighting its multi-ethnic or multi-cultural dimensions.⁷⁴ It is, however, not explained how the Union intends to bring to the fore the aforementioned common cultural heritage, or how it even characterizes such a common culture. Following Schlesinger’s claim, that, in order for the Union to obtain the identity-conferring skills equal to those of the nationstate, it should comprise of a political, economic and cultural entity, this chapter claims that the Treaty insufficiently addresses the question of a common culture and consequently problematises the creation of Europeanness on a deeper level. On the other hand, it is rather hasty to assume that a collective identity can be constructed in a relative short time and as a result of the aims and interests introduced in one single document, albeit that the document presents the foundation of the European Union. Schlesinger nuances his pessimistic view on the establishment of substantial Europeanness, by saying that “the production of an overarching collective identity can only seriously be conceived as the outcome of long-standing social and political practice”.⁷⁵ However, the Treaty does establish an ideational starting point, from which the EU will build and strengthen its identity in the subsequent years.

From ESDP to CSDP: ten years of strengthening the EU’s security identity

After the establishment of a vaguely identified Euro-identity in the early 1990s, the European Union spent more than a decade on strengthening the security aspects of its identity through the implementation of policies. From 1999 to 2009, the Union institutionalised its security identity, and displayed it as one of the core components of the European strategic culture –i.e. the consistent context in which an agent constructs behaviour.⁷⁶ According to Magnus Ekengren, “the Union has essentially always been a security project”.⁷⁷ Following the authors statement, and considering that the Euro-identity was built upon ideas on security, this research claims, that the EU has used policies on security as a tool to emphasise its role as securitising agent, on the European, as well as on the international level.

⁷³ “Treaty on European Union,” 24.

⁷⁴ *Ibidem*.

⁷⁵ Schlesinger, “Europeanness – a new cultural battlefield,” 17.

⁷⁶ Kenneth McDonagh, “Talking the Talk or Walking the Walk: Understanding the EU’s Security Identity,” *Journal of Common Market Studies* 53, no. 3 (2015): 631.

⁷⁷ Magnus Ekengren, “From a European Security Community to a Secure European Community. Tracing the New Security Identity of the EU,” in *Globalization and Environmental Challenges. Reconceptualizing Security in the 21st Century*, ed. Hans Günter Brauch et al. (Berlin, Heidelberg, New York: Springer, 2008), 698.

In 1998, the European Parliament (EP) voted for the “Resolution on the gradual establishment of a common defence policy for the European Union”, thereby extending its common foreign policy by adding a legal framework on common security and defence.⁷⁸ The resolution, which created the outlines for the later to be established European Security and Defence Policy (ESDP), determines that one of the EU’s main goals will be “to strengthen the security of the Union in all ways”.⁷⁹ The resolution furthermore proposes, that “the purpose of a common defence policy is to protect the European Union’s interests in all areas, including security of essential supplies, when diplomatic instruments are no longer sufficient”.⁸⁰ The resolution also states, that:

“[x] cooperation in the field of armaments needs to be strengthened and that the restructuring of Europe’s defence-related industries, the establishment of an open internal market in the armaments sector, the production of common military equipment which is as cost-effective as possible and the formulation of a unified policy on arms exports are essential to the establishment of a common defence policy”.⁸¹

Regarding the enforcement of the newly established policy framework, the resolution proposes several executive bodies, such as a European Armaments Agency, a European civilian corps and a police unit.⁸² The resolution also calls for the creation of a White Paper on joint defence, and states that:

“[x] such a White Paper, which would identify, inter alia, common security interests, would enable the Member States’ defence policies to be gradually harmonized, thus facilitating the development of common armaments programmes and thereby strengthening the European Union’s internal cohesion and its position on the international scene”.⁸³

By using the phrases “common security interests” and “internal cohesion”, the resolution suggests the formation of a European security community, marked by deep interdependence of interests and shared ideas on security and defence. Ekengren claims, that the European security community resulted from growing economic integration and strengthened common institutions.⁸⁴ If we characterise an institution as the result of societal incorporation of ideas, the author’s theory is applicable, and confirms the EU’s role as securitising agent. Furthermore, the resolution indicates, that the EU does not solely set out to be a securitising agent on the European level, but also on the international level. The resolution designates one of the main objectives of EU defence policy “the creation and the safeguarding of peaceful and cooperative relations not only with neighbouring states but also within a global context”, which underlines the EU’s global identity.⁸⁵ It elaborates on this objective, by stating that “under a common

⁷⁸ “Resolution on the gradual establishment of a common defence policy for the European Union,” Official Journal of the European Communities. 1 June, 1998.

⁷⁹ *Ibidem*, 192.

⁸⁰ *Ibidem*.

⁸¹ *Ibidem*, 193.

⁸² *Ibidem*, 192-195.

⁸³ “Resolution on the gradual establishment of a common defence policy for the European Union,” 194.

⁸⁴ Ekengren, “From a European Security Community to a Secure European Community,” 696.

⁸⁵ “Resolution on the gradual establishment of a common defence policy for the European Union,” 192.

defence policy the European Union will be able to contribute to peace and stability in the world”.⁸⁶ In 2003 the Union enlarged their security framework by implementing the European Security Strategy (ESS), which expressed the need for a common strategic culture “that fosters early, rapid, and when necessary, robust intervention”.⁸⁷ In order to strengthen its strategic culture, the ESS states, that the EU should be “more active, more coherent and more capable” in the pursuit of strategic objectives.⁸⁸

The process of identity-building through policy-making coincided with the enlargement of the Union from 12 member states that signed the Treaty of Maastricht in 1992, to 27 member states in 2009.⁸⁹ Already in the resolution of 1998, the EP addresses the issue of enlargement and possible challenges for the Euro-identity. It states, that “as the European Union grows larger, there could be increasing pressure for it to develop a common defence policy”.⁹⁰ It does, however, claim that “[x] the enlargement of the European Union will also fundamentally contribute to the overall security of our continent”.⁹¹ In 2009, the security framework was restructured by the introduction of the EU’s Common Security and Defence Policy (CSDP), which would replace the ESDP and enlarge the EU’s security policies.⁹² Kenneth McDonagh argues, that with the establishment of the CSDP, the EU’s strategic culture finally centralises security policy.⁹³ The CSDP should be considered an all-encompassing security framework, for it helps the Union carry out tasks ranging from humanitarian missions and conflict prevention, to joint disarmament operations and post-conflict stabilisation.⁹⁴ The CSDP additionally emphasises “a deeper form of cooperation between EU countries” and demands that member states “commit to developing their defence capabilities more intensively”.⁹⁵ The CSDP, which was created with the signing of the 2009 Treaty of Lisbon, marks the establishment of a fully institutionalised and coherent European security identity. According to Risse, the Lisbon Treaty –including the CSDP– completed “the foreign and security portfolio of the EU”.⁹⁶

The institutionalised framework on security should be considered an expression of the EU’s role conception. Role conception defines one’s responsibilities and obligations in the policy-making process, but it also expresses the agent’s norms and perceptions of reality.⁹⁷ According to Lisbeth Aggestam, “it tends to reveal the intention and motives of the [x] actor, in other words, the meaning of action”.⁹⁸ The author states, that the EU has already been appointed many different role conceptions, such as “a balancer of power, a regional pacifier, a global intervenor, a mediator of conflicts, a bridge between the rich and poor, and a joint supervisor of the world

⁸⁶ “Resolution on the gradual establishment of a common defence policy for the European Union,” 192.

⁸⁷ Council of the European Union, “European Security Strategy,” The Secretary General, Brussels, 8 December, 2003, 13.

⁸⁸ *Ibidem*, 13-15.

⁸⁹ European Union, “The History of the European Union,” accessed June 1, 2021.

https://europa.eu/european-union/about-eu/history_en.

⁹⁰ “Resolution on the gradual establishment of a common defence policy for the European Union,” 193.

⁹¹ *Ibidem*.

⁹² “The EU’s Common Security and Defence Policy.” EUR-Lex Access to European law, Summaries of Eu Legislation. Accessed June 2, 2021. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum%3Aai0026>.

⁹³ McDonagh, “Talking the Talk or Walking the Walk: Understanding the EU’s Security Identity,” 631.

⁹⁴ “The EU’s Common Security and Defence Policy.”

⁹⁵ *Ibidem*.

⁹⁶ Thomas Risse, “Identity Matters: Exploring the Ambivalence of EU Foreign Policy.” *Global Policy* 3, no. 1 (2012): 87.

⁹⁷ Aggestam, “Role theory and European foreign policy: a framework of analysis,” 19-20.

⁹⁸ *Ibidem*, 19.

economy".⁹⁹ All of these roles are constructed and reconstructed through the process of policy-making.¹⁰⁰ An analysis of EU security policy from 1999 to 2009, shows, that in addition to the abovementioned roles, the Union intends to establish its role as securitising agent, on both the European and the global level. The security framework reflects the Union's intersubjective understandings on what is appropriate behaviour, fitting to its self-appointed role as securitising agent. Additionally, the narrative throughout the policies on security frames the Euro-identity as being strongly connected to security and defence. According to McDonagh, "an identity narrative is not just found in speeches and texts, but in the everyday practice of foreign policy".¹⁰¹ Regarding its role as securitising agent, the author states, that EU practices –i.e. policies– are performed. This performative process helps the Union construct, or strengthen, its image of the securitising agent.¹⁰²

The Schengen-Dublin system: securitising migration and asylum

Throughout the 1990s and early 2000s, the European Union also strengthened its foreign policy framework by establishing the Schengen-Dublin system. With this system a shift has occurred, that increasingly puts more focus on the external borders of the Union.¹⁰³ Additionally, in an attempt to balance security and mobility, the EU has developed a system that securitises the practices of (irregular) migration and asylum from third countries.¹⁰⁴ The realization and development of this system can only be understood by acknowledging the EU in its securitising role. An analysis of the Dublin-Schengen system shows, that Europe's security identity does not solely manifest itself as a result of discourse or texts, but is also confirmed through its policy-making process.

The first Dublin Convention, which was signed in 1990 and came into effect in 1997, presents the EU's common approach to issues regarding asylum, and sets fixed criteria for the allocation of responsibility to member states.¹⁰⁵ The Dublin Convention builds on –and partly replaces– the previously established Schengen Agreement. With the Schengen Agreement of 1985, the EU created a community free from internal border security, called the Schengen Area. According to Bernd Kasperek, Schengen should be regarded "the foundation of European migration policy", for it contained norms on visa requirements and entry policy.¹⁰⁶ It also marked "the birth of the European External Border as an institution and European policy field".¹⁰⁷ Consequently, mobility within the Schengen Area needed to be "counter-balanced" by a strengthened border with third countries.¹⁰⁸ The Dublin Convention of 1997 should be regarded the first coordinated response to the increasing influx of migrants and asylum-seekers in the

⁹⁹ Aggestam, "Role theory and European foreign policy: a framework of analysis," 20.

¹⁰⁰ Ibidem, 11.

¹⁰¹ McDonagh, "Talking the Talk or Walking the Walk: Understanding the EU's Security Identity," 630.

¹⁰² Ibidem. 627

¹⁰³ Eiko Thielemann & Carolyn Armstrong, "Understanding European asylum cooperation under the Schengen/Dublin system: a public goods framework," *European Security* 22, no. 2 (2013): 149.

¹⁰⁴ Maartje van der Woude, Vanessa Barker, & Joanne van der Leun, "Crimmigration in Europe," *European Journal of Criminology* 14, no. 1 (2017): 4.

¹⁰⁵ Clotilde Marinho & Matti Heinonen, "Dublin after Schengen: Allocating responsibility for examining asylum applications in practice," *Eipascope* 3 (1998): 2.

¹⁰⁶ Bernd Kasperek, "Complementing Schengen: The Dublin system and the European border and migration regime," in *Migration policy and practice. Interventions and Solutions*, ed. Harald Bauder & Christian Matheis. (New York: Palgrave Macmillan, 2016), 61.

¹⁰⁷ Ibidem.

¹⁰⁸ Ibidem.

1980s at the European level, after initial restrictive action taken by individual member states proved to be insufficient and fruitless.¹⁰⁹ Furthermore, these independent actions negatively affected neighbouring member states, who experienced a vast increase in migrants and refugees. One year after its enactment, Clotilde Marinho and Matti Heinonen state, that the Dublin Convention is the “first binding instrument in force in the European Union in the field of asylum, confirming the Member States’ will to ensure protection for those in need, by sharing the responsibility of examining an asylum application”.¹¹⁰

Whereas the first Dublin Convention, or Dublin I, mainly dealt with issues regarding asylum, Dublin II, also called the Dublin Regulation, was expanded to include jurisdiction on irregular migration.¹¹¹ Dublin II –as well as the later to be established Dublin III– refers to irregular migrants and asylum-seekers as “third-country national[s]”.¹¹² A Council regulation of 2003, presents Dublin II by stating the following:

“A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union’s objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community”.¹¹³

As stated by Eiko Thielemann and Carolyn Armstrong, the Dublin Regulation of 2001 “aimed to bring the Dublin Convention into the Community framework”.¹¹⁴ In the years following Dublin II, the EU enlarged its security framework by creating the Common European Asylum System (CEAS): a structure of legislative acts and institutions for the regulation of migration and asylum on the European level.¹¹⁵ At the centre of CEAS are Dublin II and the Eurodac Regulation. Eurodac, which was established in 2003, is a European-wide fingerprint database, that helps the EU track irregular migrants and asylum-seekers, and registers the applicants country of first entry.¹¹⁶ The Dublin system works with a first country of entry principle, which determines that the responsibility of processing asylum applications lies with the country of first arrival.¹¹⁷ It additionally means, that rejection in one state, means rejection in all EU member states.¹¹⁸ Regarding this principle, Article 3 of Dublin II, states the following:

¹⁰⁹ Marinho & Heinonen, “Dublin after Schengen: Allocating responsibility for examining asylum applications in practice,” 2.

¹¹⁰ *Ibidem*, 9.

¹¹¹ Kasperek, “Complementing Schengen: The Dublin system and the European border and migration regime,” 61-63.

¹¹² “Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.” EUR-Lex Access to European law , official Journal L 050 , 25/02/2003 P. 0001 – 0010. Accessed July 5, 2021. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003R0343>.

¹¹³ *Ibidem*.

¹¹⁴ Thielemann & Armstrong, “Understanding European asylum cooperation under the Schengen/Dublin system,” 160.

¹¹⁵ Kasperek, “Complementing Schengen: The Dublin system and the European border and migration regime,” 62.

¹¹⁶ *Ibidem*, 64.

¹¹⁷ Thielemann & Armstrong, “Understanding European asylum cooperation under the Schengen/Dublin system,” 160.

¹¹⁸ de Somer, “Dublin and Schengen: A tale of two cities,” 3-8.

“Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by any single Member State, which shall be the one which [x] is responsible”.¹¹⁹

In 2013, the Dublin system was recast once more with the establishment of the Dublin III Regulation. Dublin III aims at enhancing the effectiveness of EU migration policy within the security framework, and improving existing institutions, such as CEAS.¹²⁰ Its main purpose, however, is to clarify the regulations regarding the responsibilities of the first country of entry.¹²¹ A 2013 regulation of the European Parliament and the Council, states that the newly recast Dublin III system aims at:

“establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person”.¹²²

According to Ibrahim Soysüren and Mihaela Nedelcu, Dublin III centralises new migration technologies in its policies of migration control.¹²³ Tools such as the Visa Information System (VIS) are used to strengthen the migration control capabilities, and overall security of individual member states. These technological tools, which have been granted increasing relevance, help the EU track and process the human body of the asylum applicant “as if it were an information storage device”, and consequently facilitate the identification of “deportable persons”¹²⁴ By including the use of such biometric data, and adopting the mechanisms on a European-wide base, the EU’s security framework regarding migration has shifted to a new phase. According to Thielemann and Armstrong, with the Dublin Regulations, the EU has established one of the main cornerstones of its internal security system.¹²⁵

Conclusion

This chapter has shown, that the European identity has been established as a result of transnational ideas on and shared interests regarding security. Because of a lacking common cultural heritage, the EU has failed to create a common identity on a deeper level. As a result, the European common identity is now strongly connected to one of the EU’s core aspects: security.

¹¹⁹ “Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.”

¹²⁰ Constantin Hruschka, “The (reformed) Dublin III Regulations – a tool for enhanced effectiveness and higher standards of protection?” *ERA Forum* 15, no. 4 (2014): 470-471.

¹²¹ “Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.” EUR-Lex Access to European law , official Journal L 050 , 25/02/2003 P. 0001 – 0010. Accessed July 5, 2021. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003R0343>.

¹²² Ibidem.

¹²³ Ibrahim Soysüren & Mihaela Nedelcu, “European instruments for the deportation of foreigners and their uses by France and Switzerland: the application of the Dublin III Regulation and Eurodac,” *Journal of Ethnic and Migration Studies* (2020): 3.

¹²⁴ Ibidem.

¹²⁵ Thielemann & Armstrong, “Understanding European asylum cooperation under the Schengen/Dublin system,” 148.

The process that was then set in motion, is one that operates in a vicious cycle: in its role as securitising agent, the EU has developed and strengthened foreign policies and security policies in an effort to confirm its security identity. Additionally, with the Schengen-Dublin system, the EU has included the issues of migration and asylum to its security framework, thereby finding a way to deal with the challenge of balancing mobility and security.

Chapter 3: Crimmigration in the European Union

Introduction

This chapter will elaborate on how the EU, by prioritising its security identity, has contributed to the rise of crimmigration, an issue that has been the topic of debate amongst scholars and critics since the beginning of the century. In its self-appointed securitising role, the EU has assigned migrants and asylum-seekers the label of potential security threats. In doing so, the EU has been able to justify intensified and securitised actions that prevent and regulate migration. Agencies and institutions that have been established in the early 2000s, such as FRONTEX, are executing criminalised policies, and are therefore partly responsible for the rise of crimmigration within the Union. Additionally, in the aftermath of the 2015 refugee crisis, the EU has faced many challenges regarding some aspects of the migration policy framework. The crisis has unveiled the divergent security interests and threats of different member states. Consequently, this is now challenging the materialisation of the EU's security identity.

Facing the external threat: strengthening migration policy

As a part of the Common European Asylum System (CEAS), the Schengen-Dublin system has allowed the EU to further strengthen its security community, by including issues of migration and asylum. CEAS, which was established in 1999, but recast several times since, materialises and institutionalises the EU's legislative framework concerning migration and asylum.¹²⁶ It furthermore serves "to harmonise asylum systems in the EU and reduce the differences between member states on the basis of binding legislation".¹²⁷ In 2016, the EU reformed CEAS to include a strengthening of the Eurodac system. In its communication to the European Parliament and the Council on 6 April 2016, the European Commission announced, that by reinforcing Eurodac, the system will be "expanding its purposes beyond asylum", so that it would be able to facilitate "the fight against irregular migration".¹²⁸ This objective demonstrates the EU's institutionalised, and highly securitised, attitude towards migration and asylum.

Throughout the 2000s, and resulting from the European security identity, the processes of migration and asylum have been securitised at a transnational level.¹²⁹ During the Dublin negotiations, successful security policy was linked with the ability to prevent flows of irregular

¹²⁶ "Common European Asylum System (CEAS)," European Commission. Migration and Home Affairs, accessed July 12, 2021. https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/common-european-asylum-system-ceas_en.

¹²⁷ Ibidem.

¹²⁸ "Communication from the Commission to the European Parliament and the Council towards a reform of the Common European Asylum System and enhancing legal avenues to Europe," EUR-Lex Access to European Law, 6/4/2016. Accessed July 14, 2021. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:197:FIN>.

¹²⁹ van der Woude, Barker & van der Leun, "Crimmigration in Europe," 4.

migration and transborder crime.¹³⁰ Even before the establishment of Dublin I, during the 1990 talks on the Convention Applying the Schengen Agreement in 1985, connections are made between migration and asylum on the one hand, and terrorism, transnational crime and border control on the other.¹³¹ Associating migration with crime and security is, therefore, not a new thing. However, since the asylum crisis of the 1990s, these links have become the basis for a series of legislative and institutional reforms within the EU.¹³² The development of these reforms, which target irregular migrants especially, seem to be accelerating throughout the decades, and demonstrate the merging of migration and crime.¹³³ The theory of crimmigration, or the criminalisation of migration, was coined in 2006 by Juliet Stumpf, and should be understood as the fusing together of immigration law and criminal law in such a way that a clear distinction between the two has faded.¹³⁴ Especially during the last twenty years, scholars have been debating the question of how and why migration policy became an issue of security that requires –or seems to require– criminal law. In 2000, Jef Huysmans recognizes that “migration is often easily connected to security-related problems such as crime”.¹³⁵ He claims, that migration and migration policy not only have been politicized, but that they have been negatively politicized.¹³⁶ According to the author, migrants are seen as “an illegitimate presence and scapegoat”.¹³⁷ This process of negative politicisation has occurred both on the national and the European level, where it has been integrated into the internal structures of the security framework.¹³⁸ However, because of the Europeanisation of migration policy and de de-bordering within the European Union, the issue of exclusion –one of the side effects of securitised migration policy according to Huysmans– has become integrated on a higher level.¹³⁹ Huysmans states, that from the 1980s onwards, “a significant Europeanization of migration policy took off”.¹⁴⁰

Considering that the EU’s identity mainly revolves around issues of security and defence, it should not be surprising that its consequential actions and policy-making efforts have contributed to the trend of growing crimmigration within the Union. Joanna Parkin claims, that crimmigration has intensified significantly during the past two decades.¹⁴¹ The main problem that she presents, is that because of increasing crimmigration, “criminality [x] is less associated with an ‘act’ but rather treated as the condition of a person”.¹⁴² Illegality has thus become a fact of the migrant’s very being. This is interesting considering that there is little evidence to back up the idea that immigrants, whether they are regular or irregular, cause a disproportionate rise in crime in a community.¹⁴³ This raises the question of why and how the EU has been able to frame

¹³⁰ Thielemann, “Understanding European asylum cooperation under the Schengen/Dublin system,” 148-149.

¹³¹ Jef Huysmans, “The European Union and the Securitization of Migration,” *Journal of Common Market Studies* 38, no. 5 (2000): 756.

¹³² van der Woude, Barker & van der Leun, “Crimmigration in Europe,” 4.

¹³³ Ibidem.

¹³⁴ Juliet Stumpf, “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,” *American University Law Review* 56, no. 2 (2006): 381.

¹³⁵ Huysmans, “The European Union and the Securitization of Migration,” 770.

¹³⁶ Ibidem.

¹³⁷ Ibidem.

¹³⁸ Ibidem.

¹³⁹ Ibidem, 170-171.

¹⁴⁰ Huysmans, “The European Union and the Securitization of Migration,” 755.

¹⁴¹ Joanna Parkin, “The Criminalisation of Migration in Europe. A State-of-the-Art of the Academic Literature and Research,” *CEPS Paper in Liberty and Security in Europe* no. 61 (2013): 17.

¹⁴² Ibidem, 18.

¹⁴³ Ibidem, 17.

the issue of migration as such that it validates excessive policies targeting and preventing migration from third countries. Marinko Banjac evaluates the “intricate relationship between migration and the idea of EU citizenship”, and states that the EU perceives irregular migrants and asylum-seekers as a threat.¹⁴⁴ He adds, that “the construction of immigrants as a threat represents a political strategy which seeks to justify diverse, contentious, even violent and exclusive, mechanisms and techniques of controlling and regulating migration”.¹⁴⁵ The author furthermore states, that the European collective identity is constructed through its migration policies, and that therefore, the challenge of dealing with migration is especially important.¹⁴⁶ This research argues, that even though the EU’s policy regarding migration has not created this collective identity, it has definitely served as a tool to strengthen the already existing security identity. Lena Karamanidou states, that the threats appointed to migration are not real or concrete, but are constructed through discourses and the practice of securitisation.¹⁴⁷ She concludes, by saying that migration has been established “as a phenomenon posing threats to the internal security of European societies”.¹⁴⁸ By establishing such threats through the act of securitisation, the EU has been able to assign migrants the status of ‘illegitimate’ and ‘other’, thereby validating practices and policies that effectively deal with the ‘security problem’. Additionally, the EU has used the constructed migration threat as a tool for the consolidation of its identity as securitising agent. The subsequent migration policies, in its turn, have had the effect of reproducing the perception of migrants as security threats.

Converging crime and migration policies: detention and border control

In the early years of the 2000s, the EU’s migration policy framework became all-encompassing. Valsamis Mitsilegas states that migration policy effectively focusses on all relevant dimensions: “prevention, regulation and removal”.¹⁴⁹ He adds, that in all three steps migration is being criminalised. Mitsilegas understands the criminalisation of migration, or crimmigration, as “the threefold process whereby migration management takes place via the adoption of substantive criminal law, via recourse to traditional criminal law enforcement mechanisms including surveillance and detention, as well as via the development of mechanisms of prevention and pre-emption.” The two, often interwoven, aspects of EU migration policy, that are frequently used by scholars and critics to highlight growing crimmigration, are detention and border control. Mary Bosworth and Sarah Turnbull argue, that since the 2000s, the EU has made increasing efforts to align migration control amongst its member states, through the establishment of various institutions and agencies.¹⁵⁰ They add, that “the EU has been at the forefront of border policing functioning legislatively and at an operational level”.¹⁵¹ With the coming about of such agencies – which, for example control the policing at Europe’s external borders– there has been a

¹⁴⁴ Marinko Banjac, “European identity through practices of enumeration: the formation of EU citizenship and European migration policy,” *Dve Domovini* 35, no. 1 (2011): 35-36.

¹⁴⁵ Ibidem, 43.

¹⁴⁶ Ibidem.

¹⁴⁷ Lena Karamanidou, “The securitisation of European migration policies: perceptions of threat and management of risk,” in *The Securitisation of Migration in the EU*, ed. Gabriella Lazaridis & Khursheed Wadia (London: Palgrave Macmillan, 2015), 56.

¹⁴⁸ Ibidem.

¹⁴⁹ Valsamis Mitsilegas, *The Criminalisation of Migration in Europe. Challenges for Human Rights and the Rule of Law* (London: Springer, 2015), 2.

¹⁵⁰ Mary Bosworth, & Sarah Turnbull, “Immigration detention, punishment, and the criminalization of migration,” *The Routledge handbook on crime and international migration* (Routledge, 2017), 17.

¹⁵¹ Ibidem.

prominent rise of “detention populations” within the Union.¹⁵² Especially in some of the southern Member States, such as Italy and Greece, migrants and asylum-seekers are incarcerated at large scale.¹⁵³

In 2004, in the context of securitising migration and asylum, the EU established the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, better known as FRONTEX.¹⁵⁴ One of the agency’s aims, is to improve “the integrated management of the external borders”.¹⁵⁵ Article 1 of Council Regulation (EC) No 2007/2004 of 26 October 2004, states the following regarding the establishment of the agency:

“While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the agency shall facilitate and render more effective the application of existing and future Community measures relating to the management of external borders. It shall do so by ensuring the coordination of Member States’ actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States”.¹⁵⁶

FRONTEX puts a considerable amount of emphasis on contributing to a “high and uniform level” of control on “persons”.¹⁵⁷ Considering that one of the agency’s main tasks is the carrying out of risk analyses, for which it “shall develop and apply a common integrated risk analysis model”, the persons in question are evidently regarded as potential security threats.¹⁵⁸ This explains why several human rights organisations have accused FRONTEX of “having launched a war against migrants”.¹⁵⁹ According to Sarah Léonard, the activities of the agency “have generated much controversy and have been heavily criticised especially by human rights activists and pro-migrant groups”.¹⁶⁰ In her article, Léonard concludes, by saying that “all the main activities of FRONTEX can be considered to be securitising practices and have therefore significantly contributed to the ongoing securitisation of asylum and migration in the EU”.¹⁶¹ FRONTEX should be regarded yet another tool of the EU for the establishing of securitised, and consequently criminalised, policies on a transnational level. The realisation of FRONTEX, as one of the EU’s core agencies of its migration framework, demonstrates how migration and asylum policies have merged with mechanisms of crime prevention and regulation.

¹⁵² Bosworth & Turnbull, “Immigration detention, punishment, and the criminalization of migration,” 17-18.

¹⁵³ *Ibidem*, 17.

¹⁵⁴ “Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union,” EUR-Lex Access to European Law, Official Journal L 349, 25/11/2004. Accessed July 9, 2021. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R2007>.

¹⁵⁵ *Ibidem*, 3.

¹⁵⁶ *Ibidem*.

¹⁵⁷ *Ibidem*.

¹⁵⁸ *Ibidem*, 4.

¹⁵⁹ Sarah Léonard, “EU border security and migration into the European Union: FRONTEX and securitisation through practices,” *European Security* 19, no. 2 (2010): 232.

¹⁶⁰ *Ibidem*.

¹⁶¹ *Ibidem*, 246.

Sharing the responsibilities: the Division between North-West and South-East

Despite the fact that many scholars throughout the last few decades have been critical of the EU's migration policy framework, it wasn't until the 2015 refugee crisis that the system really proved to be faulty and insufficient. The exponential rise in migration arrivals exposed some serious structural deficiencies of CEAS and the Schengen-Dublin system. It also unveiled significant tensions between member states. The EU's response, tackling the issues by strengthening the foundations of its security system, has once more reinforced the criminalisation of migration policy.

According to Marie de Somer, Dublin "collapsed under its own weight" as a result of "the system's lack of a sustainable responsibility-sharing mechanism".¹⁶² The current responsibility-sharing mechanism, which is translated into the Dublin Regulations as the "first country of entry principle", has caused major trust issues amongst member states regarding the ability to protect and maintain border control during a time of crisis.¹⁶³ Additionally, this principle has placed the responsibility, and more importantly, costs of securing the external border on the –mainly southern– first country of entry states. Thielemann and Armstrong state, that these member states experience a disproportionate amount of costs.¹⁶⁴ They add, that the system "advantages the wealthier, core Member States over those with external borders".¹⁶⁵ While southern and eastern borders were overburdened by a great influx of migrants and refugees from third countries, the northern and western states were faced with the consequential mass secondary movements.¹⁶⁶ Because the external border security of the EU seemed to be failing, many member states believed that the Schengen system of free movement within the Union could not be sustained. As a result, various member states, such as Germany, re-introduced border security measures.¹⁶⁷ De Somer refers to this development as the "spill-over of the Dublin crisis into the Schengen system", thereby emphasising the idea that if one system fails, both fail.¹⁶⁸ The 2016 recast of CEAS intended to deal with the issue of unequal responsibilities. In its communication with the European Parliament and the Council on 6 April, 2016, the Commission states that the first objective of CEAS should allow the EU:

"to deal better with the arrival of a high number of asylum seekers/refugees through specific points of entry and [ensure] a high degree of solidarity and a fair sharing of responsibility between Member States through a fair allocation of asylum seekers".¹⁶⁹

The communication does not specify on how to achieve solidarity and a fair system of allocation. More importantly, it does nothing but emphasise the need to strengthen the existing structures of CEAS. Giuseppe Campesi argues, that following the actions and statements of the Commission, it is evident that the "EU response appears to be treating the symptoms of the

¹⁶² de Somer, "Dublin and Schengen: A tale of two cities," 5.

¹⁶³ Thielemann & Armstrong, "Understanding European asylum cooperation under the Schengen/Dublin system," 149.

¹⁶⁴ Ibidem.

¹⁶⁵ Ibidem.

¹⁶⁶ de Somer, "Dublin and Schengen: A tale of two cities," 5.

¹⁶⁷ Ibidem.

¹⁶⁸ Ibidem.

¹⁶⁹ "Communication from the Commission to the European Parliament and the Council towards a reform of the Common European Asylum System and enhancing legal avenues to Europe," 6.

crisis, rather than its root causes".¹⁷⁰ Moreover, it raises the question of whether this recast is the EU's first serious attempt to resolve the problems of burden-sharing, or if it mainly aims at protecting North-Western member states from consequential secondary movement. The latter is 'coincidentally' also one of CEAS's objectives.¹⁷¹ Regardless of its true objectives, with the recast, the system should be considered more restrictive than ever before. According to Campesi, CEAS is "fundamentally inspired by the aim to confine as many potential refugees as possible on the edge of Europe, in third countries or in frontline Member States".¹⁷² Therefore, the 2016 recast of CEAS should be regarded an example of how EU policy developments in the aftermath of the 2015 crisis seem to encourage criminalised migration policy.

Considering all of the abovementioned, Campesi wonders if the 2015 crisis should not be regarded a refugee crisis, but rather "a crisis of the European Union".¹⁷³ The crisis of 2015 has uncovered many weaknesses of the EU's security system, some of which should be considered a result of the EU's poorly constructed and security-driven identity. Because this identity is mainly based on shared ideas about security, member states' general sense of community and cohesion is inclined to fade when their conceptions of threats and security diverge. Especially between North-Western states on the one side, and South-Eastern states on the other, there has been a significant gap between security-related interests and objectives.¹⁷⁴ The member states along the southern border of the EU, such as Italy, heartedly favour the creation of a mechanism that enables fair distribution and possible relocation of migrants and asylum-seekers.¹⁷⁵ Whilst on the other hand, the EU's North-Eastern member states prefer to maintain the strict rules of Dublin, presumably because they have been experiencing less feelings of urgency since the dropping of migration numbers in 2016.¹⁷⁶

By adding these differences in security interests and perceptions to the unequal costs of the system, we can explain why in recent years the EU, as a community, has been faced with major challenges regarding the materialisation of its security identity. Ole Weaver states, that stability within the European Union requires "mutual accommodation" amongst all of its units.¹⁷⁷ The author argues, that "a way has to be found for the units to understand each other's rationale", in order for the individual units not to act out of pure self-interest.¹⁷⁸ Thus, for the EU's migration policy to work, all member states should be willing to understand each other's motives and interests. The different reactions of member states following the 2015 crisis, show that within the EU, there is not only a lack of consensus over appropriate action, but also an inadequate comprehension of each other's rationale in taking such action. With the EU not addressing the real structural issues of the system, and consequently merely strengthening the already existing rigid and restrictive security policies, crimmigration seems likely to rise more and more. Marinho and Heinonen are cautiously positive, and state that "true solidarity and

¹⁷⁰ Giuseppe Campesi, "Seeking Asylum in Times of Crisis: Reception, Confinement, and Detention at Europe's Southern Border," *Refugee Survey Quarterly* 37 (2018): 46.

¹⁷¹ "Communication from the Commission to the European Parliament and the Council towards a reform of the Common European Asylum System and enhancing legal avenues to Europe," 6.

¹⁷² Campesi. "Seeking Asylum in Times of Crisis: Reception, Confinement, and Detention at Europe's Southern Border," 45.

¹⁷³ *Ibidem*, 44.

¹⁷⁴ van der Woude, Barker & van der Leun, "Crimmigration in Europe," 3.

¹⁷⁵ de Somer, "Dublin and Schengen: A tale of two cities," 6.

¹⁷⁶ *Ibidem*.

¹⁷⁷ Ole Waever, "European Security Identities," *Journal of Common Market Studies* 34, no. 1 (1996): 125.

¹⁷⁸ *Ibidem*.

burden sharing between Member States [x] will take time to emerge”.¹⁷⁹ However, considering that the EU is currently facing major consequences of the failing system, it does not seem that there is actually much time left. Additionally, it should be argued, that the EU’s security identity has been attempting to achieve an objective that is likely unachievable. It is highly doubtful that, within a small amount of time, the EU’s member states will align their security objectives regarding migration and asylum. Because the EU’s transnational identity mainly relies on issues regarding security, the alignment of security objectives is very important. However, to quote Weaver, “we may think we share something, but if the attempt is made to concretize it, it becomes clear that it is never totally common to us all”.¹⁸⁰

Conclusion

This chapter has illustrated how the EU’s efforts in strengthening its transnational security identity, have resulted in the increase of criminalised migration and asylum policies. The many weaknesses of the policy frameworks are unarguably a consequence of the fact that the EU’s identity is strongly based on matters of security. Due to a lacking consensus on security interests and objectives, the EU’s policy framework on migration and asylum is faulty. The following chapter will investigate the latest development of EU policies regarding migration and asylum.

Chapter 4: The New Pact on Migration and Asylum

Introduction

In an attempt to deal with the challenges of divergent security objectives, whilst also tackling the issue of criminalised migration policy, the EU introduced the New Pact on Migration and Asylum in 2020. With the Pact, the EU announces a fresh start in dealing with the many shortcomings of its policy frameworks. However, even though it does reflect a slight change in attitude towards migrants, the Pact does not represent a fundamentally different approach towards migration and asylum. This chapter will investigate the documentation on the Pact, and show that it merely encourages the continuation of existing policies.

Acknowledging the faults of CEAS and introducing a new framework

During the 2020 State of the Union, president of the European Commission Ursula von der Leyen presented the European Union’s New Pact on Migration and Asylum (NPMA).¹⁸¹ With this pact, the EU intends to set the tone for a new era of European cooperation, whereby a focus on solidarity between member states is being underlined. Throughout the statement, Von der Leyen repeatedly calls for sustainability and inclusivity.¹⁸² The Pact aims at “setting out a fairer, more

¹⁷⁹ Marinho & Heinonen, “Dublin after Schengen: Allocating responsibility for examining asylum applications in practice,” 10.

¹⁸⁰ Weaver, “European Security Identities,” 115.

¹⁸¹ “State of the Union Address by President von der Leyen at the European Parliament Plenary.” European Commission, Brussels, 16 September, 2020.

https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_20_1655.

¹⁸² Ibidem.

European approach to managing migration and asylum”.¹⁸³ With this new and improved approach, the EU is further strengthening its security framework in general, and its migration policy framework specifically. The Commission has declared that this Pact symbolises a “fresh start” in dealing with the many shortcomings of the current policy frameworks.¹⁸⁴

The NPMA is partly built on the 2015 Agenda on Migration, which has received criticism from scholars and political actors alike. One of its critics, Guiseppe Campesi, states that:

“according to the design of the EU Agenda on Migration, confinement and detention are intended to become cornerstones of a reception system forcing asylum-seekers to assume a cooperative stance, becoming ‘docile bodies’ ready to be captured by the border ‘surveillance assemblage’”.¹⁸⁵

The author’s main critique, is that human beings not only have become “subjects”, but “legal subjects”.¹⁸⁶ As mentioned in the previous chapter, a large emphasis on confinement, detention and border control in the creation of migration policy, has the potential result of establishing a security framework that contains criminalised migration measures. Considering that the 2020 Pact is built on existing ideas on security –such as those reflected in the 2015 Agenda– it can be assumed that its contents are not significantly different from earlier policies regarding migration and asylum. Additionally, it raises the question of whether or not the Pact will, for once, sufficiently deal with the issue of unequal distribution of costs and responsibilities.

In its communication to the various agencies of the EU on 23 September 2020, regarding the creation of the Pact, the Commission acknowledges that during the 2015 refugee crisis, member states have been affected in different ways.¹⁸⁷ The communication states, that the crisis has “brought to the surface differences which need to be acknowledges and overcome”.¹⁸⁸ The NPMA is presented as the “new” and “durable” framework that is urgently needed as a proper response to challenges, both in times of crisis and in normal times.¹⁸⁹ The commission presents the Pact, by stating the following:

“It provides a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management, recognising that the overall effectiveness depends on progress on all fronts. It creates faster, seamless migration

¹⁸³ European Commission. “New Pact on Migration and Asylum.” Migration and Home Affairs. Accessed July 12, 2021. https://ec.europa.eu/home-affairs/what-we-do/policies/new-pact-on-migration-and-asylum_en.

¹⁸⁴ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum.” EUR-Lex Access to European Law, 23/9/2020. <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM:2020:609:FIN>.

¹⁸⁵ Campesi, “Seeking Asylum in Times of Crisis: Reception, Confinement, and Detention at Europe’s Southern Border,” 69.

¹⁸⁶ Ibidem.

¹⁸⁷ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum,” 1.

¹⁸⁸ Ibidem.

¹⁸⁹ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum,” 1.

processes and stronger governance of migration and border policies, supported by the modern IT systems and more effective agencies".¹⁹⁰

Additionally, the commission has placed a lot of emphasis on the words "mutual trust" and "truly common" policies.¹⁹¹ Its general tone is one of positivity and constructiveness. On the other hand, it does not shy away from critically analysing its previous policies. In the communication, the Commission reflects on the lessons learned from the 2016 recast of CEAS, thereby stating that this Pact will promote trust amongst member states, through the implementation of a new solidarity mechanism.¹⁹² The document states, that:

"The New Pact recognises that no Member State should shoulder a disproportionate responsibility and that all Member States should contribute to solidarity on a constant basis. [x] It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation".¹⁹³

In an effort to counter the limitations set by the Dublin system, whilst tackling the challenge of burden-sharing, the Commission presents the Asylum and Migration Management Regulation.¹⁹⁴ According to the Commission, with this mechanism, the EU will be able to establish a system that promotes fair sharing of responsibilities.¹⁹⁵ Even though, this system mainly focusses on the relocation and return aspects of migration policy, the Commission believes that it will help the EU achieve close transnational cooperation.¹⁹⁶ Regarding the issue of lacking mutual trust, the Commission proposes the European Union Agency for Asylum.¹⁹⁷ According to the Commission, mutual trust can be established by enhancing the monitoring of national policies of different member states, and consequently offering operational support to these member states.¹⁹⁸ The proposed Agency for Asylum will help the EU with the implementation of its common approach on asylum, by offering guidance on a member state level. A third mechanism that would help reinstate mutual trust and fair cooperation, is the proposed Migration Preparedness and Crisis Blueprint.¹⁹⁹ With this mechanism, the EU intends to shift its policies from "a reactive mode to one based on readiness and anticipation", consequently creating stability as a positive result for the EU member states located at the external border.²⁰⁰ The Blueprint will provide "a framework for building resilience and organising a coordinated response to a crisis".²⁰¹

Besides creating a fair system of burden-sharing and restoring trust amongst member states, the NPMA aims at strengthening the Schengen system. The Commission acknowledges that the system has posed many challenges during the crisis of 2015, and proposes a Strategy on

¹⁹⁰ "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum," 2.

¹⁹¹ Ibidem.

¹⁹² Ibidem.

¹⁹³ Ibidem.

¹⁹⁴ Ibidem, 5.

¹⁹⁵ Ibidem.

¹⁹⁶ Ibidem, 5-6.

¹⁹⁷ Ibidem, 6.

¹⁹⁸ Ibidem.

¹⁹⁹ Ibidem, 10.

²⁰⁰ Ibidem.

²⁰¹ Ibidem.

the Future of Schengen. Regarding this strategy, which has yet to be fully shaped, the Commission states that, “it will [x] cover how to improve the Schengen evaluation mechanism to become a fully effective tool for evaluating the functioning of Schengen and for ensuring that improvements are effectively implemented”.²⁰² The Commission argues, that the Schengen system should be more complete.²⁰³ When referring to the internal border controls set up by individual member states from 2015 to 2016, the Commission emphasises that such controls may only be used temporary, and that there are alternatives that should be considered during future crises.²⁰⁴

With the improved migration framework, the EU aims at balancing the interests and needs of all member states. In its concluding paragraph, the Commission states, that “by working together, the EU can and must ensure that a truly common migration and asylum policy is quickly made a reality”.²⁰⁵ However, after analysing the communication regarding the NPMA, there are some question that remain unanswered. By placing most of the focus on the issues of common trust and coordinated policy, the EU has failed to provide an account of how it will tackle the rise of crimmigration. This raises the main question of this chapter: is the New Pact on Migration and Asylum indeed testimonial for a new approach, or does it merely strengthen the EU’s already existing ideas on security and migration, which have produced criminalised policies?

Continuing criminalisation and the violation of human rights

Many scholars have voiced their concerns about the EU’s new approach towards migration and asylum. Most of the critique stresses that, with the NPMA, the EU will continue to promote criminalised policies and consequently violate human rights. Alberto-Horst Neidhardt and Olivia Sundberg Diez notice, that the Pact will be “doubling down on control-oriented measures”.²⁰⁶ Neidhardt and Diez pressingly urge, that a different approach is needed if the European Union wants to establish a plan that respects fundamental human rights.²⁰⁷ They also claim, that the Pact does not sufficiently address how to handle future humanitarian emergencies.²⁰⁸ Furthermore, the authors underline, that the Pact should strengthen the right to asylum. However, the NPMA and its proposed border instruments will actually further enhance dangers that migrants face, because it continues to allow member states to avoid their obligations under EU law.²⁰⁹ Theodora Gazi states, that even though the Pact introduces a positive framing of certain groups of migrants, it still could potentially “negatively impact vulnerable groups’ access to asylum”.²¹⁰ The author argues, that new mechanisms of the framework –such as the Screening Regulation and the Asylum Procedures Regulation– will not adequately prevent human rights

²⁰² “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum,” 14.

²⁰³ *Ibidem*, 14-15.

²⁰⁴ *Ibidem*.

²⁰⁵ *Ibidem*, 28.

²⁰⁶ Alberto-Horst Niehardt & Olivia Sundberg Diez, “The upcoming New Pact on Migration and Asylum: Will it be up to the challenge?” *European Migration and Diversity Programme, EPC Discussion Paper* (April 2020): 3.

²⁰⁷ *Ibidem*, 4-5.

²⁰⁸ *Ibidem*.

²⁰⁹ *Ibidem*, 9.

²¹⁰ Theodora Gazi, “The New Pact on Migration and Asylum: Supporting or Constraining Rights of Vulnerable Groups?” *European Papers* 6, no. 1 (2021): 175.

violation.²¹¹ Regarding the Screening Regulation, Gazi states, that “by focusing on addressing obvious vulnerabilities, [it] overlooks and marginalises a portion of vulnerable new arrivals”.²¹²

Regarding some of its objective, the EU Commission states, that the Pact aims at building “a system that manages and normalises migration for the long term”.²¹³ This might seem like a positive step in de-criminalising of at least some aspects of migration policy. It also correlates with Gazi’s remark about the more positive framing of migration. However, regarding the implementation of its policies, the Commission proposes numerous mechanisms and procedures that will fail to counter crimmigration in practice. Firstly, the Commission states, that Eurodac is in need of further development. This development entails an enlargement of the scope of the system and an upgraded database that will “help create the necessary link between asylum and return procedures”.²¹⁴ Eurodac –a system that has already been considered a major contributor to criminalised migration policy– will thus be strengthened, and become more influential in determining how to connect the practices of asylum and return.

Secondly, the Pact will help the EU strengthen the security against illegal channels crossing its external borders.²¹⁵ On the other hand, the EU intends to offer migrants and asylum-seekers more safe and legal pathways to Europe. The Commission proposes, that the EU helps its member states to encourage legal migration, by, for example, creating Talent Partnerships with external partners.²¹⁶ In doing so, the EU will attract more “skilled” migrants. While this may sound like a good approach, it has the risk of enlarging the differences between different groups of migrants and asylum-seekers. By opening up legal pathways for skilled migrants and strengthening security on those who are used by “less-skilled”, these differences become institutionalised, and will contribute to the negative framing of the latter. Besides, looking at the issue from a human rights perspective, being skilled or less-skilled should not be a determining factor of legality.

Thirdly, the Pact does not properly address the issue of mass confinement of persons. Confinement is one of the most obvious aspects of criminalised migration policy. Considering that the EU proposes this new approach as an answer to the many challenges of its former framework, it should have included an assessment of its detention strategy. In this regard, the EU missed its chance to alter its policy in favour of human rights. Besides, by tackling the issue of detention, the EU might have been able to deal with the issue of mutual trust. According to Eleni Karageorgiou, detention measures have not only increased human hardships, they have also prevented trust in European institutions amongst the local populations of member states.²¹⁷ The author argues, that normalising confinement is not a sustainable approach.²¹⁸ Therefore, if the EU continues to ignore the problems concerning its detention-centred strategy, it will not be able to establish a truly durable framework.

²¹¹ Gazi, “The New Pact on Migration and Asylum: Supporting or Constraining Rights of Vulnerable Groups?” 175.

²¹² *Ibidem*, 172-173.

²¹³ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum,” 1.

²¹⁴ *Ibidem*, 9.

²¹⁵ *Ibidem*, 22.

²¹⁶ *Ibidem*, 24.

²¹⁷ Eleni Karageorgiou, “The Impact of the New Pact on Europe’s External Borders: The Case of Greece,” in *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees*.

International Experiences on Containment and Mobility and their Impacts on Trust and Right, ed. Sergio Carrera and Andrew Geddes (European University Institute, 2021), 54.

²¹⁸ *Ibidem*.

Entering a new era of transnational migration policy?

Whether or not the NPMA symbolises a new era of EU migration policy is questionable. Petra Bendel states, that “the Pact re-issues well-known policy choices out of the drawer, although sometimes ‘with a twist’”.²¹⁹ Therefore, the Pact should not be regarded a representation of “a fresh start”.²²⁰ Firstly, the author argues, that the new policy framework should have included mechanisms for the protection of asylum-seekers, and rules for the fair regulation of migration.²²¹ As argued in the previous paragraph, the Pact does not encourage humane policies and even risks contributing to crimmigration. The ‘new’ approach should thus not be considered fundamentally different from the EU’s former policies regarding migration and asylum. Bendel also argues, that the EU has not been able to present an approach that contains “real common principles and policies”.²²² Sergio Carrera also enervates the claim, that the NPMA is built on ideas on solidarity.²²³ She states, that “the Pact does not pursue a genuine Migration and Asylum Union”.²²⁴ Instead, the EU is merely producing a policy framework that requires an intergovernmental approach.²²⁵ Her main concern, is that the system reflects the “asymmetric interstate solidarity” amongst member states.²²⁶ All things considered, the European Commission should not have argued, that the Pact reflects “a balance of interests and needs”.²²⁷

Angeliki Dimitriadi stresses, that the NPMA “is perhaps the last opportunity for the European Union to create a holistic and common approach to migration and asylum”.²²⁸ Unfortunately, the Pact does neither seem to be symbolising a new era, nor contribute to the creation of a common policy approach. However, it does reflect some new developments in the EU’s process of policy-making. As mentioned before, the Pact is framing some aspects of migration in a more positive way. This might be a sign of changing threat perceptions towards migrants and asylum-seekers. Additionally, the EU seems to be aware of many of its challenges regarding burden-sharing, and the importance of establishing a common approach based on shared interests. However, the actual policies do encourage crimmigration, and are also not likely to resolve the issues of unequal responsibility. On the other hand, it is too soon to definitively reject the potential of the new approach. Whether or not the new framework will help the EU achieve a balance between securitised and humanitarian policies, will become clear during the materialisation of the Pact in the following years.

²¹⁹ Petra Bendel, “Fresh Start Or False Start? The New Pact on Migration and Asylum,” in *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees. International Experiences on Containment and Mobility and their Impacts on Trust and Right*, ed. Sergio Carrera and Andrew Geddes (European University Institute, 2021), 259.

²²⁰ Ibidem.

²²¹ Ibidem.

²²² Ibidem.

²²³ Sergio Carrera, “Whose Pact? The Cognitive Dimensions of the EU Pact on Migration and Asylum,” in *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees. International Experiences on Containment and Mobility and their Impacts on Trust and Right*, ed. Sergio Carrera and Andrew Geddes (European University Institute, 2021), 18.

²²⁴ Ibidem.

²²⁵ Ibidem.

²²⁶ Ibidem.

²²⁷ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum,” 28.

²²⁸ Angeliki Dimitriadi, “Looking for a bridge over troubled waters: the forthcoming New Pact on Migration and Asylum,” *ELIAMEP Policy Brief* 125 (2020): 8.

Conclusion

The New Pact on Migration and Asylum does not reflect a fair balance of interests and needs. Even though the EU acknowledges the faults of its policy framework on migration and asylum, the Pact does not offer a new, durable approach. The EU seems to be inadequate in creating a system that entails equal sharing of costs and responsibilities. The EU has also not managed to address the issue of crimmigration, resulting from the rigid and restrictive measures against migration and asylum. With the Pact, it seems likely that the EU will continue to prioritise its role as securitising agent.

Conclusions

This research is based on the premise that what we are and what we do are deeply connected. The European Union's policy frameworks are therefore a reflection of its transnational identity. This identity is formed through repeated efforts of cooperating and the development of policy-making. Because the European identity, or Europeanness, is not based on a deeper understanding of cultural commonalities, it is mainly connected to security aspects. Throughout the last thirty years, the EU has attempted to solidify its identity through the implementations of policies regarding security. As a result, the EU security identity has become institutionalised on a transnational level. Various security institutions and mechanisms, such as the Schengen-Dublin system, have become representative of the European identity. Additionally, this has allowed issues of migration and asylum to be included in EU approaches towards security matters. The practices of migration and asylum have thus become securitised on a European level. Migrants and asylum-seekers have been assigned the label of security threats, which has given the EU the opportunity to justify the establishing of criminalised migration policies. However, the security framework on migration has proven to be faulty. There is a divergence in security interests and objectives amongst different member states. This has prevented the EU to create a common approach towards migration and asylum. With the 2020 New Pact on Migration and Asylum, the EU introduced a new policy framework, that aims at overcoming the challenges of the former. However, this research has proven, that the Pact does not represent a new, durable approach. Additionally, the Pact will further enhance the dangers faced by migrants, and encourage the continuation of crimmigration in practice.

In sum, this research has shown, that the process of policy-development is often highly influenced by the transnational identity of the agent. The European security identity has been a major contributor to the establishment of migration and asylum policies. The relationship between identity and political behaviour is, however, a continuously changing one. The coming about of the 2020 Pact shows us, that the European identity is constantly questioned and re-constructed. Even though this research has argued, that the NPMA does not indicate a new era of migration and asylum approaches, it does acknowledge the development of some aspects of EU policy-making. However, as long as the EU keeps holding on to its lacking sense of Europeanness, it will never be able to establish a truly common and all-encompassing identity.

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