

Do the ends justify the means?: An assessment of the EU Convention regulations for the migration crisis

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Abstract

Are the regulations proposed by the EU, in order to deal with the new threat of excessive migration, enough to justify the violation of basic human rights?

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I. Introduction

The migration crisis has become of increasing significance worldwide. In response to its growing pressure, the EU meeting in Brussels has dynamized the gridlock in the migration and asylum rules reforms regarding regulations over the threatening increase in the number of arrivals, which have been stuck since the first proposal of the European Commission in 2016.

Germany, Italy, Spain, Poland, Greece, and Hungary are some of the countries that have been most affected by this excessive migration. Nevertheless, it seems like Germany and Italy, being those on which the final decision will rely, have different perspectives on the flexibility of the rules. This is because even though Italy

is more open to change, Germany has recently sparked apprehension towards increased regulations. These different perspectives have risen because these regulations could lead to the extension of the period that individuals are held at the border, which could imply undermining some of the human rights they are entitled to¹.

After serious suspicions, investigations in various centers where immigrants were being detained were made, concluding that the precariousness and lack of

¹ Dubois, Laura. "EU Ministers Clinch Deal on Migration Reform." *Financial Times*, 2023

hygiene of the centers dedicated to these ends were inadmissible. This led to the final closure of some centers, which were already insufficient to handle the excessive amount of people awaiting final decisions on their cases.

So, in this sense, there is a need for European solidarity to share, as stated, this “burden” and compromise, to provide a better solution.

But will other States follow common interest and risk part of their national income to a fund and facilities, or will they adhere to their best interests and to their best interests and not want to be involved in the cause? It will also be worth bearing in mind the consequences of current conflicts such as the Russo-Ukrainian War², the Israeli-Palestinian conflict³, and the Armenian Nagorno-Karabakh clashes⁴, among others, how they will influence the way States act and the role of state sovereignty in these circumstances.

With this said, all of this information will be analyzed through the following structure: Firstly, an overview of the historical context and migration trends over the years will be carried out, identifying some factors that could influence the movement of individuals⁵, as well

² “Situation Ukraine Refugee Situation.” UNHCR Data Portal, 2023

³ BULLENS, Lara. “The Gaza-Egypt Rafah Crossing Explained: ‘It Is Not a Normal Border.’” France 24.

⁴ “Persons in a Refugee-like Situation.” UNHCR Armenia.

⁵ Simpson, Nicole B. “Demographic and Economic Determinants of Migration.” IZA World of Labor, July 27, 2022.

as assessing the impact of current international conflicts in the crisis and the current situation and the challenges that regulations might encounter.

After having analyzed the EU proposal⁶, other recommendations and suggestions will be made, along with possible advantages and drawbacks that they might include, as well as predictions of potential future consequences.

2. Historical context and trends over the years

One factor that is worth bearing in mind is that there are many different reasons why people choose to migrate from their home country to another one⁷. Firstly, some do so in search of new job opportunities, economic prospects, and improved standards of living. On the other hand, we have those fleeing from their countries and seeking asylum elsewhere because of the threat to their lives that staying in their country would mean for them. This can be due to civil or international conflicts happening in the territory, which would include asylum seekers and refugees. Altogether, receiving the name “humanitarian migrants”. An issue of increasing relevance also refers to those leaving their countries due to adverse environmental conditions or climate change, acquiring the name of climate refugees.

⁶ Timeline - EU migration and asylum policy-consilium. European Council of the EU.

⁷TriumphIAS. “Factors Influencing Migration and Population Movements.” TriumphIAS, July 13, 2021.

It is important to bear this distinction in mind and understand that refugees, unlike other types of migrants, cannot go back to their native countries, since they would be met with several risks by returning to the targeted territory in the conflicts. For example, their safety would be compromised, they would face persecution or wrongful imprisonment without legal protection, and lack of resources and infrastructure due to the instability within the country, limiting or ceasing completely their access to basic services such as healthcare or education.

Hence, in that regard, there is an understanding of the regulations proposed by the EU Commission aim to address, more importantly considering the possible threats awaiting in the origin country, and the need to ensure individual protection and prevent these refugees from being returned to an unsafe environment, through a detailed and precise analysis on a case-by-case basis. What is not in the agreement are the terms/conditions by which refugees would have to remain while being held by the state until the final decision in their case is made. The ethical and human rights concerns regarding this matter will be further discussed later on.

On that note and in more detail, some of the factors influencing migration throughout time include the following: Firstly, individuals emigrate due to social and political factors concerning ethnic or racial persecution and discrimination, especially in more diverse states. These scenarios can, consequently, lead

to the undermining of human rights and a lack of protection, and in turn the lack of capacity of the State to palliate this instability.

Secondly, economic factors. On many occasions, people move to look for better employment opportunities and higher wages in internationally industrialized urban areas. It is very common for individuals in developing countries to move to more developed ones to escape forced labor for very little compensation, which is common in regions where multinational companies operate manufacturing offices due to the cheaper cost of labor. Therefore, this is an incentive for individuals to go to other countries in search of an improvement in their working conditions and to be able to send remittances back to their families.

Lastly, ecological factors impacting on resources such as agriculture or water and food security. These can be compromised as a result of excessive heat waves, floodings, strong winds, and recurrent storms.

Some of the greatest migrations in history include: **The transatlantic slave trade** was one of the biggest forced migrations occurring in history. During the period of the Atlantic Slave Trade (approx. 1526 to 1867) it is estimated that about 12.5 million men, women, and children were captured and put on ships in Africa, and 10.7 million arrived in the Americas⁸.

⁸ Mintz, Steven. "Historical Context: Facts about the Slave Trade and Slavery." Gilder Lehrman Institute of American History.

The processes of urbanization and industrialization also played a big role, since the creation of new factories attracted and encouraged many people to move for new opportunities. As a result of the growing number of factories, cities were created around them to provide goods and services to factory workers in more urbanized areas. Therefore, as industrialization progressed, more people would move to these created urban areas from rural ones, looking for better conditions and standards of living; and this ended up having a great impact in the allocation of resources and infrastructure, as well as shifts in lifestyle and culture.

Another great migration taking place during the Second World War was the **Jewish refugee migration during the Holocaust**. More than 340,000 Jews emigrated from Germany and Austria to other countries. Nevertheless, many of the countries where they had sought security and asylum, were later on conquered by Germany, such as Poland, with one of the largest Jewish populations in Europe. What is more, many Jews were also deported to other countries to be assigned to different concentration camps, which also contributed greatly to migration flows. There is the example of the St. Louis boat which sailed from Hamburg, with more than 900 Jewish refugees intending to escape anti-semitic prosecution. They were denied entry to the US and Cuba and canceled their transit visas due to national security concerns, forcing them to return to Europe. Even though Great Britain, France, the Netherlands, and Belgium accepted

to take in some of the passengers, it is estimated that nearly 28% of them (254 passengers) were known to have died in the Holocaust⁹.

During the **Cuban Revolution**, many people left the country as a result of the previous leader Fulgencio Batista being overthrown by Fidel Castro. The social and political instability also later escalated tensions at the international and nuclear level with the Bay of Pigs invasion, the Cuban Missile Crisis (1962), and their close cooperation with the USSR (one of the two most powerful blocks competing during the Cold War). Since 1995, high-income countries were almost always the main sources of remittances, including the US, the United Arab Emirates, Saudi Arabia, Switzerland, and India. Nevertheless, the World Migration Report 2020 shows that the number of international migrants has increased in all UN regions, more specifically, in Europe (86.7 M, an increase of 30 M international migrants) and Asia (86.7 M, an increase of 37 M migrants) than in other regions.¹⁰

Therefore, as we have seen, migration trends have changed in favor of Asia and Europe, with countries such as Italy, Spain, and Germany, among others, receiving its harsher consequences.

In the case of Italy, according to the UNHCR, 'Tunisia has taken over from Libya as the main country of departure for migrants crossing the Mediterranean to

⁹ Holocaust Encyclopedia. "Refugees." United States holocaust memorial museum.

¹⁰ IOM. "World Migration Report 2020."

Europe. “According to UNHCR figures, 12% of arrivals to Italy in January came via Turkey, 51% from Tunisia, and 37% from Libya”¹¹. This is mainly due to the harsh conditions and discrimination against Western African migrants.

One of the main challenges is the risk that reaching their destination entails, especially by making land first in Lampedusa, Sicily, with very little capacity and poor-quality boats.

Germany is also one of the countries taking in the most asylum seekers since 2015, and this was especially triggered by Syria’s civil war (including more than 3 million refugees), those returning after World War II, and Ukrainians due to the recent conflict.¹²

Finally, Spain was, in 2022 according to the Eurostat, one of the countries with the biggest populations of foreign-born citizens¹³. Most of the irregular flow of refugees access Spain either through the ‘Western Mediterranean route’, crossing the Gibraltar Strait, reaching the Canary Islands, or reaching Spain by land, through its cities in North African territory, Ceuta and Melilla.¹⁴

¹¹ Wallis, Emma. “*Why Are so Many Migrants Arriving on Italy’s Shores?*” (InfoMigrants, May 9, 2023).

¹² Karnitschnig, Matthew. “Germany’s Never-Ending Migration Crisis.” POLITICO.

¹³ “EU Migrant Flows Intensify in 2021.” - Products Eurostat News - Eurostat, March 29, 2023.

¹⁴ European Council. EU migration and asylum policy. “Migration flows on the Western routes”. November 21, 2023.

3. Impact and role of international conflicts in the crisis.

As previously mentioned, ongoing and recent conflicts can be one of the main factors impacting migration trends. Therefore, how are current conflicts, taking for example the Russo-Ukrainian war, the Armenian Nagorno-Karabakh clashes, and the Israeli-Palestinian conflict, affecting this refugee crisis?

In the case of the **Russo-Ukrainian war**, most of the refugees traveled to neighboring countries such as Romania and Poland; others were migrating to the rest of Europe as well, such as Germany.¹⁵

It is important to consider, for instance, that the reluctance to include Ukraine in NATO, as well as the acceptance of its refugees is an issue that does not only revolve around being a possible target for Russia in doing so but also around the involvement of the Collective defense principle contained in Article 5 of NATO¹⁶. This Article refers to the idea that an attack against one of its members constitutes an attack against them all, which has only been invoked once in history, after the 9/11 attacks in the US on September 11th, 2001. Therefore, this reluctance to intervene is also highly influenced by the fact of whether or not NATO and its member states will be willing to risk facing Russia and escalating to a possible Third World War.

¹⁵ “Situation Ukraine Refugee Situation.” UNHCR Data Portal, 2023

¹⁶ “Collective Defence and Article 5.” NATO, November 23, 2023.

Regarding the **Nagorno-Karabakh clashes**, according to the UNHCR, “91,000 individuals were displaced from Nagorno-Karabakh to Armenia as a direct result of the 2020 conflict in and around Nagorno Karabakh. Around 88% of these individuals were women, children, and elderly”¹⁷. Most refugees are around the capital of Yeveran or in the border region of Syunik.

Finally, concerning the **Israeli-Palestinian conflict**, there have been mass Palestinian displacements due to the blockade established by Israel in Gaza — fueled by the October 7th attack by Hamas on Israeli communities — which has blocked the flow and import of food, electricity, and fuel into the city. Therefore, Egyptian officials are concerned about what this would mean for the flow of Palestinian refugees through the Rafah Border Crossing. Nevertheless, although theoretically it should be controlled by the two border authorities, Israel still influences the crossing. This border is intermittent and according to the UN, it was open for 245 days in 2022 and 138 days in 2023¹⁸. It is highly important because many refugees depend on this border for their survival, especially now as a consequence of the blockade.

4. Current situation and challenges of regulation

As discussed above, the crisis has aggravated very quickly over the last few years due to different factors,

¹⁷ “Persons in a Refugee-like Situation.” UNHCR Armenia.

¹⁸ Bullens, Lara. “The Gaza-Egypt Rafah Crossing Explained: ‘It Is Not a Normal Border.’” France 24.

but more importantly due to recent conflicts that have had social and political consequences not only in the countries involved but also in the international sphere. Proposing regulations for this challenge is not something that can be done very quickly, and it might seem like this issue just requires an improvement of the legal framework and regulations to provide a solution. However, it comprises many aspects which cannot merely be addressed in such a straightforward way. It is a gradual process that entails a more complex analysis of the situation.

For instance, some of the aspects involved in this matter include: The evolving nature of the migration flows, which as previously mentioned, can dramatically change as a result of current conflicts happening in other parts of the world, triggering the rise of specific challenges which had not before been considered.

Secondly, it is also worth mentioning the humanitarian consideration in terms of providing safer rescue operations and border control agencies for preventing such high casualties and diminishing risks, such as in the example of the migrant *Adriana* ship that sank off the Greek coast in June 2023 with 104 rescued while the crew was estimated to be of approximately 400 people. “Migration to Europe will continue and it is up to the EU to ensure that it acts in a way that maintains fundamental rights”¹⁹ Emily O’Reilly said. This is

¹⁹ Minder, Raphael, Eleni Varvitsioti, and Laura Dubois. “EU Launches Inquiry into Handling of Migrant Disaster off Greek Coast.” *Financial Times*, July 26, 2023.

necessary to ensure the fulfillment of basic human rights through the lack of discrimination under the rule of law.

According to the International Rescue Committee, “nobody should be returned to a potentially unsafe country until they’ve had a very full and thorough examination of their claim and given full appeal rights[...]”.²⁰

Nevertheless, this would mean the retention for longer periods in these overcrowded centers with lack of resources and where hygiene or other primary needs are very precarious. Various revisions have been made around the European countries on behalf of the Ombudsman, concluding that the precariousness of the centers dedicated to these ends was inadmissible. This led to the final closure of some centers, which were already not enough to deal with the excessive amount of people pending a final decision on their cases, aggravating the situation.

Next, it is important to deal with the challenge of changing public attitudes and discrimination towards migrants based on different ideological, cultural, and political backgrounds, which is also a slow process. Additionally, as previously mentioned, there is the challenge of international cooperation and engagement of other nations in this exchange. Even if these nations do not think it involves them directly, its escalation

²⁰ Dubois, Laura. “EU Ministers Clinch Deal on Migration Reform.” *Financial Times*, 2023.

could have further consequences that could harm them economically or in other aspects.

Finally, it is also worth addressing the issue of enforcement, which enables many individuals to enter different countries unlawfully and unregistered. This can pose many risks to both the individuals and the State concerned, such as legal consequences and access to legal protection, social and economic challenges, limited job opportunities, limited access to education and healthcare, restricted travel movement, and vulnerability to exploitation.

5. Ethical and Human Rights Concerns and Considerations in Implementation

Ignoring the violation of human rights that the existing asylum management and procedure regulations entail, would be a breach of their dignity and entitlement under the EU Charter of Fundamental Rights²¹. Consequently, it would be against the core values of the EU and all its member states which consented to it when deciding to join this organization.

With this said, besides humanitarian, economic, and political considerations, there is also a moral question worth addressing, rooted in the regulations suggested: Are the regulations proposed in order to deal with the

²¹ Wise, Delgado Raúl, Humberto Márquez Covarrubias and Ruben Puentes. “Reframing the Debate on Migration, Development and Human Rights.” *Wiley Online Library, Development Studies, Universidad Autónoma de Zacatecas, Zacatecas, México*, 14 May 2013:

new threat of excessive migration, enough to justify the violation of basic human rights of these individuals?²²

6. Recommendations and prospects for the future

After having looked into an analysis of the factors and actors involved in this crisis, some recommendations for the future will be made to prevent future gridlocks and ensure a more dynamic process in the applicability of the procedures regarding this matter.

In the case of Spain, for instance, there have been many activists in the cause, such as Helena Maleno, who stressed the need for the EU to prioritize the handling of this crisis and to strengthen measures to avoid the high casualties²³. Additionally, there have also been first attempts at implementation of regulations in the country, which have resulted in relatively successful outcomes. According to an article of 'El País' published in August 2023 by María Martín, "Spain remains the only European country in the Mediterranean that stops irregular immigration"²⁴.

So, even though this has taken place in Spain, it is not the case among the international community,

²² Tan, Nikolas Feith, and Thomas Gammeltoft-Hansen. "A Topographical Approach to Accountability for Human Rights Violations in Migration Control." *German Law Journal* 21, no. 3 (2020): 335–54.

²³ Alonso del Val, Vega. "Helena Maleno: 'Hemos Normalizado Las Muertes y La Violencia En La Frontera.'" *Amnistía Internacional España - Derechos humanos*, June 27, 2022.

²⁴ Martín, María. "España SE Mantiene Como El Único País Europeo Del Mediterráneo Que Frena La Inmigración Irregular." *El País*, 8 Aug. 2023

especially, since some countries choose to follow ignorance because they believe that the issue doesn't concern them, and addressing it would not be in their best interest.

With this said, it is necessary to raise awareness in this sphere, emphasizing the need for European solidarity to share this "burden" and compromise to the cause in order to provide a better global foundation and solution that could later be adapted country by country.²⁵

An aspect also important to take into account is the fact that as new conflicts emerge, the situation evolves, so rising awareness of new emerging challenges that are not being given visibility will also be a relevant and continuous feature worth bearing in mind.

More recommendations could include the creation of a common fund to address it, as well as reconsidering and taking into account for the future, the recovery plan of 2021-2027, since it is dedicating 1.2% of its budget to 'Migration and border management', while ironically devoting 41% to 'Cohesion and Values'. Therefore, they could make this allocation of resources more aligned and in accordance with one another. Lastly, fixing the enforceability issue and creating bodies that aim for accountability and the support of human rights for refugees seeking asylum in other countries.

²⁵ Timeline - EU migration and asylum policy-consilium. European Council of the EU.

7. Conclusion

To sum up, the migration crisis must be accordingly addressed with its importance, and respect for human rights should come before efficiency. There is no justice without the rule of law, and even if the regulations currently provided by the EU provide a safer framework for addressing each case, no one should have to give up their basic entitlements as human beings under any circumstances.

The authorities should ensure the inviolability of basic human rights by providing a well-established framework and enforcement, addressing little by little the rising concerns that might come up over time; and finally, the redistribution of the EU budget to palliate the irregular allocation of resources. Having said this,

even though some countries are not in favor of following certain procedures to prevent this crisis from escalating, changing the public opinion could make them feel challenged at the international level, and in the end, they would be forced to act, so as not to tarnish their reputation. Therefore, they might serve as intermediaries for encouraging international cooperation without attacking them directly, and despite being part of the problem at first, they would end up being part of the solution.

It will take time for this to work efficiently, but little steps towards change are better than doing nothing at all. Failure to address the importance and urgency of this issue will imply going back to the starting point and losing all the progress made until now.

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[https://ec.europa.eu/eurostat/web/products-eurostat-news/w/DDN-20230329-2#:~:text=In%20absolute%20terms%2C%20the%20biggest,and%20Spain%20\(7.4%20million\)](https://ec.europa.eu/eurostat/web/products-eurostat-news/w/DDN-20230329-2#:~:text=In%20absolute%20terms%2C%20the%20biggest,and%20Spain%20(7.4%20million)).

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