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The EU and protracted displacement: providing solutions or creating obstacles?

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ABSTRACT

In this paper, we explore how the European Union (EU) legal and policy framework relates to protracted displacement. To this end, we examine the existing legal, policy and institutional framework both in the EU and globally, including the Common European Asylum System (CEAS), the 2015 ‘European Agenda on Migration’, and the New Pact on Migration and Asylum. Analytically, we employ Norbert Elias’ concept of ‘figurations’ as a conceptual lens to describe and identify distinct constellations of relationships, norms and social interactions between different actors shaping approaches towards protracted displacement. We argue that policies on protracted displacement are shaped by a triangle of three figurations – the migration-security figuration, the humanitarian-refugee relief figuration, and the protection-rights figuration. We trace how the migration-security figuration has gained the upper hand in recent years and what this means for EU policies addressing protracted displacement. We conclude that the EU is an actor that facilitates, rather than addresses, protracted displacement, and the Pact on Migration and Asylum further cements that role.

KEYWORDS

Refugees; asylum; protracted displacement; European Union; CEAS

1. Introduction

A significant number of asylum seekers, refugees and migrants staying in the European Union (EU) are prevented by EU migration and asylum policies from using their full capacities and social capital. Their status, or marginalisation, prevents them from local integration. Immobility does not allow them to take up opportunities in other countries. At the same time, they cannot return to their country of origin. Literature refers to such situations as life in limbo (Kessler 2010) or protracted legal and social limbo (Muižnieks 2016). In the global policy context, such situations are referred to as ‘protracted displacement’.\textsuperscript{1} In this paper, we understand protracted displacement as ‘a particular social condition of insecurity, vulnerability and dependency, in which people who have fled across international borders might find themselves for prolonged periods of time’ (Etzold et al. 2019, 14).

While the term protracted refugee situations has been used in relation to the EU’s external dimension of asylum since the Stockholm programme (para 6.2.3.), neither

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'protracted’ nor ‘limbo’ are terms found in documents relating to the EU’s internal dimension. Despite this absence, people seeking international protection in the EU face protracted displacement: They remain at the EU’s external borders in Melilla and Ceuta, at the river Evros in Turkey, and in countries in North Africa with the Mediterranean as the main barricade to entering the EU. But they also face destitution within the EU: in the ‘hotspots’ in Greece and Italy, in bigger settlements like the makeshift camps in the ‘Calais jungle’ in France, the ‘ghetto’ of Borgo Mezzanone (Info Migrants 2021) in Italy or the migrant workers’ camp in Lepe in the southern Spanish province of Huelva (Martin 2020). In addition, many live individually at various places in an irregular situation, and thus those conditions are less visible. ‘They’ include undocumented migrants (Caritas Europe 2021), asylum seekers waiting for a decision in precarious situations (Tondo 2019), as well as persons who cannot be removed, with a recent reported case of a Belarusian applicant who had been subject to temporary admission, bail or immigration detention for over 20 years in the UK being one of the most extreme cases on record (Nason 2021). When applying the definition of protracted displacement developed above, there can be no doubt that many (undocumented) migrants, asylum seekers and refugees experience protracted displacement within the EU.

Against this background, this article examines how protracted displacement features in European Union policies on international protection, focusing on the origins of the European refugee protection regime and the Common European Asylum System (Section 2), external policy tools addressing protracted displacement (Section 3) and the new Pact on Asylum and Migration (Section 4). Finally, in our conclusions (Section 5), we suggest specific necessary policy measures to prevent people from falling into protracted displacement situations within the EU.

In our analysis, we are informed by figurational sociology as originally developed by Norbert Elias (Elias 1978) and applied as an analytical framework for analysing displacement by Etzold et al. (2019; see also the introduction to this special issue Etzold and Fechter (2022)). In essence, this conceptual approach helps identify and interpret the role of distinct constellations of relationships, norms and interactions in particular social fields and, in our case, approaches towards protracted displacement. A figurational approach thus captures both the normative level (such as legal and policy frameworks) and practices of different actors and institutions constituting a figuration. While our analysis focuses on the legal and policy framework, understanding these as an element of wider figurations involving different institutions, actors, and distinct practices allows us to understand better the different logics shaping the global refugee protection regime at large and the uneasy co-presence of different logics which contribute to the production of conditions leading to protracted displacement.

2. The history of the European refugee protection regime and protracted displacement

2.1. Historical figurations of protracted displacement: rights, humanitarianism and durable solutions

Addressing protracted displacement and searching for solutions has been a key concern driving the evolution of the modern refugee regime in its foundational period between
the 1920s and the 1950s. Historically, it was protracted displacement situations in Europe and the wider Euro-Mediterranean space that triggered humanitarian action towards displaced persons, the establishment of institutions catering for them, and the development of international refugee law, in other words, the development of an international refugee regime (Kraler et al. 2020; Orchard 2019). Importantly, this refugee regime was focused on what Herbert Emerson, the then League of Nations High Commissioner for Refugees in 1943, termed ‘long-term refugees’: those unable to return for the foreseeable future because of persisting ‘political, racial or religious persecution’ in countries of origin (quoted in Kraler et al. 2020, 13), anticipating the notion of protracted displacement coined six decades later.

Historically, the evolution of the modern refugee regime and associated practices are linked to two distinct yet interrelated figurations – one centred on human rights, which we call the protection-rights figuration, and one centred on humanitarianism, which we call the humanitarian-refugee relief figuration. Key features of the former are (a) equality, as a foundational principle, and (b) legal process and individual case by case assessments as procedural principles, whereas the latter focuses on addressing immediate human suffering and providing relief to those most in need. The two figurations also differ regarding actors involved (Calhoun 2008; Kraler 2011; Watenpaugh 2015). These two figurations underlie the bifurcation between a rights-oriented regime underpinning asylum systems in the global North and relief-oriented regimes in the global South considered by Aleinikoff and Zamore (2019) to be a central feature of the contemporary refugee regime at large. Extending Aleinikoff’s and Zamore’s analysis of the global protection regime, we argue that this bifurcation is also at play within the countries of the global North.

In addition, we distinguish between two contrasting perspectives on solutions to displacement relating to different perspectives on what solutions should achieve or, put differently, whose problem should be resolved. The first is a top-down, state-centred and managerial perspective, for which the key criterion is whether ‘the refugee problem’ is resolved from the perspective of states and the international community, measured, for example, in terms of refugees’ dependency on public finances, their containment in first countries of origin, or refugees’ repatriation. The second perspective, by contrast, takes a bottom-up approach and focuses on the concrete situation of individuals, their access to rights and their ability to achieve a solution for themselves, for example, in terms of refugees’ ability to secure a livelihood, a degree of autonomy for themselves, and opportunities for personal development.

The human rights perspective underpins the classical three durable solutions (return, local integration, and resettlement), understood as means to end the ‘intractable state of limbo’ and as mechanisms to open up longer-term prospects for individuals, enabling them to rebuild their lives (Kraler et al. 2020, 13–17). These two perspectives on ‘solutions’ are similar to the distinction political scientist Ulrich von Alemann makes between what he calls a ‘governmentalist’ (i.e. a state-centred) perspective on politics, on the one hand, and an emancipatory perspective, focused on autonomy, freedom and capabilities of individual and collective subjects, on the other (Alemann 1994). Alemann’s distinction not only underlines the fundamentally different starting points on solving displacement but also that they can never be fully reconciled with each other. At the same time, it is important to note that the two perspectives are not mutually exclusive, and,
in practice, usually elements of both inform concrete protection policies. Importantly, a bottom-up perspective is not devoid of power dynamics. Rather, a bottom-up perspective focusing on the individual, including the individual’s agency, autonomy, rights, capabilities and needs, has to be understood as a particular – decisively liberal – type of governance, or governmentality, that stresses the role of displaced persons themselves, as we see in debates on self-reliance (Skran and Easton-Calabria 2020). It is oriented towards specific sets of normative frameworks, and includes an arguably greater role for a range of sub-state and non-state actors. Significantly, a bottom-up perspective does not necessarily include refugees’ voices and often involves paternalistic perspectives on refugees as ‘actors-to-be’ (Krause and Schmidt 2020) and ‘imposing aid’ (Harrell-Bond 1986), based on assumptions of what is good for them. Nonetheless, compared to state-centred, top-down perspectives, a bottom-up perspective has much greater potential for the inclusion of participatory and emancipatory agendas.

In the immediate period after World War II, a state-centred and managerial approach to responses prevailed in relation to both massive and protracted displacement and was associated with organised returns, often against the will of displaced persons (Kraler et al. 2020, 10–14). As the Cold War developed, the promotion of return was abandoned relatively quickly and was replaced by an emphasis on resettlement. However, the Refugee Convention represented a decisive shift towards anchoring solutions for refugees in human rights and developed a clear vision of what durable solutions should consist of, namely physical protection, legal status and access to socio-economic rights. Nevertheless, in practice, considerations informed by the Refugee Convention always intersected with practical, humanitarian, and geopolitical concerns. Thus, while the Convention enhanced the role of the protection-rights figuration, the humanitarian-refugee relief figuration continued to play a major role.

### 2.2. The Common European Asylum System as a response to protracted displacement

The Refugee Convention left two key issues unaddressed: first, the Convention did not define rules on access to protection. Second, it left a gap between those protected under the Refugee Convention and those somehow considered refugees and protected from expulsion but falling outside of the scope of the Convention.

The first gap implied that there were no rules on holding states responsible for determining a person’s claim to refugee status, leading to a phenomenon discussed as ‘refugees in orbit’, i.e. asylum applicants who did not submit claims in the first country of arrival but elsewhere or who submitted claims in multiple countries and which were often passed from one state to another with no state assuming responsibility to deal with a case (Boccardi 2002; Loescher 1989; Paludan 1981). The Dublin Regulation, originally adopted in 1990 outside EU law, has attempted to resolve this problem by defining rules on the states responsible for determining the status of refugees but has grandiosely failed to provide a solution (Bendel 2019).

The gap between the (narrow) persecution grounds defined by the Refugee Convention and the wider non-refoulement principle meant that ‘de facto’ refugees, i.e. individuals who did not meet the criteria of the Refugee Convention but were protected from expulsion, lacked a clear legal status (Paludan 1981). In response to displacement in
the Yugoslav crisis, several European states developed temporary protection mechanisms. These departed from the persecution-centred individual process applied until then to encompass indiscriminate violence and war that lead to mass displacement, thus incorporating a strong humanitarian dimension. However, while temporary protection implied a positive legal status, it provided only limited rights and left beneficiaries outside the regular protection system and effectively in a waiting situation (Beirens et al. 2016; van Selm 2000). The humanitarian situation demanded pragmatic solutions that provided more accessible protection, although weakening the rights granted in comparison to full refugee status. The Temporary Protection Directive attempted to harmonise the different temporary protection schemes applied in the EU Member States, albeit with the high threshold of a discretionary decision by a qualified majority in the Council and a cumbersome procedure (Beirens et al. 2016, 19–22). The discretionary and humanitarian nature of the Directive’s application suggests its strong anchoring in a humanitarian-refugee relief figuration. Indeed, the Directive sits uneasily with subsequent CEAS instruments translating the Refugee Convention and related human rights law into EU legislation and more firmly based in a protection–rights figuration.

Eventually, the Qualification Directive, adopted four years later, addressed the gap between the tight refugee definition and wider non-refoulement obligations deriving from broader international and regional human rights frameworks through the introduction of subsidiary protection. It established a positively defined legal status with associated rights, building on jurisprudence relating to Article 3 of the European Convention on Human Rights on the prohibition of torture and inhuman or degrading treatment or punishment (Messineo 2013, 138–39).

While in terms of its instruments the CEAS can be seen as a preventive response to protracted displacement, it appears as an ambivalent and contradictory project: thus, while the 1999 Tampere Council Conclusions setting out the cornerstones of the CEAS very much focused on closing protection gaps, the development of the CEAS was strongly shaped by a security perspective4, aimed at resolving tensions and contradictions between the refugee policies of European states (Bendel 2019; Noll 2000; Papagianni 2016) and oriented towards migration management. This tension has been present from the very origins of the European refugee regime. Thus, the first steps towards harmonising asylum policies were made well before the EU acquired a formal legislative competence on migration and asylum and, to an important extent, they were informed by security and migration control considerations, such as the 1990 Dublin Convention or the 1992 London Resolutions defining the ‘safe third country’ and the ‘safe country of origin’ principles and the related notion of ‘manifestly unfounded asylum applications’ (Hatton 2009: F197). At the same time, the 1999 Tampere Council Conclusions – adopted in a year of another major refugee crisis, the Kosovo crisis – sought to strike a balance between these conflicting logics while emphasising rights and humanitarianism, by aiming at ‘an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity’ (Preidency of the European Council 1999, para 4). Since then, however, the balance has shifted decisively towards security concerns, partly triggered by a rising number of asylum applications in the early 2000s and again a decade later, but also by the accession of 13 new EU Member States, which neither had contributed to shaping the initial vision.
for the CEAS articulated in the Tampere Council Conclusions, nor necessarily shared it (see Wagner and Baumgartner 2019 and Zaun 2018). While the CEAS has arguably addressed important dimensions of protracted displacement, its alignment with migration management and broader security objectives has simultaneously undermined its ability to do so.

Analytically, a migration-security configuration thus needs to be added to the protection-rights and the humanitarian-refugee relief figurations identified above. Together, these figurations constitute the broader figuration of displacement in Europe in which refugees find themselves. While these three figurations were on an equal footing at the initial stages of the CEAS, the balance has decisively shifted towards the migration-security figuration, as we show in the subsequent sections.

3. Addressing protracted displacement in EU external policy: the paradigm of security

In addition to the CEAS, there are a number of different legal and policy frameworks designed to address both internal and external dimensions of protracted displacement. They can be classified in terms of whether they focus on: short-term humanitarian responses to crises (e.g. the Instrument contributing to Stability and Peace); long-term development focused initiatives (e.g. the European Development Fund and the Communication ‘Lives in Dignity: from Aid-dependence to Self-reliance’); and securing borders (e.g. European Agenda on Migration and the Migration Partnership Programme). The differences between these frameworks have become less apparent because they are increasingly used to reduce migration flows and secure European borders. Although these strategies are partly designed to reduce protracted displacement, paradoxically, they contribute to it. Further, they share a growing focus on enhancing the securitisation of the borders of European and migrants’ countries of origins. This may consist of financial support to bolster the security services of third countries and support their efforts to control migration or to develop closer cooperation with a country’s efforts to reduce migration. With these measures, we see the increasing prominence of the migration-security figuration and a shift away from a humanitarian-refugee relief figuration. Significantly, despite their differences, these frameworks externalise responsibility for migration and protracted displacement situations to third countries and are partly designed to enforce the shift from a figuration that addresses protection and humanitarian needs to one that centres on securitisation and control.

In 2014, the Instrument contributing to Stability and Peace (IcSP) was established to provide immediate financial assistance to projects that address short and medium term conflicts and crises. The IcSP has developed approximately ‘200 projects in over 75 countries in areas such as mediation, stabilisation, mine action, rehabilitation and reconstruction’ (European Union External Action Service 2016). By supporting peacebuilding and conflict prevention projects, the IcSP also addresses some of the root causes of displacement. However, in 2016, in a bid to broaden its remit, the IcSP received an additional 100 million euros to engage in ‘capacity building of military actors in support of development and security for development (CBSD)’ (Angelini 2018). Although the intention is to support peacebuilding efforts through military capacity building, such measures need to be attentive to the local context and work in tandem.
with additional EU political strategies on peacebuilding and sustainable development. Otherwise, there is a danger that CBSD measures will ‘strengthen unaccountable and corrupt institutions and their capacity for violence’ (Angelini 2018). This would have the effect of further destabilising regions, potentially resulting in increased migration and protracted displacement.

We see a similar pattern with external EU policy focused on long-term development initiatives, particularly with the European Development Fund (EDF) and the 2016 Communication ‘Lives in Dignity: from Aid-dependence to Self-reliance’. The EDF was initiated in 1959 and is the main source of funding to African, Caribbean and Pacific countries (European Commission 2021). These are primarily former colonies of EU Member States. However, the EDF has increasingly focused on policies designed to curb migration. Significantly, over €1 billion of funds intended for poverty reduction and long-term development were allocated by EU Member States to domestic policies to curb migration, such as enhanced border controls and increased returns of migrants’ (Raty and Shilhav 2020). Development cooperation is increasingly tied to a country’s efforts to discourage migration. For instance, most of the EU Trust Fund for Africa (EUTF) funds support initiatives that hinder migration. Indeed, the success of projects is measured in terms of reduced migration flows (Raty and Shilhav 2020). In this sense, the policy is increasingly tied to ‘domestic European affairs objectives’ (Raty and Shilhav 2020, 3). As well as moving the focus away from long-term development objectives such as poverty reduction, climate and political stability, there is a short-term focus on securing borders. This is problematic because such short-termism jeopardises long-term development objectives, which ultimately can encourage migration and contribute to protracted displacement situations. In addition, a focus on state-to-state funding, as opposed to targeted local or regional funding, limits the effectiveness of funding (Fiorilli 2016). In summary, as well as adopting a short-term and limited focus on reducing the number of migrants and refugees to the EU, the EU again externalises responsibility for migratory flows and securing its borders.

The ‘Lives in Dignity’ policy framework, designed to support refugees and those living in protracted displacement, aims to move away from the short-term nature of emergency humanitarian responses, on which refugees are seen to be overly dependent, to a focus on encouraging them to be self-reliant (European Commission 2016b). Within a global context of multiple humanitarian crises resulting from conflict, natural disasters, and economic and social precarity, 80 million people need humanitarian assistance, 60 million of whom are refugees and people in protracted displacement (European Commission 2016b). Indeed, forced displacement is seen as a key component that threatens to undo development gains that have been made over the last few decades (European Commission 2016c). Humanitarian crises are increasingly long-term, hence the need to introduce durable solutions that help those living in protracted displacement become self-reliant. The policy framework recognises the initial need for short-term humanitarian assistance but seeks to build on this by supporting the social and economic conditions that lead to self-reliance, defined here as the provision of ‘livelihood opportunities’ and ‘economic integration’ (European Commission 2016c, 4). In short, the policy framework seeks to strengthen the connection between the two by moving away from a linear approach of humanitarian to development support, with the aim of building ‘resilience’ (European Commission 2016c). Ultimately, this ensures that
humanitarian and development actors work closely to support resilience and self-reliance in a humanitarian-development nexus.

However, other than calling for collaboration between humanitarian and development responses, there remains uncertainty about what resilience entails. The EU defines resilience as increasing the capacity of vulnerable groups to ‘absorb shocks and to cope with stresses, but [also constituting] an opportunity for transformation, in terms of adaptation to changing environments, empowerment, improved livelihoods and economic opportunities’ (European Commission 2013, 3). Based on research in Europe, Jordan, Lebanon, Anholt and Sinatti (2020) argue that, in reality, resilience entails making states and local communities responsible for addressing crises and building resilience. Indeed, by maintaining that ultimate responsibility for migration and protracted displacement rests with states, the EU first absolves itself of any responsibility. Secondly, this approach sees refugees and migrants as economic actors who, largely through their own efforts, can contribute to the state’s economic development (Anholt and Sinatti 2020, 322–324). Finally, they maintain that the resilience approach central to the ‘Lives in Dignity’ policy framework ultimately aims to reduce migration to the EU and is a ‘refugee-containment strategy’. Paradoxically, this could have the effect of further destabilising the region, thereby encouraging migration (Anholt and Sinatti 2020, 312) and exacerbating protracted displacement situations.

Following the arrival of more than a million migrants and people seeking international protection in 2015, the European Agenda on Migration was introduced, a programme designed to secure borders and manage migration and asylum in a more ‘effective’ and ‘cohesive’ manner. The programme involved ensuring that all Member States develop the same approach in implementing protection and resettlement for refugees. Further, it addressed four areas for reform: reduce irregular migration; protect borders and migrants’ lives; finalise a common asylum policy; and develop a ‘new policy on legal migration’ (Willermain 2016, 133).

As part of this, the Migration Partnership framework, established in 2016, supports partnerships with particular countries of origin and transit to rescue people at sea, prevent migrants and refugees from migrating, and increase returns. By contrast, the Facilitation Directive effectively criminalises humanitarian assistance of civil society actors to irregular migrants and points to a wider agenda of ‘policing humanitarianism’ (Carrera et al., 2019). The criminalisation of civil society actors involved in humanitarian assistance demonstrates a move away from a humanitarian-refugee relief figuration and the growing importance of the migration-security figuration. Within the Migration Partnership framework, the EU has established ‘compacts’ that address the specific situation of third countries, including Jordan and Lebanon, Niger, Nigeria, Senegal, Mali, Ethiopia, Tunisia and Libya (European Commission 2016c). As well as increasing returns to the regions of origin, these agreements seek to develop alternatives to irregular migration but, in fact, shift the responsibility for migration control and management onto origin and transit countries (Willermain 2016). The focus is not on supporting refugees and those living in protracted displacement; on the contrary, there is little attention to long-term sustainable development, thereby failing to address the causes of migration and protracted displacement (Oxfam International 2017).

In addition, as we will now consider, the New Pact on Migration and Asylum (hereinafter the Pact), put forward by the European Commission in September 2020 as a basis
for negotiations by Member States and EU institutions (European Commission 2020d), was not able to address the policy shortcomings analysed so far.

4. The New Pact: a hope misplaced

Against this background, the much-awaited Pact arrived in 2020 and contained elements relevant to protracted displacement both in and outside Europe. It was expected to particularly address the reform of the Dublin Regulation and re-introduce solidarity in a meaningful way in the EU asylum system. Furthermore, if the changes proposed could render any aspect of the CEAS fairer and more effective, they would also have the potential to reduce protracted displacement in the EU and beyond. The Pact arrived at a moment of great tension on migration matters in Europe: not only had EU Member States been at the centre of severe criticism for alleged involvement in ‘aggressive push-backs’, but the EU agency responsible for border control – Frontex – was already under investigation for several administrative irregularities and illegal pushbacks off the Greek coast (Boffey 2021; Stefan and Cortinovis 2020; Tondo and Boffey 2020).

The Pact is heavily informed by a top-down, state-centred managerial perspective, and falls squarely within the migration-security figuration. One can only empathise with the European Commission, faced with the seemingly impossible task of bringing on board those Member States extremely hostile towards any form of solidarity (especially the Visegrád Four: Czech Republic, Hungary, Poland and Slovakia (Zaun 2018)), while simultaneously offering policy reforms that comply with fundamental rights and address the serious issues affecting refugees in or approaching Europe. This Pact may have tried to achieve this but has certainly fallen short of what one would expect, with potential consequences for people in need of international protection at the EU external borders or remaining within the bloc in protracted displacement situations. Despite references to ‘European values’, ‘international law’ and ‘fundamental rights’, the three main leitmotivs of the Pact are solidarity (with the negative connotation of burden-sharing), border procedures, and returns – everything else remains in the shadow.

While the Pact aims to ‘strengthen cooperation with countries of origin and transit to prevent dangerous journeys and irregular crossings’ (European Commission 2020c, 14), in reality, this expectedly means further cementation of the transition from a protection-centred to a security-centred migration foreign policy. In fact, it proposes to take agreements like those already in existence with Libya and Turkey as blueprints for future cooperation arrangements with third countries. However, such agreements are at the root of severe human rights violations and debilitating protracted displacement (Giuffré 2017; Human Rights Watch 2019; MSF - Médecins Sans Frontières 2019). The lack of reference to human rights concerns when mentioning North Africa, Western Balkans or Turkey should confirm fears that further violations of human rights may well occur under future agreements without any adequate monitoring or measures to prevent such violations (Bhandari 2020; European Commission 2020c, 18; Ineli-Ciger 2020). The externalisation agenda takes even more draconian forms when addressing the situation of those blocked in Libya, evacuating them to countries like Niger and Rwanda, amongst the poorest countries in the world (Gilbert 2020), rather than facilitating their onward journey to a safer place. ‘Readmission and reintegration’ play an essential part of agreements with third countries. However, they mostly satisfy...
the EU’s desire to return irregular migrants but hardly reduce the motives why people left in the first place. In this context, whether returns are ever truly voluntary remains a point of contention. Moreover, the Pact introduces a link between cooperation on readmission and visa issuance in the Visa Code (European Commission 2020c, 21), which has been considered a blunt carrot and stick approach (Guild 2020) and a coercive approach to cooperation (Spijkerboer 2020). Furthermore, this has been seen as a form of international blackmail that risks turning refugees – especially those in protracted displacement – into ‘chips in readmission negotiations’ (Ineli-Ciger 2020).

Allusions to the promotion of ‘sustainable and safe legal pathways for those in need of protection’ seem to speak to the European Parliament’s effort to introduce humanitarian visas at the EU level (European Parliament 2018), but subsequently come closer to limiting migration to Europe to ‘attracting talent’ (European Commission 2020c, 2). Similarly, the Pact attempts to develop an EU-wide resettlement scheme and promote community or private sponsorship schemes (European Commission 2020c, 22–23), which would positively reflect on protracted displacement beyond the EU territory. Yet, sponsorship schemes are vulnerable to co-option by more sinister de-responsibilisation and discriminatory agendas if not designed according to a range of internationally-recognised refugee and human rights principles (Tan 2020). Furthermore, such proposals remain completely at the mercy of individual Member States and are not linked to any commitment to specific quotas. Therefore, they are hardly a solid basis for substantial improvements in the lives of those in protracted displacement around the globe.

The Pact also provides very little hope to those displaced people at the EU’s external borders to overcome unpredictable, long, and often harsh border procedures. In fact, it is likely to worsen the situation at the external borders and risks leading to more refugee camps, containment, and detention at the EU borders (Bhandari 2020; Ineli-Ciger 2020; Karageorgiou 2020). The 2015 European Agenda on Migration introduced the so-called ‘hotspots’ in EU external border countries whose asylum systems faced particular pressure due to the arrival of high numbers of applicants for international protection. It aimed to concentrate resources from the European Asylum Support Office (EASO, now the European Union Agency for Asylum - EUAA), Frontex, Europol and task forces of Member States at designated locations to process asylum applications quickly, address health concerns of people arriving in Europe, relocate applicants to other EU Member States and, in some cases, process returns (Willermain 2016). However, the initial main purpose of the hotspots was the implementation of the relocation mechanism with the set target of relocating overall 160,000 people to other EU Member States. However, with an ever-increasing reluctance of Member States to relocate from Greece and Italy, the relocation-protection centred approach shifted to a security-control-return focus. Consequently, the relocation process failed to meet its target and only managed to relocate 32,000 people. Thereafter the focus of the hotspots, particularly in Greece, shifted from registration, screening and relocation to return to Turkey, following the introduction of the EU-Turkey agreement (European Commission 2016d, 4). As a result of this policy shift, displaced people remained blocked in the hotspots in the Greek islands, without the realistic prospect of moving onward to other EU Member States or returning to their countries of origin of their own will or through their own means.

In this context, the Pact suggests a growing complexity with its attempt to increase procedural efficiency and coherence and close existing loopholes by introducing
‘pre-entry phases’ based on the legal fiction of asylum claimants’ non-entry in a Member State’s territory (Campesi 2020; Thym 2020). The proposed amendments also introduce shorter time frames for appeals and remove second-level appeals against decisions taken in border procedures (European Commission 2020a, 2, 6, 9, 18, 31, 32). These proposed new elements further reduce the chances of refugees obtaining protection in the EU due to the lack of access to information and support (Campesi 2020) and potentially increase protracted displacement. Asylum claimants are to be concentrated at border regions for up to six months of border procedures and are to be more likely than not subject to detention-like conditions up to 12 months (European Commission 2020a, 14, 16), even if returning them is never a straightforward process (Campesi 2020; Karageorgiou 2020). The European Commission has not been deterred by negative past experiences with similar practices in Member States, such as Greece (Moraru 2021), value-based opposition or logistical challenges to these elements – even when raised by Member States (European Commission 2020a, 9). Furthermore, the Commission’s suggestion for creating an independent monitoring mechanism during pre-entry screening procedures is not sufficiently encompassing or fully reassuring (Stefan and Cortinovis 2020). It is thus essential that all existing monitoring systems be well coordinated among themselves, including the (possible) future monitoring functions held by EASO/EUAA (European Commission 2018).

The Pact insists on the idea of speedy returns of irregular migrants to their countries of origin. While this is a positive way to avoid protracted displacement, it comes at a very high price, as the already discredited notions of ‘safe country of origin’ and ‘safe third country’ are employed in concurrence with accelerated procedures (AIDA and ECRE 2015; Costello 2016; European Commission 2020c, 4). Assurances of guarantees of an individual assessment, respect for the principle of non-refoulement, and fundamental rights (European Commission 2020d, 4) are not reassuring at all, considering that people are promised ‘rapid legal certainty’ (European Commission 2020b, 9) but not international protection. The accelerated assessment of asylum requests and seamless returns are prioritised not only for those with ‘abusive or inadmissible’ claims but also for those ‘applicants from low recognition rate countries’ (European Commission 2020b, 10) – understood as up to 20% (European Commission 2020a, 13). This is a very blunt proxy for the success of an asylum claim and weakens promises of ‘individual assessments’ and respect for fundamental rights. Moreover, the Pact acknowledges that returns are more effective when ‘voluntary’ and accompanied with ‘strong reintegration measures’ (European Commission 2020c, 8), but this ignores the doubtful voluntary character of the overwhelming majority of returns. Most worryingly, readmission agreements are not framed with the necessary legal safeguards, democratic accountability, and monitoring (García Andrade 2020).

Solidarity comes to the fore in the shape of either commitment to the relocation of refugees in other Member States or ‘sponsoring’ returns of non-recognised refugees (European Commission 2020c, 5). Both forms of solidarity address protracted displacement, even if to a minimal extent (Thym 2020). Moreover, relocation within the EU has a very disappointing record (Gkliati 2021) and linking the ‘sponsorship’ of returns to solidarity can be seen as a ‘bitter marriage’ (Bloj and Buzmaniuk 2020, 4). Even worse, if sponsoring a return fails, then the sponsoring Member State should relocate the unsuccessful asylum claimant, which is an idea that may meet a lot of political resistance.
Most importantly, the ‘first country of entry’ remains the main element of the proposed arrangements, even if complemented by considering existing relatives or previous work or study experience in another Member State (Bloj and Buzmaniuk 2020, 4; Thym 2020). This consideration of other factors can positively affect the social integration of refugees, but it is unlikely that those factors will prevail over the consideration of the first country of entry.

Aiming to support ‘effective integration policies’ (European Commission 2020c, 2) again seems, at first, to combat protracted displacement, and is reflected, for example, in the granting of long-term resident status to beneficiaries of international protection after three years of residence, as opposed to the current five years (European Commission 2020c, 6). Emphasis on areas of social inclusion such as employment, education and health is also positive (European Commission 2020c, 27). Nonetheless, what the Pact proposes falls very short of a crosscutting reception-integration-inclusion agenda supported by a substantial budget and bolstered by increased reception capacities, which is what is, in fact, necessary in this context (Walter-Franke 2020). Besides securing ‘citizens’ trust in the whole system of asylum and migration management’, the Pact refers to the need to avoid exposing ‘those staying illegally to precarious conditions and exploitation by criminal networks’ (European Commission 2020c, 7), but fails to suggest, for example, the regularisation of those who are staying in the EU and are undocumented as a possible means to address these concerns. Regularisation processes have been often used in EU Member States and elsewhere with varying degrees of success and constitute a valuable solution for those who are not eligible for any protection status but also cannot be returned to their countries of origin (Levinson 2005; Kraler 2009).

Overall, there had been hope for a more decisive proposal that would ensure adequate solutions for those seeking international protection on EU soil, including those in ‘limbo’ for extended periods. Even though the Pact does not contain all relevant details, that hope seems to have been misplaced, as the Pact fails to promote human rights, European law, and international law (Campesi 2020; Karageorgiou 2020), to the point of undermining the Global Compact on Refugees and global cooperation on asylum matters (Easton-Calabria 2020). Our analysis of the Pact evidences how these proposals risk entrenching the subordination of the protection-rights and humanitarian-refugee relief figurations to the migration-security figuration, thus undermining the very logics and normative foundations of the former. The extent of political differences between Member States on migration and asylum matters may simply be too significant to allow more consensual, effective, and humane proposals to garner support. Trying to achieve political consensus has prevailed over humanitarian principles, and realpolitik has given ground to nationalist agendas and pragmatism (Bhandari 2020). Important issues such as access to the asylum system, the quality of asylum decision-making, and the need to improve reception conditions have been neglected (Meijers Committee 2020), and the New Pact undermines the primacy of refugee protection and the principle of non-refoulement (Gilbert 2020). Nothing in the Pact offers effective tools to address the catastrophic conditions in hotspots and the experiences of protracted displacement in EU Member States such as Greece and Italy. The price to be paid for this Pact is further securitising borders, deterring refugee movements at all costs, limiting asylum claimants’ freedoms and rights, and restricting access to full-fledged asylum procedures. Human rights and international protection are the ultimate victims of this.
5. Conclusion

While broadly neglected by EU policies, protracted displacement is also an issue within the EU. However, EU migration and asylum related policies in both their external and the internal dimensions do little to prevent or, at the very least, consider protracted displacement. Analytically, these outcomes are the result of at least three figurations that centre on displaced people and shape policies in this area: first, a humanitarian-refugee relief figuration, involving development and humanitarian actors determined to relieve the humanitarian needs that come with displacement and offering an environment that allows displaced people to rebuild their lives. Secondly, a protection-rights figuration involving, amongst others, the state prerogative to provide international protection and the work of asylum judges, lawyers and legal advocacy organisations broadly aiming at providing a space of physical protection from harm, persecution, and indiscriminate violence. Third, a migration-security figuration involving various migration control actors, from ministry officials to police forces, that centres on managing migration by restricting access to the EU territory by third-country nationals, among whom people who need international protection. The relationship between these figurations has changed quickly in recent years: while the first two were initially at the forefront of EU asylum policies as manifested in the Tampere Council Conclusions, they increasingly became subordinated to and dominated by the migration-security figuration, producing paradoxical effects and unwanted results. The increasing imbalance of these figurations ultimately produces rather than prevents protracted displacement outside the EU, at the EU external borders, and within the EU.

The 2022 Ukrainian displacement crisis has not fundamentally changed the primacy of the migration-security figuration, as policies towards non-Ukrainian refugees remain unchanged. Yet, the conditions available to Ukrainians under Temporary Protection also point to a more fundamental ambivalence towards granting refugees certain rights that have been long demanded by proponents of more liberal and welcoming refugee policies. Thus, the immediate provision of a status upon registration, the ‘free choice’ regime and immediate access to employment prevailing for Ukrainians are counterbalanced by more limited welfare entitlements of persons under temporary protection compared to refugees. Displaced Ukrainians’ reliance on their own networks across Europe, as well as on civil society support, is not accidental and underlines the ambivalent logics of figurations of displacement in the EU (Kienast, Feith Tan, and Vedsted-Hansen 2022).

In the external dimension of the EU asylum policy, the ‘Lives in Dignity’ policy framework provides a solid policy impetus to offer solutions to people in protracted displacement situations in major host countries of displaced people outside the EU, reflecting its strong anchoring in the humanitarian-refugee relief figuration and informed by a longstanding perspective amongst humanitarian and development aid practitioners and policymakers. However, when defining EU partnerships under the New Pact, security aspects take the helm of EU’s external policies. Partnerships conditional on readmission cooperation send an unmistakable signal of this priority shift to major host countries and communities. In return, the Pact remained vague concerning responsibility sharing initiatives such as resettlement or complementary pathways that could relieve the precarious situations of displaced people and host communities in major host countries.
As illustrated in this article, the most significant changes the New Pact offers refer to new provisions on border procedures. However, border procedures can create bottleneck situations at the EU external borders that may quickly turn into tensions like those witnessed in Moria in the Greek island of Lesvos in September 2020 (Politico 2020). Any design for swift border procedures must also address and establish follow-up processes like relocation and return. Without follow-up processes in place, people face protracted entrapment at borders without the prospect of moving on or returning, which reflects well how the focus on the migration-security figuration produces precarity and protracted displacement.

Finally, the subordination of the protection-rights figuration under the migration-security figuration also clearly impacts EU asylum and return processes more generally. While the aim of accelerating asylum procedures is an understandable interest for the individual concerned and the state, it cannot be achieved without strengthening legal safeguards to compensate for shorter time frames. Swift screening and border procedures may well lead to decreasing quality of asylum decisions. Access to quality legal assistance and the upholding of procedural guarantees are an inevitable element in speeding up processes, if errors potentiated by hasty procedures are to be avoided. Similarly, the Pact puts much effort into return policies, which is an important part of migration management. However, quantitatively benchmarking and evaluating return processes, focusing on return rates, is short-sighted. Return policies cannot be sustainable without providing a solution for people who do not return. A thorough assessment of the prospect of return would not only be more humane but also more cost-effective than indefinite detention or the stay of non-returned migrants with a liminal (non-)status until return could potentially be accomplished. Should return not be an option, regularisation policies and an EU-wide legal status with access to livelihood and services are essential.

As a point of contestation, the increasing dominance of the migration-security figuration to prevent uncontrolled immigration and mobility will only lead to further loss of lives, more oppressive images at the EU’s external borders, and, in the end, more protracted displacement both at the EU external borders as well as within the EU. Without any solution in sight, displaced people will increasingly be forced to rely on irregular means to overcome precarity and marginalisation. One should believe that the EU could do better. After all, the EU has much to lose in terms of its reputation as a global role model for human rights if it passively observes people escaping from deprivation and violence and ending in protracted displacement situations on EU soil, often violating international legal standards. An important first step would be to recognise that the EU and its Member States’ policies create and contribute to protracted displacement situations in the EU, at its borders and in third countries. A second step is to acknowledge that protracted displacement, defined as ‘a particular social condition of insecurity, vulnerability and dependency (...) over prolonged periods of time’ (Etzold et al. 2019, 14), affects a broader category of people, including also rejected asylum seekers and others not entitled to international protection who require solutions as well. This should be followed by developing policies addressing protracted displacement that are both realistic and solution-oriented and that avoid alarmist rhetoric.
Notes

1. UNHCR defines a protracted refugee situation as a ‘situation of a long-lasting and intractable state of limbo where refugees’ lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile’ (UNHCR 2004).

2. This distinction is based on the analysis presented in Kraler et al. (2020), which was inspired in part by Easton-Calabria (2015). For a comprehensive genealogy of discourses on durable solutions see Bradley et al. (2022).

3. The term ‘governmentalist perspective’ in Alemann’s usage refers to a government and state focused perspective, also privileging national level perspectives (as opposed to perspectives of public authorities and public institutions at other levels of government).

4. In referring to security and securitisation we use the broader understanding of societal security and securitisation following the Copenhagen School of Security Studies (see Huysmans 2006).

5. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, OJ L 328, 5.12.2002, p. 17–18; Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, OJ L 328, 5.12.2002, p. 1–3 (2002/946/JHA).

6. See Roman et al. (2021) and contributions by Papatzani et al. (2022) and Cingolani et al. (2022) in this special issue.

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