Janus Faced Migration Policymaking: A Case Study of Afghan-European Migration Policy

By

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In 2019, the Afghan government launched a comprehensive national migration policy. In spite of the significance of migration in Afghan cultural, economic, political and social life—the impulse for this policy came, not from the Afghan government or civil society, but from Europe, specifically from the member states of the European Union such as Germany, who received many of the 250,000 Afghans who applied for asylum in Europe in 2015, at the time of a crisis in the European asylum policy. Perhaps inevitably, the goals of Afghan migration policy were being set by European governments responding to domestic pressures and operating within particular 'policy frames'. This article explores the role played by the European Union and its member states in shaping the migration policy of the Afghan government, in particular since 2014, and the return to power of the Taliban in 2021. This timeframe covers the creation of the National Unity Government (NUG), the withdrawal of international forces, a deterioration in the security and economic status of Afghanistan, a sharp rise in the number of people leaving the country, the so-called European Refugee Crisis, in which Afghans were the second largest group after Syrians, as well as the Brussels Conference and the implementation of the Joint Way Forward (JWF)—an agreement that tied the delivery of further aid to cooperation in matters of migration. Though it ends with the evacuation of Afghan allies in 2021, some comparisons are drawn with the response to refugees from Ukraine, which highlight the colonial and racist treatment of non-European refugees.

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This essay is structured around a series of questions that relate to migration policymaking in general, but more specifically to migration policy by, for and about Afghans. The examination of these questions indicates some of the problems with migration policymaking, especially when conducted at the supra-national level. The focus here is on state policies, European migration policies as they affect Afghans and the Afghan government and Afghan migration policies that have emerged in response to pressure exerted by Europe and Afghanistan's neighbouring states, Iran and Pakistan. Migration policy serves to highlight the international character of states,[1] since it is never simply national, and though driven by domestic pressures, always involves other states. The approach taken here is one of critical enquiry, in which the dominant framing of policy issues and its consequences are interrogated and questions of power and inequality are raised.[2] The findings are based on an 'interpretive' analysis of official documents and interviews with Afghan and European officials in Kabul. As a result, the conclusions offered and the meanings attributed to actions and policy are authors', based on 'plausibility and the balance of probability'[3] and as such, open to argument and dispute.

Failing Migration Policies

In 2004, the migration scholar Stephen Castles asked, "Why migration policies fail".[4] At that time, migration policies were largely developed and implemented in receiving countries, so Castles' paper concentrated on the migration policies of developed countries trying to control migration into their territories, focusing on the collective policies of the EC/EU. His answer to the question was that policies fail because of the complexity of factors shaping both international migration and policy. In particular, policies fail because they do not take account of 'migrant agency' and the 'structural factors', including 'political systems', that drive migration.

Castles stressed the importance of agency as migrants develop and implement their migration plans. Under the heading of agency, he discussed the factors that ease the move to and settlement in destinations, including migration networks that offer advice and resources, the migration industry (travel agents, labour recruiters, lawyers, etc.) and family strategies to manage risk at home by sending members abroad. Monsutti[5] and Harpviken[6] have discussed migration as a long-standing survival strategy for migrants, and described the networks that link Afghans in Afghanistan, Iran, Pakistan and countries outside the region. These networks, while sometimes constraining migration (persuading or enabling people to stay in Afghanistan), also provide information and resources to those wishing to leave and they are trusted much more than information provided by official campaigns and channels, especially those that seek to dissuade people from leaving.

Castles makes an important observation about the way in which (potential) migrants view migration policies—as "just another barrier to be overcome to survive…. Policies become opportunities structures to be compared and overcome".[7] In other words, migrant behaviour may be shaped

by the categories, objectives and regulations constructed by states, but not in the simple, causal manner frequently assumed by policymakers. Afghans seek out information on policies in different potential destinations, but that information is tempered by the experience of the contacts, who have negotiated those policies.[8] Contacts may, for example, urge potential migrants not to try the Turkey-Greece route, instead go directly to Italy, or to avoid having their fingerprints taken.

Castles notes the importance of structural factors in shaping migration, including the 'root causes' that drive emigration (conflict, poverty); the dependence of sending states on migration to reduce unemployment, improve the balance of payment and encourage development; and the structural dependence of developed countries on migrant labour. Migration contributes to the globalisation and transnationalism that in turn drives migration. This makes it difficult for individual states to develop and implement policy independently of other states. For sending states, a dependence on migration makes it difficult for them to regulate emigration or protect their citizens abroad. European policies recognise the drivers of migration from Afghanistan, which despite regime changes continues to suffer from massive insecurity, natural disasters including drought, earthquakes and floods, and chronic poverty, but does not respond to alleviate them or to create safe, legal migration routes. Instead, the policy objectives and strategies continue to focus on controlling, managing and reducing migration.[9]

Revisiting his paper in 2017, Castles summarised the arguments of the earlier paper as "Migration policies are problematic—because they are about migration" instead of inequality. He notes that the "economic and political policies that perpetuate inequality are much more important in shaping migration than are migration policies—but much harder to challenge".[10] This applies to the Afghan situation: as long as there is a significant gap between Afghanistan and destination countries in terms of levels of security and economic and political stability, Afghans will be forced to migrate. In a commentary on Castles' paper, Anderson[11] stresses the importance of acknowledging how two historical processes continue to drive migration, especially forced migration: "European colonialism and the emergence of the neoliberal global economic order". These two processes are at the root of the global inequality caused by centuries of "domination and plunder",[12] which led to the concentration of wealth in the Global North and a severely retarded economic and political development in the Global South. The neoliberal system, which turns migrants into an international reserve army of labour, vulnerable and exploitable, sucks migrants from the periphery to the developed centre. Afghanistan's fragility is at least as much a product of colonial ambition and exploitation as the failings of the indigenous political elite, and migration policies developed for (rather than by) Afghans continue the process of colonialism.

Making (Migration) Policy

Scholars have developed different models to describe the policymaking process and libraries have been written evaluating and refining these models[13] and then applying them to migration policymaking.[14]. Rather than using Afghan migration policy as a case study to test these different models, in this article, three (of many) models are instead used as different lenses to bring into focus the problematic aspects of policymaking in this area. Broadly speaking, the different models may be summarised as the rational decision-making process; the political game; the discourse-institutional approach. Evidence-based policymaking (EBP) is the most recent version, which assumes that policymakers are rational actors who collect evidence and information on the 'problem' and on the options for addressing the problem and select the best/most feasible/most likely to achieve a particular goal. This model assumes that there is a problem that requires a solution, and that it is the job of policymakers to identify the problem and using the best available evidence, devise a solution to resolve it.[15] It also assumes that more/better evidence will lead to better solutions, i.e., that rational actors will learn from past mistakes.[16]

It is this model that drives the many academic, government and NGO studies into migration, and its causes and consequences: the belief that if policymakers simply had more, better evidence, they would produce fairer, more efficient migration policies—a triumph of hope over experience. On this account, at least from the perspective of the Global North, migration is a problem of control and policymakers are obliged to find ways to better manage the movement of people so that the movement of certain categories of people are facilitated, while others are blocked. Castles' summary of migration policies in the post-war period describes the multiple failures of the "rational solutions" offered by policymakers.[17] However, migration was not a significant problem for Afghan governments, largely because migration out of Afghanistan brought benefits to those who migrated and to their families (though there were also costs),[18] as well as to reducing pressure on the government; because migration into Afghanistan was not significant; and because the 'state' was much smaller. It provided very little for its citizens/subjects so there was not so much competition from outsiders for resources. Migration was not a problem, but an important survival strategy for families and governments coping with poverty and unemployment, and then conflict and civil war.[19]

Providing a large, cheap workforce with limited rights, Afghan migration was also a solution for neighbouring countries such as Iran and Pakistan, especially following the expansion of the oil industry in Iran, which created labour demand in mining and construction.[20] This solution became a problem for Afghan migrants when they were denied access to education and employment, when they suffered abuse, arbitrary detention, deportation and discrimination. Migration only became a problem for successive Afghan governments when Afghan refugees were armed in refugee camps and sent back to Afghanistan to fight during the 1980s and 1990s, or when they were

used as bargaining tools, with Iran and Pakistan threatening, and sometimes actually, forcing thousands of Afghans back across the border,[21] a practice that continues even today. Early refinements of this theory introduced the concept of 'bounded rationality', which acknowledges that policy is made by actors with limited information-processing capacity, time and resources and under several other constraints.[22] This describes very well the challenges facing any Afghan government desirous of developing any policy, including migration policy. Despite many years of intervention by the international community, and millions of dollars spent on capacity building, neither the Ministry for Refugees and Repatriation, nor the other line ministries had the necessary skills or expertise[23] to develop a migration policy. Much of the data already existing is not available in the national languages, and few officials were sufficiently at ease with the jargon, never mind the concepts and theories, to be able to read, analyse and respond to the concept notes, reports and recommendations provided in English (in spite of requests that they be provided in at least one of the national languages), within the short timeframe allowed.

This 'bounded rationality' was even more evident in European policymaking. Castles' article details the problems with the European approach throughout the 1990s, which focused on controls while speaking of root causes. Even after two decades and with libraries of evidence (disregarded by policymakers), migration policies still suffer from the same flaws and failures. During the years the authors spent working with the Ministry in Kabul, different foreign experts with no experience of Afghanistan were tasked with drafting a Comprehensive Migration Policy. In a document laying out the position of the EU with respect to migration from Afghanistan, the authors emphasise the need "to address irregular migration, in particular through effective return and readmission of Afghan citizens irregularly staying in the EU".[24] Although the document begins by referring to the high number of asylum seekers from Afghanistan, nowhere does it acknowledge that the only way for refugees to reach Europe is by irregular migration and with the assistance of the smugglers that it wishes to combat.[25] The document, like many others generated by the EU bureaucracy, refers to return and readmission as necessary to discourage irregular migration, although there is no evidence that it does so, and significant evidence that it has no such impact.[26] With regard to the policy narrative below, note that rationality here is clearly limited by a stubborn adherence to particular policy narratives regardless of their incoherence and counterfactual evidence.

A Political Game

Another useful lens is to see policymaking as a political game. This model sees policy as the outcome of compromises between different stakeholders who may have competing goals and diverging interests, or at least different views on how the same goal may be achieved. The process by which policies are made is a bargaining game, in which power is the key, and "the institutional context [is a] pluri-centric, elitist, interorganisational arena with restricted

access".[27] The different stakeholders may be within a government engaged in 'bureaucratic politics' over budgets, careers and competencies, or between Ministries, or vested interests, such as government departments, international and national agencies, community groups, migrant rights groups and private companies. And, when it comes to a policy area that involves more than one state, as in the case of migration, the number of stakeholders multiplies, and issues of power are the key.[28] Policymakers are obliged to (appear to) satisfy competing interests. Castles refers to a strategy frequently employed by policymakers of employing anti-immigrant rhetoric to satisfy an electorate concerned about competition or threats to national identity while pursuing policies that encourage migration to satisfy economic or labour market objectives.[29] In other words, policies frequently have hidden as well as explicit agendas, agendas that may be in conflict.

The EU policy agendas in relation to migration from Afghanistan are explicit: stop irregular migration and facilitate returns. However, there were tensions between the European Union Commission (EU Commission) and the European Parliament, between the Directorates General (DG) of Home Affairs and that of International Co-operation and Development (DEVCO), and between the Afghan government and the Afghan Parliament, as well as between the Afghan President and some Ministries. Policies usually require resources and are a tool in the competition for scarce resources. In policymaking as a game, the stakes are budgets. Ministers compete to increase their budgets; ambitious policies require bigger budgets which increase the prestige of the Minister/Department. Policymakers may re-frame an issue as one that comes within their competence and requires an increase in funding. For example, the Joint Way Forward (JWF) was a clear example of the DG Home Affairs staking a claim to DG Development resources by insisting a) that development aid was contingent on signing the JWF and that b) the money for implementing the reintegration programmes for those who have returned comes from the development budget. There was a pushback from the DG Development representatives who objected to the use of development funds to pressurise the Afghan government, in particular, since it flew in the face of findings from DEVCO's study.[30]

The EU Commission had fashioned the JWF as an agreement in order to bypass the scrutiny of the European Parliament, in which representatives of some of the different stakeholders sit. The JWF was negotiated and agreed between Afghan government officials and a team of EU negotiators led by Melbin, the EU Ambassador in Kabul, without any debate in the European Parliament, thus avoiding objections from, for example, the Green, Liberal and Left parties; between those, such as DG Home Affairs, for whom the immediate policy goal was reversing the flow of migrants from Afghanistan, and those, such as DG Development, for whom the goal should be resolving the conflict and economic challenges that caused people to flee. Part of the policy game includes attempts to limit the number of stakeholders who can influence policy, partly because it will just make the process more streamlined, and this is justified by arguing that 'help will get to the needier quicker', but it is also a way to avoid challenges and scrutiny. The

European Parliament clearly saw the JWF as an example of the latter. In a 2017 resolution on the situation in Afghanistan, the European Parliament noted:

> … the conclusion of the Joint Way Forward informal readmission agreement between the EU and Afghanistan; regrets the lack of parliamentary oversight and democratic control on the conclusion of this agreement; … underlines that EU assistance and cooperation must be tailored to achieving development and growth in third countries and to reducing and eventually eradicating poverty, and not to incentivising third countries to cooperate on readmission of irregular migrants, to forcibly deterring people from moving, or to stopping flows to Europe.[31]

Apart from the tensions in Europe, the EU Commission also noted differences within the Afghan government:

> While President Ghani and parts of the Afghan government are publicly committed to cooperate on readmission, other members of the government do not appear to facilitate the return of irregular migrants, while attempting to renegotiate conditions to restrict the acceptance of returnees.[32]

These divisions were evident in the final months of negotiations as the different Afghan political actors made their positions clear in the media and in Parliament. It seems that during the negotiations, the EU players were more successful in hiding their divisions. However, during a policy briefing,[33] Minister Balkhi argued that the divisions within the Afghan government were superficial, that, in fact, he and the president held similar positions, and that ultimately they had won because they received the aid, but knew the EU would never be able to deport 80,000 per year as they had hoped. This raises the question of the extent to which the arguments in Kabul around the JWF were just a pantomime to deflect from more serious issues.[34]

While the outcome of the negotiations may be interpreted differently by the various players, they clearly revealed asymmetrical power relations. The Afghan government, dependent for much of its budget on foreign aid, had a great deal to lose, and was in a very vulnerable position. While Melbin, the senior EU official in Kabul made no attempt to hide this disparity, seemed in fact to revel in it, and in the access it afforded him to the president,[35] other officials saw their role as that of a mediator,[36] trying to negotiate the best brokerage deal for both parties. One official explained that it was necessary to persuade the Afghan officials to compromise, to accept an increase in returns and to cooperate in reducing irregular migration, in order to maximise the pledges from individual donors.[37] If we see policymaking as gaming, then the building of policy coalitions is a very important way of redressing those asymmetrical power relations.[38] This was one area where Afghan officials failed. Had they developed policy coalitions with partners in Europe, whether with DG DEVCO officials, more progressive political coalitions in the Parliament or migrant organisations, they may have found it easier to push back against the demands of Melbin, Cameron, May and the German Interior

Minister de Maizière, among others. Alternatively, they could have strengthened their hand by using EU principles and legislation to undermine the JWF proposals, but a lack of familiarity with the details of EU asylum legislation further handicapped them. Nonetheless, as Minister Balkhi claimed, Afghanistan possibly won that particular policy game because of European failings rather than Afghan strengths. And those failings relate to the construction of the policy problem, which is a product of the policy discourse.

A Discourse-Institutionalist Approach

This approach, in contrast to the first discussed earlier, does not accept that there is an a priori objective problem to be identified and resolved. Instead, relying on a constructivist or interpretivist approach, those who adopt this approach explore the ways in which policymakers constitute, construct or represent problems through the employment of particular discourses. In this account of policymaking, policy is seen as, at best, the outcome of process of sharing divergent ways of framing the policy problem, and persuading others of the validity of one's argument (close to the rational process above) or at worse, the closing down and excluding of alternative frames so that one frame, one paradigm comes to dominate.[39] Discourses are not just ways of talking about or framing an issue but they are also "the interactive processes by and through which ideas are generated and communicated"[40] and blocked. Ideas, discourses or frames are institutionalised in laws and practices, shaping the governance of that issue. For example, migration can be framed as a security, social or political problem, as a technical or management problem or as a development opportunity, a win-win-win strategy for migrants, sending and receiving governments.[41] For some scholars, ideas are tools that are deployed to advance particular policy preferences, while for others, "ideas are conceived as paradigms or frames, delimiting what is feasible or legitimate".[42] For example, the idea that states have the right to control entry into their territory is a dominant policy frame within which policies must be constructed. While the idea of open borders may be floated, it is usually dismissed as unfeasible, except within carefully limited areas such as the EU, and for a limited category of people.

These frames or discourses are shaped by the belief systems or ideologies of different actors or groups of actors, who are often resistant to persuasion and are "used for strategic purposes, but need not be internally coherent or strictly rational".[43] Within the different institutions of the EU, different discourses are in conflict and compete, and these tensions are evident in relation to Afghan migration, which is regularly cited as a concern for European states. Most documents issuing from the EU recognise the factors driving migration from Afghanistan as conflict and poverty, and some refer to the potential benefits of migration. For example, shortly after the second round of Presidential elections in 2014 in Afghanistan, the Council of the EU published a series of conclusions, in which the primary concern of EU member states is:

> the need to create jobs for some 400,000 Afghans entering the workforce each year. If this demand is not met, there is a risk of a new generation of underemployed and alienated youth which may lead to an increased pool for insurgent recruitment and uncontrolled and illegal immigration to neighbouring countries and Europe. Well managed legal migration can bring benefits, while further increases of uncontrolled and illegal immigration would exacerbate pressure on a number of EU Member States.[44]

The European Agenda on Migration[45] declared: "Europe should continue to be a safe haven for those fleeing persecution as well as an attractive destination for the talent and entrepreneurship of students, researchers and workers."

And yet, despite references to the benefits of migration and calls for legal migration channels, none have been created.[46] Instead, almost every conclusion/resolution/statement on Afghanistan issuing from the EU, whether referring to development, economy, elections, justice or peace refers to the need to 'tackle illegal migration', 'combat irregular migration', 'combat migration smuggling'. The framing of the problem in 2015 as Afghans joined Syrians on the Balkan route was not new—since the 1990s, European governments have defined migration as a technical problem—how to steer and select "migrants who can contribute most to productivity and economic growth",[47] while excluding those who might be a drain on public resources. Asylum seekers represent a particular challenge for these governments as, legally, states may not select from among applicants and there is no limit to the number of refugees that should be accepted.[48] In 2015, it seems the 'problem' was not the wars and conflicts that were driving millions from their homes, it was too many refugees arriving too fast into countries that were still feeling the effects of the 2008 financial and economic crises and that were vulnerable to populist, racist movements.[49]

The solution chosen was not, however, ending war and conflict or ceasing the sale of arms to those who make war, it was not finding a way to help refugees reconstruct their lives in safety and dignity and contribute to host societies—it was, as EU President Jean-Claude Juncker told the European Parliament, "to ensure that no more refugees come from Turkey into the European Union"[50] and in the case of Afghans, to send back as many as possible—"up to 80,000 persons could potentially need to be returned in the near future".[51] The Turkish route was not the only target of this policy, North African countries, including Libya, and Sahel countries such as Niger, Mali and Senegal were also paid to block the routes to Europe and take back those who had transited their territory.[52] The dominant discourse within the EU Commission and the Council of the EU employs a discourse of 'safety' and 'dignity', but essentially problematises migration from Afghanistan (and elsewhere) without acknowledging that the 'illegality' that marks much Afghan migration is produced by the lack of legal channels for asylum or labour migration.

This discourse was exported very effectively to Afghanistan in 2016 and was clearly visible around the Joint Way Forward negotiations.

Government ministers explained to the Afghan Parliament and to the media the problems Afghan migration was creating for Europe. Although within the negotiations, officials fought hard to soften the conditions being imposed, they offered no challenge to this problematising discourse. It was accepted that Europe was threatened by a populist movement capitalising on the arrival of migrants, that, as argued by German officials, more Afghans in Europe would mean less money available for Afghanistan. The idea that Afghan migrants could make an economic contribution to both Afghanistan and Europe seemed unthinkable—literally. Afghan officials were distracted by unnecessary (because already enshrined in EU asylum law) arguments around obligations to consider claims individually and refrain from deportation before all appeals had been exhausted, rather than attacking the inadequate implementation of those laws or the lack of access to rights.

Unfortunately, lack of capacity within the Afghan government means that challenges to the framing of Afghan migration as a problem for Afghanistan and transit and receiving countries is unlikely, though a re-framing is necessary if the government is to develop a policy that is grounded in the reality of life in Afghanistan and in exile. A new discourse that recognises migration as both a symptom of and solution to some of the economic, political and social problems facing Afghans would allow the development of a policy that puts Afghan interests and the protection of Afghan migrants first. Such a discourse would allow policymakers to understand that the problems facing migrants (lack of legal channels which create a demand for smugglers, limited understanding of migrant rights, isolation) are a result of the current construction of migration as a security problem, and of the solution as one of increased controls.

Pantomime Policymaking in Times of Crisis

The International Centre for Migration Policy Development was contracted by the EU to support the Afghan government to develop a Comprehensive Migration Policy (CMP), to build the government's capacity to reintegrate those returned and to prevent irregular migration.[53] In 2019, the policy was presented to the president, though in the absence of a budgeted action plan it was not approved. The EU had engaged a consultancy firm to work on a State and Resilience Building Contract. If the Afghan government fulfilled a number of tasks they would have access to €100 million. Most of the tasks had to do with setting up taxation systems, but one Key Performance Indicator was to prepare a costed action plan for the implementation of the CMP. In June, as fighting was taking place in 26 of the 34 provinces, Schuster was asked to be the technical advisor to the Ministry of Refugees and Repatriations (MoRR), the Ministry designated to take the lead. As the Taliban advanced, meetings took place with officials from the Ministry of Finance, Interior, Justice and Labour. Discussions were undertaken on the actions necessary to implement the policy goals for which the Ministry was responsible, and then switching from what increasingly felt like fantasy

policymaking[54] to news from the provinces, the fears of the officials for their own lives, and those of their families and communities.

Throughout July and August, the mood became increasingly difficult, but work continued on this action plan, even though we knew it would never be implemented. Increasingly, civil society organisations in Europe were demanding a moratorium on forced return, and finally in August, some countries did announce that they would cease deportations. But not all: six EU states (Austria, Belgium, Denmark, Germany, Greece and the Netherlands) wanted to continue deporting and wrote to the EU commissioner Ylva Johansson on 10 August, arguing that halting returns "sends the wrong signal and is likely to motivate even more Afghan citizens to leave their home for the EU".[55] At that stage, the Taliban had already taken control of most provinces and two major cities. The consultants were continuing their work, meeting with officials, waiting for the EU to acknowledge the unreality of the situation and call a halt to what was happening. This had never happened. Schuster was drafting letters of recommendation and appeals for visas for MoRR colleagues, and Hussaini was working to assist university colleagues. In the week following the fall of Kabul, both were evacuated to Europe, Schuster from a camp beside the airport, Hussaini and his family having had experienced the chaos and shooting just outside.

Having spent years pressurising the Afghan government to stop emigration, within days, the EU appeared to do a sharp U-turn, telling the new Taliban government that it would be judged on whether it would allow all those who wished to do so, to leave Afghanistan. In the immediate aftermath of the fall of the Ghani government, and in sharp contrast to the situation up to July, demands for visas and even passports from those seeking to leave the country were temporarily suspended by the representatives of national governments inside the airport. How was the EU able to shift so abruptly from keeping people out to bringing people in? The collapse of the government was rapid and highly visible in the media; to have completely abandoned people would have called into question Europe's self-image as a liberal, human rights-driven institution. It could not openly abandon allies to the Taliban, constructed as the opposite of open, liberal, noble, EU saviours. But once most of the media moved on, that is what it did and did so very rapidly. Aside from that very small window 2021 and 2022 has seen Afghans imprisoned more effectively than ever before within their borders by the reluctance of other states to afford them refuge. Small numbers of people have been evacuated to Europe and the US, but many more await resettlement from neighbouring states to which they fled, or from countries such as Albania, Kosovo and the Gulf States to which they were moved for processing.

The contrasting response to the Ukraine crisis has been interesting. Russia invaded on 24 February and six days later the Temporary Protection Directive (TPD) was activated for the first time since it was drafted in 1996, granting to Ukrainian refugees: residency, access to housing, social welfare assistance, medical care, legal guardianship and safe placement for

unaccompanied children and teenagers, access to education, the labour market and banking services. Perhaps most incredibly, it allowed Ukrainians to move to another EU country, before the issuance of a residence permit and to move freely in EU countries (other than the Member State of residence) for 90 days within a 180-day period. Without doubt, it was a useful instrument in the circumstances, but why was it not in operation in 2015, for the Syrians,[56] or in 2021 for the Afghans? It was, after all, designed as a response to: "the arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme".[57]

The EU Commission argued that the TPD was not implemented "due to its lack of an in-built compulsory solidarity mechanism to ensure a fair sharing of responsibility across member states".[58] Yet, this did not prevent its implementation in March 2022. At the same time, private and state transport providers offered Ukrainian refugees free travel on buses, trains and planes; they have been offered free food, drink and accommodation. When the Syrians were welcomed to Europe, it was largely by the citizenry with hand-drawn signs, but now travelling through airports and train stations, there are large official posters in blue and yellow welcoming Ukrainians, signposting them to services. It is not that the European response to refugees has been significantly *changed* by the Ukrainian crisis; it is that the response to Ukrainians is so different to the treatment meted out to other refugees. For decades, demands from activists for more open, just and generous policies have been dismissed as idealistic, unrealistic, naïve. In particular, the arrival of approximately one million people, six years ago, was apparently a crisis that stretched the EU systems to the breaking point. Yet, post-pandemic, in a cost of living crisis 6.5 million Ukrainians had arrived into the EU within a month and there is no crisis. True, it is not clear how long this narrowly focused generosity will last, but it does demonstrate that numbers are not the argument. We make choices; those choices are particular, reflect political relationships and reveal the racism that underpins EU migration policy.[59]

Conclusion: Why Do Migration Policies Fail in Afghanistan?

Whether or not a policy is deemed to have failed depends on how a policy is evaluated and who has analysed it. Anderson[60] points out that the stated goals of a policy may not be the actual goals. This certainly seems to have been the case with the Joint Way Forward. As pointed out by Anderson, whether a policy is judged a success or failure depends on which criteria are being used to measure it: European asylum policy in the past three years judged by human rights standards, by the number of people unable to access protection or other basic rights including to claim asylum, is a failure; judged according to the increasing public funds directed to expanding and multiplying private companies charged with policing migration controls it is a success for those businesses.

European policies with regard to migration continue to fail not because of resources, but to borrow Castles' words, because they are about

migration. The rhetoric of development, rights and peace is currently nothing more than window dressing to legitimise policies that seek to control migration and promote returns. The only attempts to integrate new arrivals into Europe have been by individual local authorities and small groups of citizens. This is in spite of the evidence referred to by different European actors, in spite of the rhetoric of rights and development, in spite of the recognition that "vulnerable people cannot be left to resort to the criminal networks of smugglers and traffickers. There must be safe and legal ways for them to reach the EU".[61] There is neither the political courage nor the political will to challenge the dominant discourse or problematisation of Afghan migration or create the safe and legal channels that would reduce the costs and risks created by policies that force people to use smugglers. So long as policies mis-frame migration as a problem and set unrealistic and unreasonable policy goals for dealing with that problem, they are bound to fail. Such policies create instead a market for smugglers who Afghans are forced to use. Policy about and by Afghans need to recognise migrants as social agents for whom migration is a useful strategy for coping with profound structural challenges, who will not passively accept the constraints imposed on their mobility, who have the capacity to contribute to the well-being of both Afghanistan and their destination countries. Perhaps most importantly, policies should never be made by those who do not have to live with their consequences.

Notes

[1]Alison Edgley, "Chomsky and the State," *Politics* 15, no.3 (1995): 155.
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[4]Stephen Castles, "Why Migration Policies Fail?" *Ethnic and Migration Studies* 27, no.2 (March 2004): 205-227.
[5]Alessandro Monsutti, "Migration as a Rite of Passage: Young Afghans Building Masculinity and Adulthood in Iran," *Iranian Studies* 40, no. 2 (April 2007): 167-185.
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[7]Castles, "Why Migration Policies Fail?" 209.
[8]Liza Schuster, Reza Hussaini, Mona Hossaini, Razia Rezaie and Mohamud Riaz Khan Shinwari, "'My Beloved Will Come Today or Tomorrow' Time and the Left Behind," in *Stealing Time: Migration, Temporalities and State Violence,* eds. M. Bhatia and V. Canning (London: Springer International Publishing, 2021), 1-23.
[9]Heaven Crawley and Brad K. Blitz, "Common Agenda or Europe's Agenda? International Protection, Human Rights and Migration from the Horn of Africa," *Journal of Ethnic and Migration Studies* 45, no. 12 (2018): 2269.
[10]Stephen Castles, "Migration Policies Are Problematic–Because They Are about Migration," *Ethnic and Racial Studies* 40, no. 9 (2017): 1543.

[11]Bridget Anderson, "Towards a New Politics of Migration?" *Ethnic and Racial Studies* 40, no. 9 (June 2017): 1527-1537.
[12]Castles, "Migration Policies Are Problematic," 1542.
[13]Bert Enserink, Joop Koppenjan and Igor Mayer, "A Policy Sciences View on Policy Analysis," in Wil A.H. Thissen and Warren Walker (eds) *Public Policy Analysis*, International Series in Operations Research and Management Science, edition 127, no. 978-1-4614-4602-6, December (Springer, 2013); Frank R. Pfetsch, "Power in International Negotiations: Symmetry and Asymmetry," *Negotiations* 16, no. 2 (January 2011): 39-56.
[14]Christina Boswell and James Hampshire, "Ideas and Agency: A Discursive Institutionalist Approach," *European Journal of Political Approach*, 56 (2016):133-150.
[15]Martin Baldwin-Edwards, Brad K. Blitz and Heaven Crawley, "The Politics of Evidence-based Policy in Europe's 'Migration Crisis'," *Journal of Ethnic and Migration Studies* 45, no. 12 (2019): 2139-2155.
[16]In fact, it was parallels between assumptions about the rationality of migration decisions and policy-making that shaped the research project on which this paper is based.
[17]Castles, "Why Migration Policies Fail?"
[18]Representations of migration and migrants in Afghan popular culture were examined. It revealed the heartache and loneliness caused by migration, as well as the importance of migration over centuries; also see Belgheis Alavi Jafari and Liza Schuster, "Representations of Exile in Afghan Oral Poetry and Songs," *Crossings: Journal of Migration and Culture* 10, no. 2 (October 2019): 183-203.
[19]Alessandro Monsutti, *War and Migration: Social Networks and Economic Strategies of the Hazaras of Afghanistan* (London: Routledge, 2005).
[20]Maliha Safri, "The Transformation of the Afghan Refugee 1979-2009," *The Middle East Journal* 65, no. 4 (Autumn 2011): 587-601.
[21]Jelena Bjelica, "Caught Up in Regional Tensions? The Mass Return of Afghan Refugees from Pakistan," Afghanistan Analysts Network, last modified December 22, 2016,
https://www.afghanistan-analysts.org/en/reports/migration/caught-up-in-regional-tensions-the-mass-return-of-afghan-refugees-from-pakistan/
[22]H.Simon, *Administrative Behaviour, A Study of Decision Making Processes in Administrative Organizations* (MacMillan, New York, 1957)cited in Enserink, et al., "A Policy Sciences View": 20.
[23]This was largely because appointments were primarily made for political reasons and not on the basis of expertise and because 'capacity building' was delivered overwhelmingly in English, at speed and by foreign 'experts' unfamiliar with Afghanistan.
[24]European Commission, *Joint Commission-EEAS Non-paper on Enhancing Cooperation on Migration, Mobility and Readmission with Afghanistan* (Brussels: European Commission, 2016), doc. 6738/16 MIGR 43 COASI 19 RESTREINT UE.
[25]Just as true in respect of the Horn of Africa, see Crawley and Blitz "Common Agenda," 2263.
[26]Liza Schuster and Nassim Majidi, "What Happens Post-deportation? The Experience of Deported Afghans," *Migration Studies* 1, no. 2 (July 2013): 221-240.
[27]Enserink, et al., "A Policy Sciences View," 21.
[28]Pfetsch, "Power in International Negotiations."
[29]Castles, "Why Migration Policies Fail": 214.

[30]DG Devco, *Study on the Results and Impacts of EU Funded Projects in the Area of Voluntary Return and Reintegration* (Brussels: European Commission, 2015).
[31]European Parliament. *European Parliament Resolution of 14 December 2017 on the Situation in Afghanistan (2017/2932(RSP))* (Brussels: European Parliament, 2017).
[32]European Commission "*Non-paper on Enhancing Cooperation,"*
[33]Sayed Hussain Alemi Balkhi, conversation with Liza Schuster and Reza Hussaini, Ministry of Refugees and Repatriations, Kabul, September 11, 2017.
[34]Blunt et al., "The Long and the Short of Policy Pantomime."
[35]In interviews with Afghan officials in the Ministry of Refugees and Repatriations and Ministry of Foreign Affairs, and among the EU delegation, he was referred to as 'without any diplomatic skills', 'a bully', 'a nightmare', and 'undeserving of such a post'**.**
[36]Pfetsch, "Power in International Negotiations".
[37]EU official, interview by Liza Schuster and Reza Hussaini, Kabul, May 25, 2017.
[38]Pfetsch, "Power in International Negotiations".
[39]Enserink et al., "A Policy Sciences View," 25.
[40]Vivien Schmidt, "Speaking of Change: Why Discourse is Key to the Dynamics of Policy Transformation," *Critical Policy Studies* 5, no. 2 (2011): 107.
[41]World Bank Group.*Forced Displacement and Development* (New York: World Bank Group, 2016).
[42]Boswell and Hampshire "Ideas and Agency."
[43]Georg Menz, "Framing the Matter Differently: The Political Dynamics of European Union Labour Migration Policymaking," *Cambridge Review of International Affairs* 28, no. 4 (2015): 560.
[44]"Council Conclusions on Afghanistan," Foreign Affairs Council Meeting Luxemburg, The Council of the European Union, June 23, 2014, https://www.consilium.europa.eu/media/28036/143322.pdf
[45]European Commission, *A European Agenda on Migration* (Brussels: European Commission, 2015).
[46]The only proposal on the table is an agreement (not yet signed) with Kuwait.There is nothing for those wishing to migrate to Europe. There are a handful of scholarships available for those wishing to study, but nothing for those wishing to work or claim asylum. Unless an Afghan is well-connected and or wealthy, there are no 'legal channels' available.
[47]Boswell and Hampshire, "Ideas and Agency," 3.
[48]Liza Schuster, *The Use and Abuse of Political Asylum: A Comparision of British and German Asylum Policy and Practice* (London: Frank Cass, 2003).
[49]Florian Trauner, "Asylum Policy: the EU's 'Crises' and the Looming Policy Regime Failure," *Journal of European Integration* 38, no. 3 (2016): 311-325.
[50]2015 March EU-Turkey Deal–In exchange of €3 billion, greater access to the EU and the resettlement of a small number of Syrians from Turkey, Turkey agreed to prevent migrants leaving its coasts for Greece, and to take back rejected arrivals.
[51]European Commission, *Non-paper on Enhancing Cooperation.*
[52]2015 November Valletta Summit–in exchange of €1.8 billion and promises of further development aid, a group of Sahel countries promised to reduce migration to Europe and to take back those who made it to Europe; 2017 February EU-Libya Agreement—the EU, in particular Italy, had for years been paying Gaddafi to patrol Libya's southern borders in an attempt to reduce the number of people arriving in Lampedusa and Sicily. As reported by CNN,

(https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html), in spite of the violent and chaotic conditions in Libya (CNN 2017) in 2016/2017, the EU agreed an MoU to pay the Libyan coastguards to turn back boats carrying migrants (Selm 2015). Also see, Joanne van Selm, "Missing in Action: The Unused Temporary Protection Directive," *Migration Policy Practice* 5, no.4 (2015): 15–19.

[53]In August-October 2016, Schuster was placed in the Ministry of Refugees and Repatriations by ICMPD to provide support to the Ministry colleagues working on these three goals

[54]Blunt et al., "The Long and the Short of Policy Pantomime".

[55] Georgi Gotev "Six countries urge EU to continue Afghan Deportations," *Euractiv*, August 11, 2021, https://www.euractiv.com/section/global-europe/news/six-countries-urge-eu-to-continue-afghan-deportations/

[56]Selm, "Missing in Action".

[57]"Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof," *Official Journal of the European CommunitiesCouncil* 44 (August 2001): 14, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2001:212:TOC.

[58]H. Deniz Genç and N. Ash Sirin Oner, "Why Not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union," *International Journal of Political Science & Urban Studies* 7, no. 1 (2019): 1-18.

[59]Moustafa Bayoumi, "They Are 'Civilised' and 'Look Like Us': The Racist Coverage of Ukraine," *The Guardian*, March 3, 2022; Stephen. McCloskey,"The War in Ukraine Has Revealed a Hierarchy of Victims," *Policy and Practice: A Development Education Review* 34 (2022).

[60]Anderson, "Towards a New Politics of Migration?"

[61]European Commission, *A European Agenda on Migration.*