



WORKING PAPER

'FLEXIBLE SOLIDARITY' ON THE NEW PACT ON MIGRATION: OVERCOMING A COLLECTIVE ACTION PROBLEM?

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Abstract

Although one of the main chapters in the United Nations Global Compact for Refugees was to provide effective burden-sharing, the 2021 New Pact on Migration supposes a turning point in EU refugee protection shared responsibility. The Pact addresses the issue by launching a 'mandatory but flexible' solidarity scheme: Member States decide how to deal with a situation of a massive influx of migrants. From a collective action theoretical perspective, the Pact may be analysed as a tool to overcome collective action failure scenarios. According to collective action literature, actors enhance actions based on a cost-sharing calculus premise, or, in other words, by maximising the benefits of their own actions. This research seeks to understand to what extent the Pact's new approach to the concept of 'flexible solidarity' may be understood under a cost-sharing model. In the case of EU asylum policy, the V4 countries (Czechia, Hungary, Poland, Slovakia) mostly speak as one voice in the EU, usually opposing EU reforms in that policy field. In the 2015 Relocation Scheme framework, Poland and Hungary were reluctant to relocate refugees on their own territories. This opposition led to political tensions among the Member States, revealing a lack of shared responsibility for refugee protection in the EU. Accordingly, in order to understand whether these governments perceive the new Pact as a 'cost-sharing tool', I carry out a content analysis of two V4 joint statements regarding both the 2015 relocation scheme and the New Pact on Migration (2020-present). By looking at those V4 joint statements, this research demonstrates how collective action theory offers an interesting theoretical framework to understand burden-sharing dynamics in the development of EU asylum governance.

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1. Introduction

Within the last two decades, the EU underwent a major enlargement process culminating in the accession of more than a dozen new Member States. In 2004, 10 Central and Eastern European countries, including Hungary, Poland, and Slovakia, joined the EU. In 2007, Bulgaria and Romania completed the enlargement process and gained membership. For the Visegrad Group (V4), formed after the disintegration of the Soviet Union in 1991 and composed of Czechia, Hungary, Poland, and Slovakia, the Visegrad Agreement was insufficient to develop integrated economies and therefore the process had to be conducted among the members via a collaborative economic integration channel to have a chance at eventual integration into the EU (Medvec, 2009). Before and after entering the EU, in terms of cooperation the V4's main goal was to increase the level of integration to join the Schengen system (Baureová, 2018). Subsequently, the V4 members' main interest turned to European foreign policy. In this area, the Visegrad Group members try to speak with one voice in the EU as they generally have a shared interest in most issues related to this field, such as energy security (Baureová, 2018).

In recent years, the V4 have shown strong opposition to cooperation with some EU-wide policies, including migration and environment. In the context of EU migration and asylum policy, and specifically during the 2015 migration-management crisis, the V4 countries expressed strong opposition to cooperating with the EU. In particular, they were highly reluctant to participate in the relocation of asylum-seekers from Italy and Greece to other EU countries (see Gońda et al. 2019; Kazharski, 2018; Pachocka 2016). On this issue specifically, and in other key EU areas, the V4 has mostly been of one voice (Nič, 2016).

When it comes to analysing actors' choices from a utilitarian cost-benefit approach, the literature on public goods has focused on the rational choice model, within which, in the provision of public goods, the actors are motivated by the sum of their preferences (see Samuelson 1954; Buchanan 1968/1999; Musgrave 1969). In addition, the rational theoretical assumption is integrated within Olson's collective action framework in order to explain actors' cooperation in providing public goods; in other words, the under-provision of a collective public good is a consequence of actors' different cost-benefit motivations and the free-riding problem. This article seeks to assess to what extent the concept of 'flexible solidarity' within the EU might be a tool to overcome the reluctance of the V4 countries in contributing to refugee protection provision. To do this, the research uses as a case study the V4 states as new actors in the EU, reviews their different perceptions of asylum and migration issues, and evaluates how this has led to collective action failure in this policy field. To conduct the research, two V4 joint statements regarding both the 2015 relocation scheme and the New Pact on Migration (2020-present) are used. A content analysis of the two addresses through humanitarian and security frames should reveal whether the V4 countries have become more flexible in supporting EU migration and asylum policy. In addition, the analysis incorporates a collective action theoretical rationale by which the concept of 'flexible solidarity' might be seen as a tool to overcome the collective action problem.



2. Collective action theoretical rationale

Olson's thesis (1965) on collective action and the failure in providing public goods offered a major contribution to the understanding of state behaviour in reaching a common goal. According to Olson, one may argue that the larger the group the more individual incentives and, consequently, the greater the probability of different perceptions of the provision of the good. In other words, because each state has its own motivations, there are likely to be more differences with a group of states. Some of Olson's key suppositions were summarised by Cornes and Sandler (1996: 324-6) as follows:

- 1) Large groups cannot provide a collective good for themselves.
- 2) The larger the group, the lower the collective level of provision.
- 3) Large, well-developed members will bear a disproportionate burden of collective provision, which smaller members will exploit.
- 4) Asymmetric groupings (including both well-developed and less-developed members) are more apt to contain at least one member or subgroup whose benefits from the collective action will exceed the associated costs, even if these costs are solely born by the individual member or subgroup.
- 5) Collective action can be promoted, up to a point, by selective incentives and/or institutional design.

In the case of a collective action situation, 'one may argue that states' collective behaviour depends on their own incentives and rationale, that is to say, an individual state will act by its own incentive rather than the common interest of the other states; for instance, in order to understand international environmental agreements (environment protection as a public good), states will act by considering their own interests and incentives, so collective action is likely to fail', (Caballero Vélez and Pachocka, 2021: 4).

Collective action literature normally has been studied from a rational choice approach. Actors' actions are moved by a maximisation of the utility of their choices². The rational choice rationale behind the Olsonian collective action theory does explain a situation of failure or success of a global public good provision. The rational choice nature of the Olsonian maximising behaviour rationale is obvious: the final public good is provided because of the sum of the actors' preferences/benefits. Based on Popa's model (2015), if we index this theoretical assumption in a formula, it might read as follows:

$$X=U_a (B^a_1 + B^a_2 + \dots, B^a_n)$$

The public good (X) is provided when the utility of an actor (U_a) constitutes the sum of benefits (B), so in other words, when the utility is maximised. Hence, we may say that benefits are perceived by actors (B^a), in the case

² By utilities, Roberts (2019) summarizes it as "a synthesis of the individual's idiosyncratic tastes and socially constructed wants and desires" (p. 125).



of states, benefits are perceived according to inter-subjective norms in a society (Betts, 2003). In a scenario in which we have a group of two actors (w, z) that seek to provide a global public good, the provision might read as follows:

$$X_f = U_w(B^w_1 + B^w_2 + \dots, B^w_n) \approx U_z(B^z_1 + B^z_2 + \dots, B^z_n)$$

According to this formula, the provision of the final public good (X_f) will be more likely to succeed if the perceived benefits from both states towards it (B^w_n and B^z_n) are equivalent (\approx). This assumption takes us back to the theoretical conclusion that in the case of group provision, the 'purity' of the public good is assumed: the benefits are similar and/or equal to the contributors' costs. Accordingly, the utility of both states is maximised by receiving similar benefits from the public good provision.

Broadly speaking, collective action failure scenarios are likely to occur when states' preferences differ each other. Overcoming collective action problems is not an easy task. Normally, institutions seek to provide final goods out of cooperation between states over legal measures. Nevertheless, actors' rationale and identity constitute crucial factors to understanding their preferences.

2. Overcoming the EU refugee-protection burden-sharing problem

Within the framework of Suhrke's criteria (1998), in the classification of the states' main motivations to provide refugee protection, we see, as mentioned in previous sections, that: 1) States may be driven by the need to fulfil humanitarian obligations; 2) States seek to reduce the number of refugees to avoid security threats—in part, their preferences towards refugees are driven by individual incentives while refugee protection emanates partial public benefits:

- a) First, in the case of the fulfilling humanitarian obligations, states' individual incentives may be to gain international prestige (Betts, 2003), which, while a benefit for the receiving state, may also benefit other states that do not take refugees.
- b) Second, by reducing the security cost (or at least potential cost), a certain state may gain more national security, which is an individual benefit; on the other hand, other states may suffer from that decision by having to face a higher inflow of refugees, which may lead to political instability—a cost to those states.

These assumptions lead to the question of burden-sharing in refugee protection issues, and especially in the case of the EU refugee protection regime. In collective action terms, 'solidarity may mean a collective duty to perform where one member of the collectivity fails to perform according to its obligation' (Nagy, 2017: 3).



Normally, the lack of strong regulations in refugee protection mean burden-sharing is important in understanding states' motivations on this subject. In the context of the EU, the two main measures that reflect the burden-sharing dynamics in the EU asylum and migration policies are the 2015 Relocation scheme and the 2020 New Pact on Migration. Not only do these two measures give us an overview about the Member States' different positions towards forced migration but they also reveal some changes in the V4 states' perceptions of shared responsibility.

A) The Refugee Emergency Relocation Scheme

In 2015, with the mass arrival of asylum-seekers to Italy and Greece, the European Commission, based on Art. 78(3) TFEU³, launched a relocation scheme. This legal measure proposed to relocate around 40,000 asylum-seekers from both Italy (24,000) and Greece (16,000). Given the emergency situation that these Southern European frontline countries were facing, Art. 78(3) provided adequate legal basis to develop the relocation scheme, which was based on a mandatory distribution key by which Member States had the duty of relocating a certain number of asylum-seekers.

On 9 September 2015, another EC proposal was launched by which around 120,000 asylum-seekers from Italy (15,600), Greece (50,400), and Hungary (54,000) needed to be transferred to other Member States. In addition, based on the EC proposals, the Council of the European Union adopted two decisions⁴ with the scope of relocating 160,000 asylum-seekers from Italy and Greece by September 2017 (Pachocka, 2016). In this regard, the first Council Decision (EU 2015/152334 of 14 September 2015) was adopted unanimously; on the other hand, the second Council Decision (EU 2015/16035 of 22 September 2015) was approved by qualified-majority. However, by March 2019, only 34,710 asylum-seekers had been relocated from Italy and Greece (European Commission, 2019) and some Member States, including Czechia, Hungary, and Poland, did not participate in the scheme.

Broadly speaking, Central Eastern European (CEE) Member States, particularly the V4 states, were the most reluctant in cooperating with the quota system. For instance, the case of Poland is very interesting to analyse as it is a non-frontline Member State with respect to Southern immigration and a new member of the EU so, hypothetically, not under the stress of massive flows of asylum-seekers; nevertheless, the Polish government strongly opposed the solidarity principle on refugee protection burden-sharing.

The lack of cooperation with the scheme prompted the Commission to initiate a 'treaty-infringement procedure in July 2016 and decided in December 2017 to refer these members to the Court of Justice of the

³ Art. 78(3) TFEU: "In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament".

⁴ Council of the European Union, 2015a, 2015b.



EU because they remained in breach of their legal obligations as rooted in Council Decisions (EU) 2015/1523 and (EU) 2015/1601' (Caballero Vélez and Pachocka 2021: 12).

B) The New Pact on Migration

On 23 September 2020, the Commission launched the New Pact on Migration. One of the main goals was to overcome the problems that had provoked a lack of cooperation among the Member States in the 2015 crisis. According to the European Commission⁵, 'the new Pact adopts a "humane approach", promotes solidarity between EU States and adopts "a pool of projected solidarity measures"' (Gazi, 2021: 167-176). Important emphasis is put on the protection of vulnerable groups and border-control measures such as pre-entry screening processes (Gazi, 2021).

When it comes to the concept of 'flexible solidarity' mentioned in the Pact, it regards a set of flexible contributions proposed by the Commission that Member States may choose from to support other Member States facing migration-related crises (European Commission, 2020). These measures include accepting the relocation of asylum-seekers and taking responsibility for returning individuals with no right to stay (European Commission, 2020). The solidarity 'nature' of the Pact promotes no legally binding measures to force cooperation. In this case, the main difference with the 2015 relocation scheme is the added 'flexibility' by which Member States may act to support other members in emergency situations.

In December 2020, the V4 countries, along with Estonia and Slovenia, signed a common position on the European Commission's proposal of the New Pact on Migration and Asylum. The main criticism of the Pact by these countries stems from the question of 'responsibility' and 'solidarity'; accordingly, the V4 reaffirmed their opposition to mandatory relocations. On this subject, the introduction of 'flexible' mechanisms in the New Pact may be seen as an EU approach to make these countries more open to cooperation on migration and asylum issues.

⁵ Communication COM(2020) 609 final from the Commission of 23 September 2020 on a New Pact on Migration and Asylum



3. Analysis

To analyse the extent to which the concept of ‘solidarity’ has been used to overcome the lack of shared responsibility of refugee protection in the V4 countries, I use the V4 joint statements regarding both the 2015 Relocation Scheme⁶ and the 2020 New Pact on Migration⁷. A content analysis with the assistance of NVivo software was prepared by gathering paragraphs/sentences related to a theme into nodes.⁸

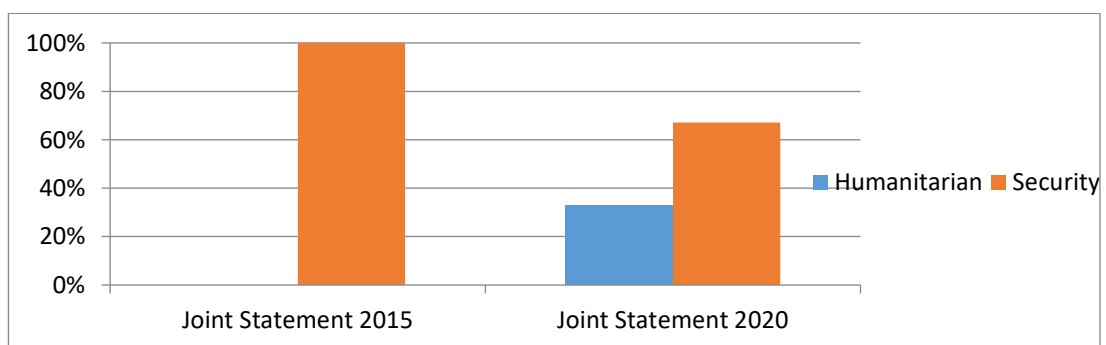
3.1. Data framing: a content analysis

Taking Suhrke’s criteria (1998) to classify states’ main motivations to provide refugee protection, I created two broad frames: a) humanitarian; b) security, along with its corresponding categories⁹ from which I have calculated the percentages of use (see Appendix 3)

a) Humanitarian and security frames

According to Figure 1, it is possible to speculate that the V4 countries perceived the 2015 migration-management crisis as a security problem, as the 2015 joint statement is highly securitised (score: 100%), as opposed to a humanitarian narrative (0%). On the other hand, the 2020 New Pact on Migration is perceived with some reluctance and the migration *problématique* is still viewed to a high percentage as a security issue (67.1%); nevertheless, the New Pact is perceived by the V4 countries with a brighter perspective, as there is some humanitarian narrative in the joint statement (32.9%). Even if the V4 countries consider refugees more a security problem, a considerable humanitarian narrative is employed in the joint statement on the New Pact.

Figure 1. Matrix frequency of the humanitarian and security frames



⁶ Source: <https://www.visegradgroup.eu/download.php?docID=279>

⁷ Source: <https://www.visegradgroup.eu/download.php?docID=457>

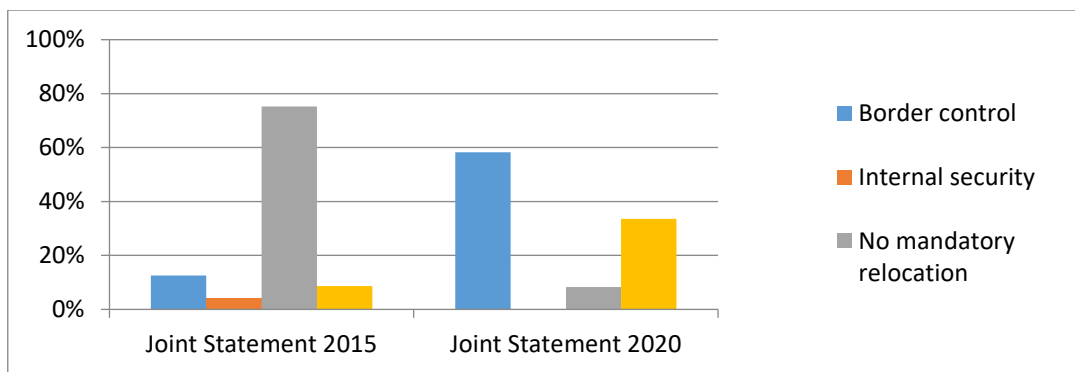
⁸ Each frame percentage is calculated as the total number of words coded across a determined frame in a document. For instance, in the case of the previous table, if there were a total of 500 words coded in the file “Joint Statement about the New Pact on Migration” and that file has 250 words coded in the “security” node/frame, the percentage of use of that frame would be 50% (See Appendix 1 for an example of frame operationalization).

⁹ See Appendix 2

b) The security frame

As presented in Figure 2, in 2015 the V4 countries refer to a high percentage (75%) to ‘no mandatory relocation’ scheme, which reflects these countries’ reluctance to mandatory quotas. On the other hand, in the 2020 joint statement, ‘no mandatory relocation’ is barely used (8%) in comparison to ‘border control’ (58%). This is correlated with the fact that the New Pact on Migration does not mention the obligation of Member States to relocate refugees, rather that they offer ‘flexible’ support through various mechanisms. The New Pact on Migration puts much more emphasis on new measures in the development of border control and return policy, so this is why those categories are highly mentioned in the 2020 joint statement.

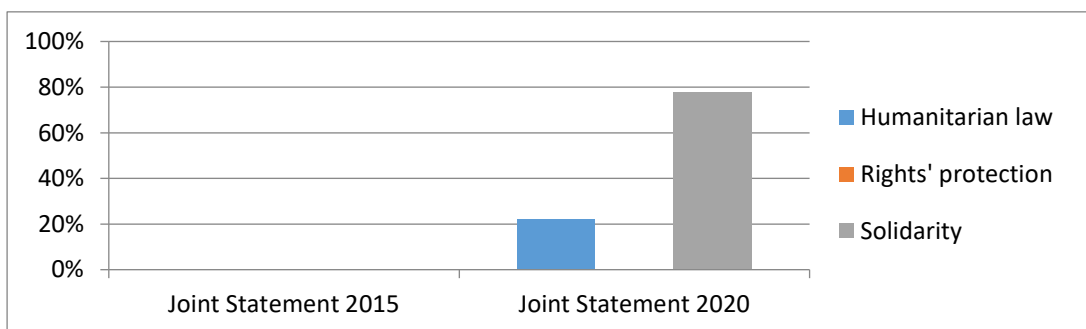
Figure 2. Matrix frequency of the security frame categories



c) The humanitarian frame

The results in Figure 3 closely match those seen in figures 2 and 3: a) there is no humanitarian narrative in the 2015 joint statement; b) ‘solidarity’ is highly mentioned in the 2020 joint statement (78%). This means that the V4 countries perceive the New Pact on Migration and its more ‘flexible mechanisms’ to resolve migration crises in the EU more positively.

Figure 3. Matrix frequency of the humanitarian frame categories





4. Conclusions

In recent years, collective action literature has been growing given its numerous implications in different areas of international relations and political science. This study shows how the collective action theoretical framework may be useful in the analysis of burden-sharing dynamics in the EU, especially in the case of migration and asylum policy. One may argue that 'flexible solidarity' has been a useful tool to overcome refugee-protection burden-sharing problems. In 2015, the V4 joint statement pointed to a refusal to accept mandatory quotas for at least these Member States; in the case of the 2020 joint statement on the New Pact on Migration, the V4 countries perceived this legal measure with some reluctance but also as offering more flexibility to act in a migration crisis. This 'flexibility' may open the door to greater cooperation by these countries, and accordingly, the collective action problem would be more likely to be overcome.

As with all such studies, there are limitations that offer opportunities for further research. Despite the interesting insights in this analysis of EU refugee-protection burden-sharing, the main limitations of this research lie in the broad analysis of the V4 countries' perceptions. This research may plant roots for further research focused on analyses of more data, such as official speeches and parliamentary debates about the two legal measures.

To sum up, this research provides a theoretical and methodological turning point in both collective action public and migration studies literature. This research's main attempt has been to cover aspects of the V4 governments' preferences towards cooperation on the EU migration and asylum regime. In this regard, rather than engaging in a debate on populist political parties applying anti-migration rhetoric, I aimed to shed some light on the EU's attempts to overcome the lack of cooperation on reform of the Common European Asylum System.



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APPENDIX 1.- Frame operationalization

NODES	PARAGRAPHS	DOCUMENT	COVERAGE (%)
1) Security 2) No mandatory relocation	“The relocation or other forms of admission of migrants have to be of voluntary nature. Member States must not be forced to implement any particular instruments that could be considered as violation of their sovereignty”	V4 joint statement regarding the 2015 relocation scheme	2,08% (N=35)



APPENDIX 2.- Frames' categories

MAIN FRAMES	CATEGORIES/SUB-FRAMES
Humanitarian	Rights' protection Humanitarian law Solidarity
Security	No mandatory relocation Return Internal security Border control

**APPENDIX 3.- Frames' frequencies**

MATRIX- FRAMES FREQUENCY OF USE- V4 JOINT STATEMENTS				
Visegrad Group Joint statements	2015 Relocation scheme		2020 New Pact on Migration	
FRAMES	HUMANITARIAN	SECURITY	HUMANITARIAN	SECURITY
Percentage of use	0%	100% (N=428)	32.9% (N=190)	67.1% (N=388)

MATRIX- FRAMES FREQUENCY OF USE- FRAMES' CATEGORIES				
CATEGORIES	BORDER CONTROL	INTERNAL SECURITY	NO MANDATORY RELOCATION	RETURN
Joint statement 2015	12.15% (N=52)	4% (N=17)	75.2% (N=322)	8.6% (N=37)
Joint statement 2020	58.2% (N=246)	0%	8.3% (N=36)	33.6% (N=192)