

The New Pact on Migration and Asylum: Erasing migrants as a migration policy?

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Abstract:

This essay try to analyze the use of the word “migrant” in the EU Commission New Pact on Migration and Asylum in the light of Simmel’s concept of foreigner and Fanon’s one of depersonalization. The hypothesis is that the use of the word “migrant” is functional to a progressive strategy of erasing migrant individualities and their stories to facilitate an increasing closure of the EU and its Member States to any new arrivals.

Keywords: European Union – migrant – foreigner -depersonalization

In a famous essay published in 1908, G. Simmel talked of the stranger as «one who comes today and remains tomorrow... the potential wanderer who, despite he has not continued to move, has not completely overcome the absence of ties of going and coming» (Simmel 2003:468).¹ Compared to the classical notion of the stranger as someone who, by language, culture, somatic traits places himself/herself outside the cultural or state space of the community in which he/she finds himself/herself and who can represent a threat to it, Simmel’s definition presents this concept in a partially different way. A stranger is one who, while maintaining the signs of his/her being a foreigner with respect to the community in which he/she is and while continuing to be perceived as such, resides in it in a stable way. To Simmel, it is precisely this positioning of the foreigner at the same time outside and inside the group in which he/she lives that explains the ambivalent attitude of the community towards him/her. The stranger highlights both the positive and negative characteristics of the group in which he/she lives, emphasizes its peculiar identity and also the weaknesses of social ties.

It is a notion characterized, therefore, more by an intrinsic ambivalence than by a precise positive or negative connotation. In this sense, a stranger can be perceived in both ways, as a threat and as a resource.

And, in fact, it is no coincidence to me that it is not the notion of stranger that we use when we talk about people trying to enter the EU in search of protection or simply of better prospects of life than in situations of war, persecution and deprivation in their countries of origin. We talk of them as “migrants”, i.e. people who «change one’s home to another country or (regularly) from place to place», according to the definition of the Cambridge dictionary. And they have always been defined this way, even in the so-called crisis of 2015-2016, when their huge arrivals at the EU borders put at serious risk the nascent EU migration policy.

E. Guild suggests that using the word “migrant” is a way of implicitly emphasizing the «state’s claim to a monopoly on the legitimacy of movement across borders» (Guild 2009:14) and consequently of framing the issue of arrivals management in terms of the sovereign control of the host State over its borders and its internal security.

Undoubtedly, this is the ultimate meaning of talking migrants about people who live in the open and in the snow on the borders of Croatia or those who have been displaced from the burnt camp of Moria, in Greece, where they were waiting to be able to file an application for international protection status or a decision on its outcome. Or those who lost their lives in an attempt to reach the EU. The ultimate meaning is that, after all, these are subjects who move almost habitually, who think they will find a kind of Eden at our place and that we have a right to keep them out, especially when a pandemic we are unable to contain and its social and economic consequences confront us with complex challenges.

Talking about migrants makes it possible, first of all, to forget that they are human beings and that among them there may be people who could have a right to international protection status, i.e. those forms of protection in terms of access to the state territory, residence and employment that starting from the UN Convention on refugees, 1951, states have pledged to recognize each individual who

¹My translation.

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (UN Convention 1951, art. 1)

It is not a question here of the Kantian right to move on the surface of the planet by virtue of its belonging to the whole human race. It is a question of obligations that European states have freely subscribed and which, initially conceived for refugees from World War II, have gradually extended to include political opponents to dictatorial regimes in Eastern Europe and Latin America and, today, to a limited extent, to the masses of desperate people from the Mediterranean northern shore who arrive at the doorstep of Europe.

Defining them as “migrants” can mean having an hidden intention. On the one hand, we reaffirm the right of states of first entry to decide who can enter, under what conditions and who cannot. On the other hand, embracing potentially different situations in a single definition means not to pay any attention to the stories and peculiarities of each individual to whom the definition is applied.

2. If this is the general orientation, the *New Pact on Migration and Asylum*, presented by the Commission in September 2020, is a further step forward.

Its aim is to provide «provide certainty, clarity and decent conditions for the men, women and children arriving in the EU» (European Commission 2020:1), while ensuring to European citizens that migration flows will be managed in «an effective and human way» (id.). The problem, however, is not that of managing massive incoming flows, EU Commission recognizes that they are in sharp decline² but rather of preventing the outbreak of new crises and equipping the EU with the necessary means to manage them efficiently and in a spirit of solidarity.

In this sense, the *New Pact* essentially provides for two tools, a new screening procedure on arrival and an enhanced cooperation with the countries of origin and transit of migrants.

The screening procedure means that, even before crossing EU borders, migrants are subjected to security checks relating to their identity, their state of health and the degree of danger they can represent for their host societies.

The data collected in this phase are also functional to channel migrants towards three distinct procedures: repatriation following refoulement, an accelerated examination of the application for international protection status for manifestly unfounded cases or for those migrants who come from countries with recognition rates lower than 20%, relocation pending the filing or the outcome of an application for international protection status.

For each phase there are fixed and rapid completion times, which may be waived in the event of massive arrivals or rescue operations at sea (SAR).³

As far as cooperation with countries of origin or transit of migrants is concerned, the *New Pact* envisages making migration management one of the central points in EU’s relations with developing countries, which would benefit from European support in the creation and management of instruments for containing departures and managing flows in transit on their territory, in an exchange with the granting of a preferential visa regime to the EU for their citizens.

The initiatives in the *New Pact* are the object of strong criticism from the academic world, starting from the chosen name. The term “pact”, in fact, underlines the idea of a negotiation among member states in relation to a document concerning a policy which falls within the competing competences between the EU and its Member States (Carrera 2020). In the same direction, De Bruycker emphasizes how the substantial lack of consensus among the latter led the European Commission to adopt a document that bears no trace of a strategic vision on how to develop a truly European migration policy, which the EU needs the most (De Bruycker 2021).

It is above all the border screening procedures that foster the strongest criticism. These take place at a moment of greatest vulnerability of people who are vulnerable by definition, i.e. when they discover that the destination of their troubled journeys is not at reach though it seems at hand, the poorer their knowledge of the operator’s language and procedures to carry out, the greater their fatigue for their journeys and adversities they had to overcome.

²EU Commission states that «1.82 million illegal border crossings were recorded at the EU external border at the peak of the refugee crisis in 2015. By 2019 this had decreased to 142 000...The EU hosted some 2.6 million refugees at the end of 2019, equivalent to 0.6% of the EU population»(European Commission 2020: 1).

³ In these cases, in addition to the extension of the pre-entry screening procedure from 5 to 10 days and of that for application registrations from 15 days to 4 weeks, the *New Pact* proposes the creation of compulsory solidarity mechanisms among EU Member States.

That the screening procedure and the filing at the border of an application for international protection status do not give any right to access the EU territory, leads J. Wessels to highlight that in the screening procedure all migrants are considered «in the pre-entry phase as unauthorised. On that basis, it presumes that physical restrictions to certain areas on the ‘fringes’ of the territory, including those amounting to detention, are lawful» (Wessels 2021). G. Cornelisse also focuses on the same aspect, highlighting how the ban on entry in the EU during the screening phase actually involves the creation of reception camps at European borders, which could easily turn into detention centers in fact or in any case in places in which migrants right to individual freedom is seriously compromised. Furthermore, the European Commission does not indicate who is responsible for managing the camps, limiting itself to detail reception conditions for migrants while leaving every operational responsibility to the Member States, a practice whose results have been sanctioned by the European Court of Justice (Cornelisse 2021). It is Jakulevičienė who better shed lights on the real core of screening procedures. These, in fact, are functional to accelerate the identification of so-called irregular migrants and to facilitate their repatriation. But they are conducted at EU borders and in short and predetermined periods of time, in conditions which make almost impossible the access for lawyers and NGOs supporting migrants and when the total ignorance on the part of migrants themselves about the rights of appeal against adverse decisions that EU rules recognize them, risks confusing irregular migrants and asylum seekers in a «same category of unauthorised entrants» (Jakulevičienė 2021: 3), with the risk of a substantial violation of their right to non-refoulement.

EU cooperation with countries of origin and transit of migrants, too, is the object of criticism, as far as its aim of supporting their efforts in improving their capacity to manage migration flows, in practice to enable them to block departures to the EU, is concerned. This is a tendency of which the EU tries to affirm the centrality in its relations with developing countries since the 2009 Stockholm Program and which has led, as E. Guild points out, to financing local police forces, such as the Lybian coast guard, whose respect for the most basic rights of intercepted migrants is doubtful at least (Guild 2021).

The same promise of a facilitated visa regime for citizens of those countries which collaborate most with the EU in managing migration represents, according to De Bruycker, a red herring since no EU Member State really wants to accept on its territory foreign citizens who are not highly qualified and therefore able of entering profitably in national and European society and economy (De Bruycker 2021).

In practice, the *New Pact* aims at rearticulating EU cooperation with developing countries around EU interest in the containment of departures to Europe and in readmission agreements for irregular migrants, in a clear deviation from the objective of EU development cooperation policy, which is the eradication of poverty (Andrade 2020) and with a brutal refocusing on EU priorities without any consideration for those of partner states (Guild 2021).

3. What strikes me most in the *New Pact on Migration and Asylum* is that migrants as individuals disappear completely in it. This is a process that had already begun with the adoption between 2011 and 2013 of the EU directives on standards for the qualification of third-country nationals as beneficiaries of international protection, on standards for their reception, on common procedures for granting and withdrawing international protection (EU Directive 2011; EU Directive 2013; EU Directive 2013.a). It is here that the clear will of EU Member States to react to forms of migration, that are perceived as uncontrolled, through increasing forms of border closure, finds for the first time a full articulation.

In this sense, the first directive of December 2011 on standards for the qualification of third-country nationals as beneficiaries of international protection (EU Directive 2011) regulates in details the circumstances that allow the recognition of international protection status and the attribution of refugee one, indicates documents and evidence of the persecutions suffered or risks to their own physical integrity that migrants must provide to the administrative authorities of the European countries where they submit their applications for protection, which normally is the country of first arrival. It has often been stressed that these are documents and evidence migrants are often deprived of at the very beginning of their journeys and that are difficult to obtain from countries of origin with extremely fragile administrative structures. Even if the recognition of international protection status provides for the parallel recognition of the right to housing and access to employment, social and health assistance and education facilities for beneficiary migrants, the directive smells of a bureaucratic act with respect to which migrants represent a category of potential beneficiaries, not well defined and to which the rights international protection/refugee status provide are granted more than recognized.

For its part, the first Directive of June 2013 provides that those who apply for international protection have a right to wait for its outcome but not to circulate on the territory of the State of application or to any residence permit, have a right to receive information on procedures and appeals in case of rejection of their application but only one degree of appeal is granted (EU Directive 2013). Migrants must pass a personal interview by officials with a specific training aimed at ascertaining the validity of their application but this assessment is based on the applicant’s ability to provide

supporting documents and evidence of the persecutions suffered and/or risks to their personal safety that return to the country of origin would entail (id.).

The date of the interview is set by the administrative authority of the State of application and cannot be changed unless the applicant proves that it is completely impossible to him/her to attend. Failure to attend the interview, as well as a reiterated application, are reasons for refusal. The same applies to refusal to pass identification procedures in first reception centers.

In addition, each EU Member State can prepare its own list of non-EU countries deemed “safe”, that is to say in which it is assumed, following an adequate investigation, that migrants personal safety is not at risk and where he/she can therefore be sent back without any examination of his/her application, if it is ascertained that he/she comes from there or has passed through it (id.:80-81). In this regard, it suffices to remember that the EU attributes to Turkey the safe third country status to get an idea of the pregnancy of this concept.

The second directive of June 2013, on the other hand, regulates the conditions of reception of applicants for international protection status. It declares in the opening, in art.3.3, that provisions of the directive do not apply in the event of a «mass influx of displaced persons» (EU Directive 2013.a: 100), for which the 2001 regulations are valid but this reference seems almost a style clause compared to the meticulousness of provisions that follow.⁴

Applicants must reside in the place fixed to them by the State of application, which usually is the one of first arrival, and can circulate only in the area indicated to them, they can be detained if there are risks of absconding or if it is necessary to verify their identity, their citizenship and/or the validity of their application or if they are subject to an obligatory repatriation procedure (id.: 101). Detention may also take place in prison, although migrants should be isolated from common offenders and although special support should be granted to vulnerable migrants such as unaccompanied minors.

Access to work, education, health care and housing are granted by individual EU Member States on the basis of national laws and may be subject to additional conditions than those provided for State citizens by national or EU laws. Most of all, accommodation can be a house or an accommodation facility or a reception center from which migrants can be transferred without being asked of any consent (id.: 105). Special measures are formulated for unaccompanied minors, which are aimed at ensuring their continued legal representation, and for victims of violence, who should be granted support by specialized personnel.

These are evidently very detailed rules, which in the intentions of EU institutions should reduce the wide margins for discretion, provided for by previous EU regulations and which Member States had often abused. However, it is difficult to avoid the impression that the idea of migrants that these three directives give, even of those eligible to benefit from the international protection status, is that of a burdens for the administrative structures of the host State, administrative practices to be discharged through standardized bureaucratic procedures, limiting migrants freedom of movement, moving them without requiring their consent and subordinating their fruition of basic rights such as housing, work and education to the goodwill and discretion of their host States.

In this direction, the *New Pact on Migration and Asylum* seems to me to go further. Here, migrants completely disappear and it is not only because the most used expressions to refer to them are “irregular migrants” and “applicants”. The whole Communication and the tools it provides are focused on the idea that migrants should be prevented from accessing the EU territory, both by blocking their departures and without being too scrupulous as to the means used for this purpose, and by providing for procedures which facilitate refoulement at the border, even in potential violation of the effective right to international protection of some of them.

We are beyond the depersonalization process, described by F. Fanon in 1952 *Peau noire, masques blanches*. This refers to the removal of the colonized subjective identity by the colonizer by means of its replacement with stereotypical characteristics that reinforce the negativity of the one who is so defined and the parallel superiority of the one who attributes them (Fanon 2015). In this way, the colonizer can cancel the subjectivity of the colonized by making them indistinguishable and interchangeable «in the boundless mass of [their] fellow men» (Carofalo 2013: 110).⁵

And we are also beyond the «politics of exhaustion» E. Guild speaks about to refer to the social and psychological conditions of «fractured mobility, daily violence and fundamental uncertainty» (Guild 2018: 2), which is peculiar of

⁴The 2001 directive regulated, in a fairly generous way, the reception conditions for refugees fleeing interethnic wars in the former Yugoslavia. It is worth highlighting that 2001 directive never talks of “migrants” but of “persons” or “displaced persons”, a consequence of the fact that it is the first EU act on the subject. Maybe because it was believed that beneficiaries would return to their country of origin as soon as the situation on the ground allowed it.

⁵ My translation.

regular as well as irregular migrants who stay at the EU border without any reasonable prospect of entry or who, once inside it, find themselves blocked in more or less legal reception centers unable to reach their desired destination.

If 2011-2013 directives could still be read as steps forward towards a truly European common policy on migration precisely by virtue of the strong harmonization of national rules that they involved (Hailbronner Thym 2016), the *New Pact* seems, instead, to reveal the EU true intentions. Simply, EU and its Member States declare that they have no intention of taking care of migrants, that they are not interested in their subjectivities or their stories. The use of the term “migrants” is functional to depriving people of any individuality and by consequence making their removal and refoulement easier. In this sense, it suffices to consider how evident the lack of news in the mainstream press is, in Italy at least, on the conditions in which people live at the border with Croatia.

How can we explain this attitude? Undoubtedly, the difficult economic and social situation caused by the pandemic has exacerbated European citizens concerns for their own future and generated feelings of growing closure towards those who are perceived as foreigners who come to milk the scarce resources of national welfare systems to the detriment of indigenous people (Collier 2013). The same 2011-2013 directives were negotiated in the context of the economic crisis of 2009-2010. And it could also be argued that being inflexible towards people who are by definition weak and aliens as migrants are, is a way for the EU and its Member States to reaffirm a sort of sovereign control over European borders which is far from being really achieved.

However, the real point seems to me to be that it is essentially a short-sighted attitude. History teaches that not even great empires in the past have managed to stem or contain movements of large masses of people. At best, it was possible to try and integrate them, as the Roman Empire did with the barbarian populations who were pressing on its eastern borders. The EU and its Member States could try and do the same, that is they could try to equip themselves with policies and tools that make it possible to manage arrivals through broad and multi-level policies of reception and integration, based on the recognition of migrants identities, on their respect of EU laws and values as well as on material support actions.

This would allow the EU to effectively affirm its coherence with regard to the values of solidarity and respect for human rights, that are enshrined in its founding treaties and, at the same time, to benefit in terms of economic and demographic development from the presence of young people in an ageing Europe.

Most important, there does not seem to be any viable alternative option on the table. Walls are always destined to collapse.

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