

DIANA IHRING, Selective Border Policies and ‘Victimhood’: The Shrinking Protection Space for Migrants in Europe

This paper offers a critical analysis of the gradual closure of the Western Balkans migrants’ route between September 2015 and March 2016. The article suggests that rather than being based on law, the gradual closure of the borders along the Western Balkans was a result of the depleting compassion among Europe’s public vis-à-vis migrants’ plight and the need of respective governments to respond. Dictated by emotionally charged notions of ‘victimhood’ and ‘deservingness’, the increasingly selective entry policies go against the very basic notions upon which the international protection regime is based and attest to the ever-shrinking protection space for migrants in Europe.

Introduction

As the so-called ‘European refugee crisis’ enters into its second year, European solidarity with migrants²⁹ is gradually depleting. Whilst at the onset of the crisis cheering publics awaited migrants at train stations, steadily high numbers coupled with the Cologne New Year’s attacks and the perceived inaction of national governments have made the European public increasingly weary of the status quo. In Ticktin’s words (2015), a certain “compassion fatigue” has hit the European public and with it the European policy response.

It is with this background that we need to read the entry policies based on the country of origin enforced by national governments along the Western Balkans route between November 2015 and March 2016. After two months of de-facto visa- and restriction-free passage along the Western Balkans migrants’ trail, the profiling of migrants based on their country of origin was first introduced as a selective entry policy in late November 2015 by EU member state Slovenia. Individuals from countries other than Syria, Iraq and Afghanistan were henceforth not allowed to enter Slovenia to continue their journey to Austria. Within days Croatia, Serbia and the Former Yugoslav Republic of Macedonia (hereafter FYROM) followed suit, closing their borders and leaving thousands of migrants stranded in Greece. The second round of entry restrictions followed in February 2016 upon Austria’s announcement to cap migrant entries to 80 persons per day (Strickland 2016). From then onwards, Afghan nationals were also excluded from continuing their journey northwards, as were individuals from certain parts of Iraq. Early March saw further restrictions set in place by FYROM, which started to grant selective entry to migrants according to their city of origin. Damascus, for example, was designated as a safe city (CBC 2016).

In this paper, I offer a critical analysis of the above developments and illustrate the adverse effects of granting access to international protection on the basis of set policy categories, such as the country or area of origin. I will begin with an analysis of the political discourse on the country of origin, presented as a balancing tool between safeguarding borders and responding to humanitarian needs. Then, I will illustrate how the profiling exercise is based on common assumptions of victimhood and deservingness, rather than the actual determination of needs. As such, I will argue that the policy contradicts the central notion of equal and non-discriminatory access to international protection.

Justifying a Controversial Policy: Seeking a Balance between Border Controls and Humanitarian Needs?

²⁹I will use throughout this article the term “migrant” which includes all individuals traveling along the Western Balkans route.

After weeks of de facto visa-free passage for migrants along the Western Balkans route, Slovenia introduced the country of origin as a profiling tool on 19 November 2015. Upon the policy's inception, a Slovenian police spokesperson held that with "more and more people that we have reason to believe are economic migrants [...] arriving," the country would only accept migrants "from countries where there are armed battles" (Teffer 2015). Within one day, Croatia, Serbia and FYROM also closed their borders to so-called 'economic migrants', and adopted similar justifications for their new policies. Serbian government representatives further cited the need to "protect our country" vis-à-vis the risk of migrants otherwise stranded in its territory (Teffer 2015).

The distinction between so-called 'economic migrants' and others was further picked up in the second round of restrictions in February 2016. In a joint statement released by the police services of Austria, Croatia, Slovenia, FYROM and Serbia (Republic of Croatia Ministry of the Interior 2016), the countries reappraised the Schengen Borders Code, which had de facto been suspended in the foregoing months. According to the joint statement; entry of individuals without legal documents was henceforth restricted to entry on so-called 'humanitarian grounds', defined as applying to "those persons who are arriving from war-torn areas and are in need of international protection (for example from Syria Iraq), provided that they can prove their nationality" (Republic of Croatia Ministry of the Interior 2016).

This approach was further detailed in the Vienna Declaration a week later, which saw the same five countries stressing the responsibility of the Western Balkans in maintaining "security and stability in Europe", as well as ensuring "access to international protection for people in need" (Austrian Ministry of Foreign Affairs 2016). The fight against 'illegal migration', associated with "risks of crime, violent extremism and terrorism" was juxtaposed with the need to cater appropriately for asylum seekers. 'Illegal' migration along the Western Balkans route was described as "a challenge for the reception and asylum systems of all partners concerned" (Austrian Ministry of Foreign Affairs 2016); a peril, thus, not only for European security and stability, but for the institution of asylum itself. Thereby, policy makers presented access to international protection as conditional upon selective border policies.

Thus, profiling by country of origin was presented as a balancing tool between restoring control at border crossings and catering for those in need of international protection.

The Country of Origin and Assumed Deservingness

At the heart of the distinction by country of origin – *either* 'war-torn' *or* 'safe' - lies the assumption of the voluntary nature of migration. Whilst someone coming from a war-torn area - is assumed to have been 'forced' to leave their home, someone from a deemed "safe" country is presumed to have acted 'voluntarily'. The dichotomy between 'forced' and 'voluntary' migration is in line with invoked policy categories: an individual en route is *either* a 'refugee' *or* an 'economic migrant'. In the terms spelled out in the Vienna Declaration, the dichotomy is embodied by the concept of an individual being *either* an 'asylum seeker' *or* an 'illegal migrant'.

Of course, the very vast majority of migrants traveling along the Western Balkans route during that period did so without legal travel documentation; that is, they crossed borders without fulfilling any formal visa requirements. As such, the invoked distinction is rather paradoxical from a legal viewpoint. The discourse on 'two kinds of people' is not based on

law. Instead, ‘asylum seeker’ and ‘illegal migrant’ are extremely politicised terms, which base their *raison d'être* on moral judgement, rather than on any legal basis.

In her seminal study on victimhood, Diane Enns (2012) argues that to be a ‘victim’ and especially to be a ‘good victim’, an individual must not be complicit in one’s plight. The author argues that only those who are ‘innocent’ and can be pitied are “victims with high moral currency” (Rothe 2011). The distinction by country of origin and associated complicity in one’s suffering is therefore inextricably linked to the assumed deservingness of an individual traveling along the Western Balkans route. At the same time, Ticktin (2015) argues that empathy is a finite resource and that ‘the victim’ has to be recurrently re-defined to fit the ever-narrower ‘empathy space’.

Read in this light, one well understands the increasingly restrictive entry policies along the Western Balkans. Indeed, between November and March 2016, no discernible improvements in the security situation neither in Afghanistan nor in Iraq took place. Rather, policy makers had to respond to the increasing ‘compassion fatigue’ (Ticktin 2015) among their audience – the European public – and reframe the ‘victim’ as deserving of international protection. The currency of the ‘good victim’ was devaluated to fit the decreasing compassion towards migrants in Europe.

A Shrinking Protection Space in Europe

The danger with this approach is two-fold. First, access to international protection becomes conditional upon an individual’s ability to fit the notion of the ‘good Other’ (Enns 2012). The country of origin and associated involuntariness become a prerequisite for even just accessing the international protection regime. At the same time, public empathy guides and redefines who can be the ‘good Other’. Thereby, public opinion (as shaped by media), subjectivity and, to some extent, irrationality, determines the protection space an individual may access.

Second, migrants whose movements are deemed ‘voluntary’ – which in itself is a problematic concept – are, by definition, excluded from accessing international protection, which along the Western Balkans means the permission to continue their journey. These migrants, deemed undeserving, are left in a limbo, parked in borderlands across the route, prone to exploitation and ready to do whatever it takes to reach Northern Europe. By assuming needs rather than investigating them, the profiling exercise creates new humanitarian needs. In March 2016 these needs were visible as never before with over 13,000 migrants stuck at the Greek - FYROM border.

Ways Forward

As demonstrated above, much of the policy making in the region is infused with moralising judgments on migrants’ complicity in their plight along the Western Balkans and simplistic notions of migration.

Migration scholars like Richmond (1993) and van Hear (2009), have repeatedly drawn attention to the risks of reducing migration to either ‘forced’ or ‘voluntary’. Indeed, Richmond suggests that the decision to migrate is always situated along a “continuum between compulsion and choice”. Access to international protection - especially for people on the move – must be based on a case by case determination of individual needs and not by pre-defined and politically laden categories.

At the same time, we must be weary of moral judgments often made when speaking of migration. As the fierce discussion started by Al Jazeera (Malone 2015) and picked up by UNHCR (2015), Jorgen Carling (2015) and others illustrate, ‘migrant’ and ‘refugee’ are deeply politicised terms. More than that, however, these terms have real life implications for the people who are labelled as such. Assuming individuals’ motives and treating them in accordance to associated and assumed deservingness goes against the most basic notions upon which the international protection regime is based.

With a humanitarian crisis at the footsteps of Greece, and Europe as a whole, the protection space for migrants across the region has never been smaller. There is an urgent need to move away from category-based protection mechanisms and return to the very cornerstone of international protection: investigate needs and support accordingly.

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