Check for updates

ESSAY

REVISED Instrumentalized migration: avoiding the trap

[version 2; peer review: 1 approved, 3 approved with reservations, 1 not approved]

Maxime Lebrun[1], Tanja Ellingsen[2], Hanne Dumur-Laanila[1], Sophie Bujold[1], Annabel Miller[3], Beth James[3], Gordan Akrap[4], Josip Mandić[5]

[1]The European Centre of Excellence for Countering Hybrid Threats, Helsinki, Finland, 00130, Finland
[2]Faculty of Social Sciences, Nord University, Bodø, Nordland, 8049, Norway
[3]Ridgeway Information EU, Hague, 2595, The Netherlands
[4]Dr Franjo Tuđman Defense and Security University, Zagreb, 10000, Croatia
[5]University North, Koprivnica, 48 000, Croatia

v2 **First published:** 22 Nov 2024, **4**:251
https://doi.org/10.12688/openreseurope.18635.1
Latest published: 29 Apr 2025, **4**:251
https://doi.org/10.12688/openreseurope.18635.2

Abstract

The article considers the European Union's (EU) and its Member States' capacities to face the challenge posed by instrumentalized migration as a hybrid threat activity. Instrumentalized migration in this context entails people being forcibly displaced towards an EU border and made to cross it to claim international protection with an aim of causing capacity overload, adverse reactions, or exerting larger pressure on the target state. Because global migration is a highly politicised and securitized issue in European and domestic politics, authoritarian states may see a strategic opportunity in instrumentalizing it their advantage. Responding strategically to instrumentalized migration requires identifying policy pitfalls and value traps while managing to maintain as many tools and as much space for manoeuvre as possible. Authoritarian states may use instrumentalized migration to further their wider agenda of turning international law into a system of rules which would primarily protect state sovereignty and non-interference at the expense of the international protection of human rights. Responses to instrumentalized migration have impacts and establish precedence in terms of acceptable state practice. Considering this, this article discusses the EU's new Pact on Migration and Asylum and examines how it can be used to the advantage of Member States when dealing with instances of instrumentalized migration.

Keywords

Instrumentalized migration, hybrid threats, EU, migration and asylum pact

Open Peer Review

Approval Status ? ? ✗ ? ✓

	1	2	3	4	5
version 2 (revision) 29 Apr 2025		? view		? view	✓ view
version 1 22 Nov 2024	? view	? view	✗ view	? view	

1. **Luisa Marin**, University of Insubria, Varese, Italy
Michele Gigli, European University Institute, Fiesole FI, Italy

2. **Federica Zardo**, Danube University, University for Continuing Education Krems, Krems, Austria

3. **Paweł Kaczmarczyk**, University of Warsaw, Warsaw, Poland
Natalia Letki, University of Warsaw, Warszawa, Poland

4. **Sofia Galani**, Panteion University of Social and Political Sciences, Athens, Greece

5. **Ayhan Kaya**, Istanbul Bilgi University, Istanbul, Turkey

H2020 This article is included in the Horizon 2020 gateway.

Any reports and responses or comments on the article can be found at the end of the article.

Corresponding authors: Maxime Lebrun (maxime.lebrun@hybridcoe.fi), Tanja Ellingsen (tanja.ellingsen@nord.no)

Author roles: Lebrun M: Conceptualization, Writing – Original Draft Preparation, Writing – Review & Editing; **Ellingsen T**: Conceptualization, Writing – Original Draft Preparation, Writing – Review & Editing; **Dumur-Laanila H**: Conceptualization, Project Administration, Writing – Original Draft Preparation, Writing – Review & Editing; **Bujold S**: Conceptualization, Project Administration, Writing – Review & Editing; **Miller A**: Conceptualization, Writing – Original Draft Preparation, Writing – Review & Editing; **James B**: Conceptualization, Writing – Original Draft Preparation, Writing – Review & Editing; **Akrap G**: Conceptualization, Writing – Original Draft Preparation, Writing – Review & Editing; **Mandić J**: Writing – Original Draft Preparation, Writing – Review & Editing

Competing interests: No competing interests were disclosed.

Grant information: This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No [883054] (Empowering a Pan-European Network to Counter Hybrid Threats [EU-HYBNET]).
The funders had no role in study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Copyright: © 2025 Lebrun M *et al*. This is an open access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

How to cite this article: Lebrun M, Ellingsen T, Dumur-Laanila H *et al.* **Instrumentalized migration: avoiding the trap [version 2; peer review: 1 approved, 3 approved with reservations, 1 not approved]** Open Research Europe 2025, **4**:251 https://doi.org/10.12688/openreseurope.18635.2

First published: 22 Nov 2024, **4**:251 https://doi.org/10.12688/openreseurope.18635.1

REVISED **Amendments from Version 1**

The modifications brought to this article were threefold: the authors included a more comparative perspective by bringing in the examples of Morocco and Tunisia as an illustration of differences with cases from Russia and Belarus; modifications also deepened the analysis about the twin legal principles of Ex factis Jus oritur and ex injuria jus non oritur; finally, the modifications brought a more critical assessment to the new EU Pact on Migration and Asylum and its various dispositions.

Any further responses from the reviewers can be found at the end of the article

Introduction

The European Union's (EU) new Pact on Migration and Asylum marks a significant step for EU Member States to streamline their migration and asylum policies. The recent increases in cases of instrumentalized migration make it even more important to improve and streamline processes at the EU and Member States levels. Instrumentalized migration refers to a situation in which state and non-state actors use migrants[1] as a tool, either covertly or in plain sight, to exert strategic or political pressure upon a target state. This is employed to create and aggravate existing difficulties in organizations, exacerbate social relations, and polarize political debates. The purpose of this article is to understand the challenge that instrumentalized migration poses as a hybrid threat activity. The article focuses on types of instrumentalized migration as exemplified by the Belarus case in 2021 and the Russia case in 2023. These two cases demonstrate a high level of engineering by the initiating states: people claiming asylum via Belarus and Russia were clearly being used as an instrumentalized migration flow. The two cases are also related in their dimensions of luring and violent coercion. Migrants were misled by false advertising, and they were ultimately subjected to violent treatment, arbitrary detention and confiscation of goods and currency. This string of practices was likely meant as deterrence against turning back, effectively forcing them to attempt crossing the border.

This kind of hybrid threat activity leverages existing political and societal grievances to tilt the balance of international law towards the protection of state sovereignty in a manner that may be at the expense of the standards of international human rights law. Authoritarian states may instrumentalize migration to exploit societal fault lines and steer the target state's practices in a direction favourable to their own agendas of putting pressure on democracy, liberal values, and the system of international human rights law. Furthermore, states targeted by instrumentalized migration may face significant international pressure as they contend with the need to secure their borders and meet growing reception and processing demands whilst continuing to uphold international commitments that protect the rights and safety of people on the move.

Successfully countering hybrid threat activity requires considering the end goal of the adversary. The short-term consequences of instrumentalized migration may be severe, but the end goal of the adversary is to interlink those implications with longer term consequences. This article contends that policy responses to instrumentalized migration tend to be short sighted and made with the intention of balancing state commitments to international protection with their duty to ensure national security and state sovereignty. We propose to transcend this distinction. Respecting international protection commitments as laid out in the Qualification Regulation is the strategic imperative to adequately responding to instrumentalized migration. It is for this reason that the article proposes that this kind of hybrid threat activity leverages domestic politics in order to alter the nature of international law. Authoritarian states are driven by regime survival and implement policies to this end, which is why the challenge of instrumentalized migration directly relates to international law. Authoritarian states have a strategic interest in promoting a view that international law should favour principles such as non-interference and state sovereignty at the expense of the international protection of human rights. Transcending the opposition between international protection commitments and national security makes it necessary for EU Member States to have as much contingency planning and crisis management in place while simultaneously respecting their commitments to international protection. It is when states are faced with no other option but to default away from international protection that authoritarian states will achieve their fundamental goals. Targeted states should maintain a toolbox that maximises their margin for manoeuvre, but they should be able to scale their responses to an appropriate level depending on the situation. Denying the disruptive effects of instrumentalized migration requires preparing for absorbing the flow of instrumentalized migrants as efficiently and humanely as possible.

The new EU Pact on Migration and Asylum, which entered into force in June 2024, notably contains a Crisis and Force Majeure Regulation which lays out a series of options for states targeted by instances of instrumentalized migration to trigger solidarity measures through a process driven by the European Commission (EC). This is a legal innovation, and this article discusses its relevance and fitness for purpose. The EU acting on a more collective level against instrumentalized migration has the potential to make it more resilient and to deter authoritarian states from triggering instrumentalized migration in the first place. Pooling resources together and not letting Member States face only detrimental options has the potential to enable the EU to transcend the opposition between international protection and national security.

While it contextualises the challenge of instrumentalized migration with a number of different examples, the article focuses in greater details on a twofold, fundamental goal of instrumentalized migration as witnessed in Belarus and Russia: undermining the credibility of the model of democratic governance,

[1] According to UNHCR, "migrant" is widely used as an umbrella term to refer to a person who moves away whether internally or across border either voluntarily or by force. "Asylum-seeker" instead refers to person, who is seeking international protection. More information: Migrant definition | UNHCR; Asylum-seekers | UNHCR.

while tilting state practice so that international law would lean towards safeguarding state sovereignty at the expense of the protection of human rights. In addition to the two aforementioned cases, the article also briefly mentions the case of Morocco and Spain. It considers state practice in countering this challenge, discusses the implication of it, and explores the tension it creates in the principles of international law which authoritarian states seek to leverage to advance their agendas. The second part of the article deals with the tools effectively available at present and in the future to EU Member States to assess the margin of manoeuvre they might utilize. The new EU Pact on Migration and Asylum will be considered under this angle.

Framing the challenge: forcibly displaced people as instruments of power

According to Teitelbaum (1984) and Weiner (1985), people are being used as instruments of power by states in pursuit of certain goals and as a means of foreign policy. More recently, Greenhill (2010) has characterized the phenomena as "weaponised migration" or "coercive engineered migration". "Coercive engineered migration" refers to cross-border population movements which are deliberately created or manipulated by other state(s) to induce political, military and/or economic concessions from a target state or states. The leverage created by aggressors may manifest as direct threats or public demands that could overwhelm state capacities, or, more indirect coercion, such as private political blackmail. Petty (2022) argues that "weaponized migration" means that "migration, and particularly mass migration" is used deliberately by states or non-state actors as a "weapon" of sorts to reach political, economic, military, or any other types of goals. Both Greenhill and Petty's characterizations of the weaponization of migration rely on the ability of migration to bring about political, economic, and military change; the ability for migration flows to bring about such change is exemplified, for example, in the securitizing effect that the so-called refugee crisis of 2015 has had on European societies.

Instrumentalized migration may come with very different degrees and methods of coercion by the initiator state. A clear example of instrumentalized migration was seen when Morocco enabled the crossing of 8,000 migrants, largely sub-Saharans, into the Spanish enclave of Ceuta. The events came amid diplomatic tensions over the disputed territory of Western Sahara, namely, after Spain admitted the leader of the Polisario Front into a Spanish hospital, which prompted Morocco to state, according to Reuters, that it was a "premeditated act" that would have "repercussions". Spain responded by deploying border patrols which saw some people voluntarily return to Morocco, and the events did not result in an increase in arrivals in the long-term.

In late 2021, Belarus brought thousands of migrants, largely Kurds from Syria and Iraq, into the country on the promise of access into the EU. This was a step further compared to previous occurrences targeting Europe as clear evidence showed a deliberate pull to get third-country nationals into the country and channel them towards EU borders. Many migrants were left at the western borders of the EU for months during the winter, while Latvian, Lithuanian, and Polish authorities-imposed pushback strategies. Greenhill causally links Belarus' actions with the EU's refusal to recognise Aleksandr Lukashenko as the President following irregular elections, which also resulted in EU sanctions against Belarus. Further, in late 2023, Russia was accused of instrumentalizing migration to exert pressure on Finland amid the rising tensions between Russia and NATO. While Belarus has been accused of working to charter flights from the Middle East to its territory through disreputable travel agencies and fabricated visa prospects to facilitate the movement of migrants to the EU border, Russia's practices have been more coercive. Migrants were prohibited from ever returning to Russia at the cost of threats on the wellbeing of their families and of forced conscription or other disproportionate measures in retaliation to any future irregular stay on Russian territory. This led Finland to close its entire land border with Russia in November 2023. In July 2024, the Finnish Parliament adopted a new law, allowing for a special legal regime whereby border guards would be enabled to assess asylum seekers' grounds already at the border. The law is very similar to pushback legislation adopted by Lithuania, for instance. Because they contain the least organic migration elements, the Belarus and Russia examples are raised in this article as prototypes of instrumentalized migration. Both examples are used for the analysis in this article.

Responses to instrumentalized migration create precedence in state practice which has a considerable impact on states' track records in complying with and interpreting various dispositions of international law. This article proposes that the reason authoritarian states decide to instrumentalize migrants against liberal democratic states is that they consider them to be vulnerable to it. Liberal democratic states are committed to respecting and upholding international law and especially, their obligations related to the international protection of human rights. (Baylis *et al.*, 2023) Authoritarian states may also consider societies in Europe to be particularly prone to cultural and ethnic divisions and polarization. Political issues around migration and integration have proven debilitating for domestic politics in many European countries, provoking demonstrations and stoking racial hatred and discrimination. Anti-migration rhetoric is also a powerful political mobilization factor for parties whose foreign policy platforms often conform with Russia's. Accordingly, and as pointed out by Petty (2022), in a significant number of cases, a key objective may simply be to create a crisis that forces targeted countries to take measures contrary to their commitments regarding the international protection of human rights, and on a more general level, international law. An effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention. Human rights and international protection thus limit the state sovereign border control prerogatives.

The challenge of instrumentalized migration links domestic politics and international law. Authoritarian states can leverage societal fault lines and steer the target state's practice in a direction favourable to their agenda. Ginsburg (2020) notes that authoritarian regimes share a common goal in international law which is to promote noninterference in the internal affairs of states. This is key to their regime survival and solidity. Authoritarian states promote an interpretation of international law in which states would be as minimally responsible as possible for the way they deal with what they consider to be their internal affairs, such as human rights and individual liberties. In this sense, the protection of state sovereignty at the expense of individual rights and liberties is at the core of the authoritarian agenda. Democratic states, on the other hand, defend human and individual rights as the bedrock of the system of international law designed after the Second World War. Authoritarian regimes seek the primacy of state sovereignty and inviolability at the expense of the international protection of human and individual rights globally. It is when states resort to refoulement or compromise with the requirements of international commitments that authoritarian states can claim a successful utilization of migration as a tool to pressure democratic states. Restrictions to freedom of movement worldwide directly undermines the international protection of human rights, since it establishes precedence that authoritarian regimes can use in justifying their own actions and in decreasing democratic states' standing in the international arena.

Instrumentalized migration further stresses a tension between two principles of international law. The first principle, *Ex Injuria Non Oritur* means that a legal right cannot arise from wrong. It implies that international law cannot recognize a matter of fact that is the result of a wrongful and illegitimate action. This principle underlies the EU's nonrecognition of the illegal and illegitimate annexation of Crimea by the Russian Federation in 2014. The second principle, *Ex Factis Jus Oritur*, means that the law is born out of effective situations. This implies that international law generally validates an established situation, an effective matter of fact. The manifest existence of a state within established borders and with a population inside of them is a fact that international law recognizes (Gignac, 2017). The twin principles that legal rights cannot arise from wrongdoing and that the law is borne out of practice balance each other. The first principle is a safeguard against injustice, while the second protects against disorder. While they cannot arise from wrongdoing, legal principles are shaped or determined based on existing factual circumstances or situations. The tension between those principles of international law appears in calls from states to modify international legal conventions on asylum and migration in light of a "new" situation of instrumentalized migration, which they argue did not exist when the relevant instruments were adopted. The EU recognized the existence of these new circumstances in a 2021 Communication of the European Commission by stating that: "A particularly cruel form of hybrid threat has emerged with the state-sponsored *instrumentalization* of people for political ends". In the Strategic Compass for a Stronger EU Security and Defence by 2030, the EU recognised the instrumentalization of illegal migrations as a hybrid threat to the EU.[2] This recognition of changed circumstances drives a push for modifying state practice to protect state sovereignty at the expense of human rights and individual freedoms despite repeated warnings of those practices being contrary to international law. The European Court of Human Rights is currently adjudicating over 30 cases against EU Member States for pushback strategies against migrants in 2021 and 2023 (Ginsburg, 2020). If enough liberal democratic states enshrine practices contrary to their international law commitments based on the arguments that facts and contexts have changed, therefore justifying their breaking of international commitments, it would provide Russia with more political arguments to back up its revisionist international law agenda.

Balancing the principles of the international protection of human rights with respect for state sovereignty over borders without either of those two being at the expense of the other is a demanding issue regarding instrumentalized migration cases. Target states must consider the full extent of the predicament in which instrumentalized migration leaves them. The phenomenon causes organizational and contingency challenges related to registering migrants, accommodating them, and transporting them in an orderly manner, often in contexts of limited resources. It can also create institutional stress linked to public opinion pressure in polarized societies, which are often disproportionately sensitive to a negative perception of the issue of migration. However, the deeper challenge that instrumentalized migration presents is a reflexive trap. As the examples above have shown, states adopt responses that end up undermining the principles of the protection of human rights and can cause democratic governance to weaken when adopting measures fundamentally contrary to international case law and commitments. This entrapment logic is important to the hybrid threat analysis since authoritarian states that instrumentalize migration flows against EU Member States seek to discredit European governance as a model.

Avoiding the trap with the new migration pact?

The new EU Pact on Migration and Asylum is a policy framework that seeks to leverage the benefits presented by regular immigration pathways while simultaneously addressing the challenges associated with irregular migration. Migration crises in particular have triggered policy and legal initiatives regarding migration policies and their effectiveness, and especially the equilibrium between international law commitments and national sovereignty. The purpose of this section is to provide a selective perspective as to what the EU provides in terms of a toolbox for Member States facing instances of instrumentalized migration. Increasing and maintaining awareness of the tools available is critical to countering hybrid

[2] "State and non-state foreign actors are constantly refining and thereby strengthening their tactics, techniques and procedures, such as the *instrumentalization* of irregular migration, lawfare, as well as coercion targeting our economic and energy security."

threats. Adequate responses to hybrid threat activities are ones in which the target state preserves a wide range of options for later use.

Especially since the Belarus crisis in 2021, instrumentalized migration began to be incorporated into EU legislative and non-legislative initiatives, indicating a greater political will to understand and manage the phenomenon. Notwithstanding the new Pact on Migration and Asylum, it is important to consider that the EU has a set of existing tools, such as: the toolbox addressing the use of commercial means of transport to facilitate irregular migration to the EU, the Union Civil Protection Mechanism, the EU Migration Preparedness and Crisis Management Network, and the Integrated Political Crisis Response arrangements. All those mechanisms contain provisions and funding that can also be mobilized in the event of any crisis per their relevant triggering procedures. Exploring the operational use of those mechanisms should provide more tools to Member States targeted by instrumentalized migration.

This part of the article discusses the European Commission's Common Implementation Plan adopted on 12 June 2024, with ten interdependent building blocks and their potential implementation with a goal of understanding what can provide Member States with tools to prevent and absorb instrumentalized migration. EU Member States must submit their national plans for implementation to the Commission by December 2024. The Pact on Migration and Asylum includes specific measures to counter instrumentalized migration by providing EU Member States with a decision-making and activation procedure to trigger solidarity measures and support for crisis situations and *force majeure*. It contains a series of regulations updating and improving previous legislation in this area such as: the Asylum and Migration Management Regulation (AAMR), which provides for a better system in determining Member State responsibility for asylum applications and which contains the requirement for solidarity between Member States while faced with migratory pressure; the Asylum Procedure Regulation, including the Return Border Procedure Regulation, which streamlines asylum application decision procedures and establishes mandatory border procedures for asylum and return processes at external borders of the EU; and the Crisis and *Force Majeure* Regulation, which specifically deals with instrumentalization of migration and crisis situations, listing possibilities for derogations from international commitments and solidarity measures. The Pact also includes the Eurodac Regulation, the Screening Regulation, the Qualification Regulation, the Reception Conditions Directive, and the Union Resettlement Framework, which all constitute essential elements to a better streamlining of migration and asylum policies across the EU, thereby also reducing the attack surface for this particular hybrid threat activity. threat activity.

Structural improvements and emergency and contingency tools

The Pact presents structural improvements to streamline migration and asylum policies and procedures. Block 1 is a substantial reconstruction of the European Asylum Dactyloscopy Database with more functionalities, a greater focus on international protection, increased categories for sea rescues, arrests, and more. Block 2 deals with rules for improved management of migration fluxes at the external borders of the EU. Among the various regulations are concerns regarding non-refoulement and the imposition of stricter deadlines. Block 3 deals with reception conditions to balance appropriate treatment with the prevention of unauthorized movement. Block 4 aims to streamline decision making processes on asylum applications to ensure just, fair, and coherent asylum procedures. Block 9 contains a set of rules and regulations to enhance respect for fundamental rights and the right of asylum. Block 10 focuses on reinstallation, inclusion, and integration. Block 5 aims to incentivize returns and to make returns more effective. The role of Frontex would be of utmost importance while a manual to better implement and follow those procedures is being considered.

Blocks 7 and 8 contain the most relevant tools for countering instrumentalized migration as they provide for a solidarity mechanism that is flexible, but legally binding. Block 8 deals with contingency plans and crisis responses. Emergency plans need to be in place for solidarity to apply. At the core of Blocks 7 and 8 is the Crisis and *Force Majeure* Regulation. It provides for the possibility for a Member State to request the activation of a mandatory solidarity mechanism. In practical terms, a Member State that considers itself to be facing a situation of crisis or *force majeure* will be able to request an authorization from the European Commission to default from certain regulations in case of capacity overload. It will also be able to request solidarity from other Member States in addressing the situation. These cases concern occurrences of instrumentalized migration, but more generally, cases of disproportionate consequences outside the control of the Member State in question. The innovation in this regulation is that it provides a clear decision-making track: the requesting Member State must submit to the Commission a reasoned request establishing the grounds of the situation. The Commission will then assess the situation to determine its crisis character through an implementing decision process. It determines whether this is a situation of crisis including instrumentalization or *force majeure*. In particular, the Commission will assess why the Toolbox on Migration is not sufficient to address the situation. In consultation with the requesting Member State, the Commission includes a draft Solidarity Response Plan, tabling the needs in terms of relocation, financial solidarity, or alternative support. The Commission, in parallel with the implementing decision process mentioned above, makes a proposal to the Council authorizing derogations and establishing solidarity measures. This also contains a Solidarity Response Plan. At the same time, existing tools can be triggered by the Member State facing a situation of instrumentalized migration. The different levels of Integrated Political Crisis Response can be activated at the Council, paving the way for better information exchange and speeding up decisions on collective action. The effectiveness of those tools in avoiding the need for Member States to default from their international obligations will naturally depend on implementation and the usage being done of the decision-making procedure and solidarity process outlined above. States should seek to exhaust all possible solidarity

measures before requesting authorizations to default from certain obligations contained in EU law or wider international commitments.

Conclusions

The challenge posed by instrumentalized migration is strategic and countering it in the long-term demands an acute awareness of the precedence that EU Member States produce through their reaction and practice of democratic governance, as well as the current regime of international law. It is also equally important to build contingency measures to absorb the shocks created by instrumentalized migration, as this would have the potential to deny the effects sought after by the authoritarian states. Authoritarian states which instrumentalize migration pursue a goal of revising acceptable practices and the international law associated with them. When target states lack the resources to anticipate, prevent, and absorb the shocks caused by instrumentalized migration, they revert to policies and actions that fall short of commitments to the standard of international protection and international human rights law. This provides authoritarian states with a strong argument for pursuing their revisionist international law agenda of state supremacy over respect for human and individual rights. Authoritarian states can also claim that democratic states have double standards, and this would reduce their standing in international fora. The nature of the response to the challenge of instrumentalized migration is about preserving a margin of manoeuvre and a tool reservoir for the target states. The EU provides and frames a vast series of tools available for states to activate solidarity measures in order to collectively deny political effects of cases of instrumentalized migration against its Member States.

Ethics and consent

Ethical approval and consent were not required.

Data availability

The data for this article consists of bibliographic references, which are included in the References section.

Acknowledgements

The co-authors of this article would like to acknowledge the contributions of Dr. Marek Świerczek of the Polish Internal Security Agency throughout the conceptualization of this article.

References

Baylis J, Smith S, Owens P: **The globalization of world politics: an introduction to international relations.** Oxford: Oxford University Press, 2023.
Publisher Full Text

Gignac MA: **Compte rendu de [Anne Lagerwall, *Le principe* ex injuria jus non oritur *en droit international*, Bruxelles, Bruylant, 2016].** *Revue québécoise de droit international /Quebec Journal of International Law / Revista.* 2017; **30**(2): 261–265.
Reference Source

Ginsburg T: **Authoritarian international law?** *Am J Int Law.* 2020; **114**(2): 221–260.
Publisher Full Text

Greenhill KM: **Weapons of mass migration: forced displacement as an instrument of coercion.** 2010.
Reference Source

Petty A: **Migrants as a weapons system.** *Journal of National Security Law and Policy.* 2022; 113–139.
Reference Source

Teitelbaum MS: **Immigration, refugees, and foreign policy.** *Int Organ.* 1984; **38**(3): 429–50.
PubMed Abstract | **Publisher Full Text**

Weiner M: **On international migration and international relations.** *Popul Dev Rev.* 1985; **11**(3): 441–455.
Publisher Full Text

Open Peer Review

Current Peer Review Status: ? ? ✗ ? ✓

Version 2

Reviewer Report 30 May 2025

https://doi.org/10.21956/openreseurope.21911.r54135

© **2025 Kaya A.** This is an open access peer review report distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

✓ **Ayhan Kaya**
Istanbul Bilgi University, Istanbul, Turkey

The paper is very well written and introduces a new concept to the field: "instrumentalised migration." It also refers to the relevant literature and legal documents within the European framework. It dwells on the ways in which Belarus instrumentalised migration to put pressure on the neighbouring states and the EU in general, and how the New European Pact on Migration and Asylum offers some mechanisms for the member states to cope with such pressures, which might come from the authoritarian states outside the EU. I think the latest version of the paper is concise and updated, and convincing.

Is the topic of the essay discussed accurately in the context of the current literature?
Yes

Is the work clearly and cogently presented?
Yes

Is the argument persuasive and supported by appropriate evidence?
Partly

Does the essay contribute to the cultural, historical, social understanding of the field?
Yes

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: Migration, Populism, Youth Radicalism, Islamophobism, Migrant Integration, Citizenship Studies, Nationalism Studies

I confirm that I have read this submission and believe that I have an appropriate level of expertise to confirm that it is of an acceptable scientific standard.

Reviewer Report 29 May 2025

https://doi.org/10.21956/openreseurope.21911.r53695

© **2025 Galani S.** This is an open access peer review report distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

?

Sofia Galani
Panteion University of Social and Political Sciences, Athens, Greece

I am concerned that the authors have not sufficiently engaged with the reviewers' feedback. The main improvement is that the piece is now more appropriately referenced. Their revisions are not clearly reflected in the document. For instance, while Tunisia is not addressed at all, the mention of Morocco lacks a comparative analysis with Belarus and Russia. Additionally, the discussion of legal principles, though interesting, remains underdeveloped. Finally, the description of the EU framework is largely descriptive and lacks critical analysis.

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: International law, human rights, law of the sea

I confirm that I have read this submission and believe that I have an appropriate level of expertise to confirm that it is of an acceptable scientific standard, however I have significant reservations, as outlined above.

Reviewer Report 13 May 2025

https://doi.org/10.21956/openreseurope.21911.r53696

© **2025 Zardo F.** This is an open access peer review report distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

?

Federica Zardo
Danube University, University for Continuing Education Krems, Krems, Austria

On the one hand, the authors say they have included the example of Tunisia, which is not correct because they only include the example of Morocco. Moreover, the case of Morocco in only mentioned i passing, but does not in any way provide a comparison. It is therefore not correct to state that there is a comparison between cases.
The authors also state that they have included a critical assessment of the Pact, but the essay only describes it. At the moment, the only portion of text that "assesses the Pact" is the following: "The innovation in this regulation is that it provides a clear decision-making track: the requesting Member State must submit to the Commission a reasoned request establishing the grounds of the situation".

I would encourage the authors to explain how the different blocks of the Pact, or the crisis and force majeure Regulation if it is more appropriate, address the issues they identify.
Moreover, what I still suggest is a clear statement or acknowledgment that the manuscript is an essay, to clarify that to the readers.

Competing Interests: No competing interests were disclosed.

I confirm that I have read this submission and believe that I have an appropriate level of expertise to confirm that it is of an acceptable scientific standard, however I have significant reservations, as outlined above.

Version 1

Reviewer Report 18 February 2025

https://doi.org/10.21956/openreseurope.20161.r47812

© 2025 Galani S. This is an open access peer review report distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

?

Sofia Galani
Panteion University of Social and Political Sciences, Athens, Greece

The article deals with an interesting and topical matter – that of instrumentalized migration. The authors explain in simple terms how instrumentalized migration is understood and draw on relevant examples, i.e. the practice of Belarus, to demonstrate how it works in practice. The authors also discuss the impact of instrumentalized migration on European democracies by relying upon what they call 'the entrapment logic' which as they explain force States to depart from their human rights obligations in the interest of protecting their State sovereignty. They then move on discussing how EU Member States can rely on the EU Pact on Migration and Asylum, which entered into force in June 2024, and especially the Crisis and Force Majeure Regulation in order to be better prepared for crises and avoid the "trap".
The article raises a lot of interesting and valid points. But, one may wonder whether it tries to do too much in too little space. The last two parts of the article simply list various tools that the EU Member States may use to deal with instrumentalized migration. This, however, does not leave much space to the authors to explain how these tools may enable the EU Member States to avoid the "trap" which seems to be at the heart of their argument. I'd therefore recommend the authors consider focusing more on the Crisis and Force Majeure Regulation, or at least be more specific and selective about which other aspect of the EU Pact on Migration and Asylum can help States deal with the crisis more effectively.
In addition, the authors seem to argue that authoritarian States instrumentalize migration in order to force democratic States to violate international law which challenges two principles of international law, Ex Injuria Non Oritur, and Ex Factis Jus Oritur. This is an interesting and innovative argument, but it is somehow lost in the current piece as it is "squeezed" between too

many other points. Perhaps, the authors could consider leaving this point aside and working on another short piece elaborating more on this theoretical approach which merits further discussion. Instead, this piece could be used more to elaborate on the last two parts.

With regards to the scope of the article, the authors may wish to shorten their introduction which is a bit repetitive and set out the aim of the paper more clearly. Perhaps, it would make sense to briefly mention the "entrapment logic" in the introduction as this comes in much later in the article and a reader may wonder what this "trap", mentioned in the title of the article, really is. Readers may also benefit from a short explanation of, or at least a reference to, what a "hybrid threat" is.
Another point that the authors may wish to reconsider is the reference to "forcibly displaced people" in the heading of the second part. The term "forcibly displaced" people is much more narrowly construed than the term "migrant" and several people affected by instrumentalized migration may, as a result, be left out of the scope of the discussion.
Since the piece is focused on the EU, a reference to the case law of the CJEU, i.e. Case C-72/22 PPU, 30 June 2022, would be more appropriate than – or equally necessary – to the reference to the European Court of Human Rights.
Finally, the paper is thin in references. The authors could consider citing more relevant papers both in the interest of substantiating their claims but also for the benefit of the readers who may wish to study further relevant material. See, for example, Galani, Gkliati, Miholjcic Mitchell, or relevant EU and NATO reports.[Ref 1, 2 and 3]

References

1. Galani S: The Instrumentalization of Migration as a Hybrid Threat against the EU: Can Human Rights Become 'Hybrid' Too?. 2024. 263-286 Publisher Full Text
2. Gkliati,M: Let's Call It What It Is: Hybrid Threats and Instrumentalisation as the Evolution of Securitisation in Migration Management. *Insight Instrumentalisation of Migrants, SanctionsTackling Hybrid Attacks and Schengen Reform in the Shadows of the Pact*. Reference Source
3. Miholjcic,N: Migration as an Instrument of Modern Political Warfare: Cases of Turkey, Morocco and Belarus. *Jean Monnet Network on EU Law Enforcement Working Paper Series*. Reference Source

Is the topic of the essay discussed accurately in the context of the current literature?
Yes

Is the work clearly and cogently presented?
Partly

Is the argument persuasive and supported by appropriate evidence?
Partly

Does the essay contribute to the cultural, historical, social understanding of the field?
Yes

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: International law, human rights, law of the sea

I confirm that I have read this submission and believe that I have an appropriate level of

expertise to confirm that it is of an acceptable scientific standard, however I have significant reservations, as outlined above.

Reviewer Report 28 December 2024

https://doi.org/10.21956/openreseurope.20161.r47279

© **2024 Letki N et al.** This is an open access peer review report distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.



Paweł Kaczmarczyk
Centre of Migration Research, University of Warsaw, Warsaw, Poland
Natalia Letki
University of Warsaw, Warszawa, Poland

This is an interesting and well written, but brief opinion piece and not a research article. It makes two main arguments: that by limiting human rights, e.g. the right to asylum, liberal democracies deny their core values and become complicit in the actions of authoritarian states, and that solidarity measures in the new Pact on migration and asylum could be used to prevent EU Member States from giving in to the spiral of instrumentalization of migration. While both arguments make a lot od sense, they seem fairly obvious and therefore they do not constitute an original contribution. The paper does not provide any evidence to prove usefulness of Pact's solidarity measures to prevent instrumentalization; while relocational and fiscal solidarity are indeed present in the Pact, we do not know whether, and if yes - when and how - they will be implemented. The Authors also do not address the fact that some MSs oppose the Pact and openly use instrumentalization to their own political benefits despite the availability of solidarity measures.
There is more evidence needed for some of the claims the Authors make. For example, what is the source of information on the national composition of irregular migrants on the PL/BY border? Also, the Finnish legal acts cited have not — to our knowledge — been implemented.
While the discussion of *Ex Injuria Non Oritur* and *Ex Factis Jus Oritur* principles is beyond our competence to evaluate, we feel this is where the most interesting potential contribution of the paper might be - to demonstrate, in reference to legal and political discourse and practice of the MSs, how these principles and the tension between them are being deployed. However, this would require the discussion of the Pact to be much more detailed and less cursory.

Is the topic of the essay discussed accurately in the context of the current literature?
Partly

Is the work clearly and cogently presented?
Yes

Is the argument persuasive and supported by appropriate evidence?
Partly

Does the essay contribute to the cultural, historical, social understanding of the field?
Partly

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: Public opinion, policy preferences, migration studies

We confirm that we have read this submission and believe that we have an appropriate level of expertise to state that we do not consider it to be of an acceptable scientific standard, for reasons outlined above.

Reviewer Report 26 December 2024

https://doi.org/10.21956/openreseurope.20161.r47817

© 2024 Zardo F. This is an open access peer review report distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

?

Federica Zardo
Danube University, University for Continuing Education Krems, Krems, Austria

The article is a well-informed and thoughtful essay examining how the EU Pact on Migration and Asylum seeks to address the growing phenomenon of instrumentalized migration. It begins with the premise that the instrumentalization of migration by non-EU states is on the rise, with the primary aim of shifting the balance between adherence to international law and the protection of state sovereignty. The authors contend that recent cases, such as those involving Belarus (2021) and Russia (2023), illustrate coercive tactics employed by authoritarian regimes to exploit migration flows as tools for manipulating the political and legal responses of target states.
The essay highlights a significant challenge faced by European states: a "reflexive trap," wherein their responses to such hybrid threats risk undermining international commitments. This, in turn, provides authoritarian actors with a platform to claim success, eroding the credibility of democratic governance. To counter this, the authors propose that the EU Pact on Migration and Asylum offers promising structural reforms and emergency mechanisms. These include solidarity measures and the Crisis and Force Majeure Regulation, which collectively aim to bolster resilience and mitigate the impact of such hybrid threats.
The essay is well-written and draws on key literature about coercive engineered migration and instrumentalization. However, its use of supporting sources could be further enriched by incorporating the latest analyses of the Belarus case, that also critically reflect on the EU´s reaction to instrumentalization cases, such as:

- Grześkowiak, M. (2023). The “Guardian of the Treaties” is No More? The European Commission and the 2021 Humanitarian Crisis on Poland–Belarus Border. Refugee Survey Quarterly, 42(1), 81–102. Ref 1
- Gkliati, M. (2023). Let’s Call It what It Is: Hybrid Threats and Instrumentalisation as the Evolution of Securitisation in Migration Management. European Papers - A Journal on Law and Integration, 2023 8(2), 561–578. Ref 2
- Kelemen, & Pavone. (n.d.). Where Have the Guardians Gone? Law Enforcement and the

Politics of Supranational Forbearance in the European Union by R. Daniel Kelemen, Tommaso Pavone: SSRN. Retrieved 10 August 2023, from Ref 3

The cases analyzed in the essay are undoubtedly relevant. The authors describe them as "prototypes of instrumentalized migration," but I would suggest referring to them as "exemplary cases." Furthermore, I would encourage the authors to reflect on and briefly discuss how these cases compare to other instances of instrumentalized migration, such as those involving Turkey, Morocco, or Tunisia. Can the underlying hypotheses or rationales driving the actions of these different “instrumentalizing actors” also apply to other cases? If so, how? If not, why not? Such reflections could provide a broader comparative framework and enrich the analysis.

While the essay does include some citations, and as an essay it naturally allows for personal interpretations and opinions, certain statements and assumptions would benefit from stronger referencing. This is the case, for instance, of the following sentences:

- The short-term consequences of instrumentalized migration may be severe, but the end goal of the adversary is to interlink those implications with longer term consequences.
- Migrants were prohibited from ever returning to Russia at the cost of threats on the wellbeing of their families and of forced conscription or other disproportionate measures in retaliation to any future irregular stay on Russian territory.
- In this sense, the protection of state sovereignty at the expense of individual rights and liberties is at the core of the authoritarian agenda”
- The new EU Pact on Migration and Asylum is a policy frame work that seeks to leverage the benefits presented by regular immigration pathways while simultaneously addressing the challenges associated with irregular migration.

The tension between the two legal principles, *Ex Injuria Non Oritur* and *Ex Factis Jus Oritur* forms the core of the article's argument. I would suggest that this pivotal theme be introduced earlier, ideally in the introduction, to frame and drive the entire analysis. Highlighting this tension upfront would provide a clearer focus for the essay and help readers understand how the legal and policy debates are situated within this broader framework. In the analytical section, I recommend providing more detailed explanations of how the EU Pact on Migration and Asylum specifically addresses the tension between these two principles. Additionally, the section should expand on how the provisions of the Pact reduce the EU’s vulnerability to instrumentalizing actors. For instance, it would be valuable to explain how the structural and emergency mechanisms, such as solidarity measures and the Crisis and Force Majeure Regulation, directly mitigate the strategic goals of those employing migration as a tool of coercion.

References

1. Grześkowiak M: The “Guardian of the Treaties” is No More? The European Commission and the 2021 Humanitarian Crisis on Poland–Belarus Border. *Refugee Survey Quarterly*. 2023; **42** (1): 81-102 Publisher Full Text

2. Burrows NP, Rytina E, Lee AJ, Ager N, et al.: Testing a signal-processing image analysis technology in hospital on suspicious pigmented naevi referred for biopsy.*J Vis Commun Med*. 2024. 1-6 PubMed Abstract | Publisher Full Text

3. Kelemen R, Pavone T: Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union. *SSRN Electronic Journal*. 2021. Publisher Full Text

Is the topic of the essay discussed accurately in the context of the current literature?

Yes

Is the work clearly and cogently presented?

Yes

Is the argument persuasive and supported by appropriate evidence?
Partly

Does the essay contribute to the cultural, historical, social understanding of the field?
Yes

Competing Interests: No competing interests were disclosed.

Reviewer Expertise: Migration Studies, International Relations.

I confirm that I have read this submission and believe that I have an appropriate level of expertise to confirm that it is of an acceptable scientific standard, however I have significant reservations, as outlined above.

Reviewer Report 19 December 2024

https://doi.org/10.21956/openreseurope.20161.r47816

© 2024 Marin L et al. This is an open access peer review report distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

?

Luisa Marin
University of Insubria, Varese, Italy
Michele Gigli
European University Institute, Fiesole FI, Italy

The article discusses how instrumentalized migration threatens the EU and its Member States' system of migration management, and tries to explain how this threat can be overcome. The purpose of the article is two fold: first, understanding the challenge posed by instrumentalized migration as a 'hybrid threat' activity; then, presenting the tools provided by the EU to avoid the trap of instrumentalized migration.
a) The practice of instrumentalized migration has been presented in an interesting and innovative manner. The authors described how authoritarian states use instrumentalized migration to force democratic governments to choose whether to abide to their obligations of international protection at the sake of political credibility or to safeguard state sovereignty disregarding their commitment to the rule of law. The authors use the recent Russian and Belarusian crises as prototypes of instrumentalized migration, and find that the entrapment logic of instrumentalized migration arises from a new tension between two principles on international law which did not exist when those principles were adopted. The analysis is well rooted in the relevant literature and make an important contribution to the legal understanding of this topic.
b) The analysis of the tools provided by the EU to avoid the trap of instrumentalized migration lacks necessary specificness to make a compelling argument. First of all, the article refers to the Pact on migration and asylum, presented in 2020, while in 2024 the European legislator has

adopted legislative instruments expression of that Pact. This part [Structural improvements and emergency and contingency tools] requires a more in-depth analysis of the relevant instruments approved in 2024 by the European legislator. Currently the article touches upon the policy choices or policy goals chosen by the legislator, yet it does not look closely at the manner these choices and goals have been translated into legal provisions.
In particular, the following questions remain unanswered: why discussing only the migration pact and no other tools? (Is this innovative? Has it been adopted on purpose? Is it the newest/ most suitable one? Are there other tools at all?); how does/ can the EU specifically contrast instrumentalized migration?
The authors' argument seems to be that most efficient solidarity measures at EU level help avoiding the effects of politicized migration against Member States, yet these solidarity mechanisms are only presented in their stated aims and not examined nor discussed in their functioning. Nevertheless, the need for solidarity is a long-standing issue in the discussion on how to improve migration management in the EU (mandatory solidarity in migration management has also been invoked on the basis of art. 80 TFEU). Therefore, this part seems rather to answer the more general question "how to better manage migration?", while the specificness of instrumentalized migration remains unaddressed. Moreover, it is true that the new migration pact includes the 'Crisis and Force Majeure Regulation' and the solidarity mechanism, but these tools have been criticized in literature for not being compelling enough to ensure effective solidarity. This article does not contrast these critics. This part of the analysis seems to be necessary against the background of the stated aims of the article. If there were more political cohesion among Member states, instrumentalized migration would presumably be less impactful, but experts agree that such a level of political cohesion is just not yet there.
In conclusion, while the conceptual analysis of instrumentalized migration is interesting and fairly problematized, what is missing is a convincing claim on how to respond to instrumental use of migration policies for political purposes: the analysis of the European instruments remains somehow limited to the stated policy goals. We recommend the authors to be more forceful on the elements that contribute to the concluding argument, namely that a higher degree of political cohesion among Member States would neutralize the effects of instrumentalized migration.

Is the topic of the essay discussed accurately in the context of the current literature?
Yes

Is the work clearly and cogently presented?
Partly

Is the argument persuasive and supported by appropriate evidence?
Partly

Does the essay contribute to the cultural, historical, social understanding of the field?
Yes

Competing Interests: No competing interests were disclosed.

We confirm that we have read this submission and believe that we have an appropriate level of expertise to confirm that it is of an acceptable scientific standard, however we have significant reservations, as outlined above.