

The European Response to the Syrian War: Pathologies Uncovered

Written by Christiane Fröhlich

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CHRISTIANE FRÖHLICH, JUL 8 2016

Ever since the beginning of the Syrian war, the EU has voiced criticism of the Syrian government's brutal reaction to the popular uprising which had begun as a peaceful demonstration against an oppressive regime in early 2011. In May of that same year, the European Council suspended all cooperation with the government of Syria which had been established within the framework of the European Neighbourhood Policy. Parallel to this, it gradually extended restrictive measures towards Syria from May 2011 onwards.

At the same time, the EU has repeatedly declared that it wants to find a political solution to the conflict, for instance in the EU Council conclusions on Syria of October 2015. Its actions in this regard have been channelled mostly through the UN-led International Syria Support Group. Also, the EU and its member states are the largest donor for the international humanitarian response to the crisis: They have mobilised over €5 billion in humanitarian aid as well as stabilisation and development assistance to Syria and its neighbouring states.

Without wanting to belittle these efforts, this article argues that the EU response to the Syrian war reveals some dysfunctional behaviours and pathologies of the EU reminiscent of Finnemore and Barnett's (1999) idea of pathologies of International Organisations. However, I apply a slightly different focus from Barnett and Finnemore; instead of looking at dysfunctional behaviours as indicators for an International Organisation's disengagement from their member states, I apply their framework to a Supranational Organisation, namely the EU. The EU is not merely an intergovernmental institution; as a supranational organisation it has agency independent from its member states, which is expressed in its administrative bodies and other bureaucratic structures. For the purpose of this text, I therefore measure the EU's behaviour against its own rules, not, as Barnett and Finnemore did, against its ability or willingness to fulfil the political will of its member states. The pathologies I identify derive directly from the EU's power as a Supranational Organisation to set meaning, to classify the world, and to diffuse internationally accepted norms.

Firstly, rather than "designing the most appropriate and efficient rules and procedures" (Barnett and Finnemore 1999:720) to accomplish its declared goal of finding a political solution to the Syrian war – a task which, at the very least, would have required a thorough analysis of EU policies towards pre-war Syria, including the fact that Bashar al-Assad turned from applauded reformer to villain overnight, the EU arguably has applied a pre-existing, tested and comfortable rulebook, a "one size fits all" approach, so to speak. Instead of developing its own Syria strategy on the basis of critical reflection of past relations, the EU chose to go along with international efforts to solve the conflict, thereby adhering to a long-standing strategy of 'following suit'. A strategy which only changed in May 2015, four years into the war, under the pressure of a new international terror group, resulting in the EU regional strategy for Syria, Iraq and the Da'esh threat. In the case of Syria, this entailed letting go of the rather extensive relations the EU had entertained with the Syrian government before 2011. The Euro-Mediterranean Partnership and the European Neighbourhood and Partnership Instrument (ENPI) had provided the EU with a whole range of instruments to foster reform, however limited they may have been in their effects. But as a part of the international community's concerted strategy towards the Syrian regime, these efforts were abandoned when the conflict began, and were substituted by sanctions as well as the scaling down of the EU mission in Damascus. Some even argue that the extreme political measures taken by the EU after the beginning of the Syrian war led to a complete loss of political leverage (Turkmani and Haid 2016), meaning the EU let go of any means to achieve its self-proclaimed goal.

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The strategy of 'following suit' also reveals the EU's failure to develop a common foreign and security policy, another prominent self-declared goal. In Article J.1, paragraph 4 of the Maastricht Treaty of 1992, the member states agreed to "support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity (...)" [and to] refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations." The fact that single EU member states like Germany, France and the UK feature as separate members of the International Syria Support Group already illustrates the fact that the EU, and thus, its member states, are not following this self-given rule, which qualifies as a pathology of a supranational organisation following Finnemore and Barnett (1999). On a different note, the strategy of 'following suit' uncritically accepts the asymmetries inherent in the current international system, and perpetuates the discrepancies between the Global North and South.

Another arguable dysfunctionality of the EU relates to the organisation's power to set meaning in the world; Barnett and Finnemore refer to this process as 'classification' (1999:710). Today, the Syrian conflict is considered to have reached such a scale that it arguably threatens "the balance of its neighbours and the security of the entire Mediterranean basin" (Benhamou 2016). Particularly the so-called "refugee crisis" – clearly a misnomer, since refugees are not a crisis, they are people – has revealed a political crisis within the EU the full scale of which is still unfolding. In the current European discourse, as represented in official documents and pan-European media voices, the fact that at least one quarter of the refugees currently striving towards the EU originate from Syria has created the view that the Syrian war is now directly affecting Europe's interests (Benhamou 2016). Apart from the fact that it always has, even before more and more Syrian refugees from Jordan, Lebanon and Turkey as well as Internally Displaced Persons took the ultimate risk of crossing the Mediterranean in a rubber dinghy, I argue that the political crisis in the field of human mobility has much less to do with the much-cited number of people currently seeking refuge in Europe – after all, we are talking about the largest economic bloc in the world with annual legal immigration of about 2 million people – but a lot to do with the pathologies of the European Union I am describing here.

One of them is the way in which the EU's classifications, for instance the internationally recognized categories of "refugee" and "migrant" as set in the Geneva Refugee Convention of 1951, regulate and define EU policies, for instance with regard to border protection, but fail to represent the lived realities of today's forced migrants, meaning those they claim to protect.

Refugees are defined in the Geneva Convention as people who are fleeing from political violence, persecution and war and therefore require the protection of the international community. They may receive asylum in other states if the receiving state considers the reasons for their forced migration to be in accordance with the refugee convention; if not, they are considered 'illegal' or 'irregular migrants', categories which are extremely problematic, to say the least. The United Nations High Commissioner for Refugees (UNHCR) is responsible for the protection of refugees, since their home country is not willing or able to protect them anymore.

Migrants, on the other hand, are considered to have left their homes voluntarily, for instance in order to find better economic opportunities. They remain under the protection of their origin states through embassies and consulates, and have no right to asylum. Whether an immigrant is considered a refugee or a migrant thus has very tangible and far-reaching consequences on her life.

The problem is that these categories do not fully represent the reasons for current human mobility. Neither do they take into account the effects of transnational challenges like climate change, nor do they reflect a globalised market economy, for instance the effect of the billions of US-Dollars of export subsidies which the industrialised world invests every year in order to sell their agrarian products in less developed states (Oxfam 2002 and 2004, Actionaid 2011, Brot für die Welt 2009). Thus, the fact that these mechanisms destroy many people's livelihoods and add to migration decisions is not part of international refugee and asylum law. In fact, international refugee and asylum regulations themselves illustrate the power asymmetries between global North and South, which are rooted in a historically unique process of industrialisation that would not have been possible without colonisation processes and which to this day defines the international system. Even the Geneva Convention itself reflects this asymmetry: It was not formulated by states from the Global South, thus not by those states who are sending – and receiving – most refugees today, and their goal was not to safeguard their people. They were developed by the 'Western' victors of

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two World Wars who wanted to protect the uprooted European populations after 1945.

Even though reasons for, and forms of, migration have changed, the convention in its original version is still considered the basis for EU refugee and asylum policies. It has resulted in a discursive differentiation between, on the one hand, legal refugees and labour migrants, and on the other, 'illegal' or 'irregular' immigrants, who have left their homes 'only' for economic or ecological reasons. The latter are often derogatively called 'economic refugees', 'economic migrants', 'asylum seekers', 'sans papiers', 'illegal' etc. While refugees and labour migrants are considered 'good' immigrants – the first are considered to have a legal right to protection, the latter are largely independent from state services and potentially benefit national economies – the other, 'bad' migrants are increasingly blamed for 'only' wanting to profit from better living conditions in Europe (Tusk 2016; Orban 2015). The fact that the criteria for the protection of forced migrants were selected in a different era; the role of the Global North for push factors of migration; and the perpetuation of global asymmetries in the Geneva convention remain a blind spot of European asylum and refugee policies and can be considered a pathology of the EU since they hinder the achievement of the self-declared goal of wanting to be a safe haven for refugees from war.

Yet another and related pathology is the fact that the EU wants to be and has for decades been acting as a norm diffusor (Barnett and Finnemore 1999: 712), while having trouble or sometimes, it seems, no real interest in adhering to those very norms. In particular, the EU's current policies towards forced migrants reveal a discrepancy between the EU's self-proclaimed role as a proponent of universal human rights (see, among many other sources, the Maastricht Treaty) and its own policies. Part of the explanation are the above-mentioned lack of a concerted foreign policy, internal deficits like slow EU Commission procedures and instruments, and strong re-nationalisation tendencies within several member states, but I argue that the issue goes deeper than just dysfunctional structures. The EU's treatment of (Syrian and other) forced migrants is a case in point.

With the Schengen treaties, the European "Space of Freedom, Security and Rule of Law" (article 3 paragraph 2 EUT) was opened for the Schengen states and its citizens. At the same time, a re-interpretation of immigration took place within this geographical space: The abolishment of internal borders required the acceptance of immigration from other EU (Schengen) member states, while at the same time the need to protect national borders was transferred to the EU as supranational institution. What had hitherto been nationally managed border protection measures was thus substituted by the protection of the EU's external borders through new, European actors, most notably Frontex. At the same time, the self-given goal of further political integration of the EU in the sense of transferring more national sovereignty to the EU has yet to be achieved (see, for instance, the Hague Programme of 2005).

A result of this reframing of (im)migration within the political framework of the EU was a systematic erosion of the European refugee and asylum law, which claims to protect those fleeing from war and prosecution, and which is part of the EU's role as a norm diffusing entity. In order to claim asylum, a Syrian migrant – thus a migrant who undoubtedly fulfils all criteria of the Geneva Refugee Convention – has to stand on European soil, a feat which has become increasingly difficult, not to say almost impossible since the Schengen treaties. This has to do, on the one hand, with a border protection machinery which is built to fend off, not let in refugees, or any kind of immigrant, for that matter, and on the other, with a systematic externalisation of border protection to non-EU and non-state entities. Today, there is in fact no legal way to reach the EU from Syria: The EU has externalised its border protection to private airline carriers and shipping companies by subjecting them through Council Directive 2001/51/EC of June 28, 2001 to financial penalties should they transport passengers without valid visa. Also, there is no valid procedure to receive even a tourist visa, let alone to be granted asylum and a Schengen visa directly from the German or any other European embassy or consulate in Syria or elsewhere outside Europe. And finally: The EU has since the late 1980s increasingly externalised the achievement of its self-declared goals, namely the protection of its borders as well as of refugees from war, to non-EU countries like Libya, Morocco or, most recently, Turkey, without particular regard for human rights and rule of law within these states, thus putting into question its self-proclaimed and often repeated commitment to human rights and rule of law.

It is to be expected that migration towards Europe will continue, especially, but not only from Syria. The EU needs to address the above-mentioned pathologies and dysfunctions in an effective way in order to fulfil its humanitarian

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promise to be a space of freedom, prosperity and rule of law in the world, and in order to improve the livelihoods of those it claims to want to protect. Perhaps it is time to rethink the categories on which EU migration, refugee and asylum policies are based, because whether someone is fleeing from bombs or from crushing poverty, they are fleeing to survive.

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Dr. Christiane Fröhlich is Mercator-IPC-Fellow at the Istanbul Policy Center of Sabanci University, Istanbul, Turkey, and Research Fellow at the Institute for Peace Research and Security Policy at Hamburg University, Germany. Her research focuses on reasons for migration, with a particular focus on environmental drivers. She has done extensive ethnographic field research on the impact of a prolonged and climate change-related drought period in Syria which immediately preceded the Syrian war. Moreover, she inquires into the role of the Global North for current migration movements from the Global South from a Postcolonial Perspective. She holds a PhD from the Center for Conflict Studies at Marburg University, a Master in Peace Research and Security Policy from Hamburg University and an M.A. in English Literature, History and Psychology from Hamburg and Warwick Universities.