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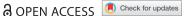European Foreign Policy Observatory, Institut Barcelona d'Estudis Internacionals, Barcelona Spain

ABSTRACT

The 2015 migration crisis has shaken the EU system to the point that no agreement on the matter was possible. In this line, it was decided to bring to the international level the need to agree on a migration norm: the UN Global Compact for Migration. This article analyses the EU and Member States dynamics of dissent vis-à-vis substantive and procedural norms. It shows the existence of four structural factors within EU foreign policy that enhances consensus. That is the existence of a common position on the matter, the expert culture constraining the behaviour of parties, the EU community of practices and the role of the chair. The presence of these factors explain why the EU contained Hungary's objections to the Compact, but its absence also explains the domino effect triggered by the Austrian withdrawal. At the end, EU norms such as effective multilateralism and sincere cooperation were contested.

Introduction

The European Union has been portrayed as the actor most likely to develop a comprehensive migration policy, yet its integration on the issue has remained fragmented and differentiated (Goodman & Schimmelfennig, 2019; Scipioni, 2018). The 2015 migration crisis has exacerbated this void, and migration has been used by European populist forces to build political movements aiming to challenge EU norms and values at the same time as the international liberal order has also been eroded (Ferris & Donato, 2020, p. 23).

This article focuses on the UN Global Compact for Migration (GCM), a UN process that was launched in 2016 as part of the New York Declaration and concluded in 2018 at the Marrakech Conference. The GCM was seen as the first international attempt to work constructively and comprehensively towards an international migration framework. This article focuses on the internal dynamics of negotiation in the EU around the GCM. It posits that the EU and its Member States were willing to act pragmatically to fill the void in the international migration regime (European Council, 2018). This move was both normative and interest driven. First, not only did the EU act as a single player, it also took a leading role in hosting discussions on migration at the UN. But the EU

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and its Member States saw migration as a collective problem where national interests were pushing actors further apart. In this vein, moving the migration issue from the EU to the international level was based on the idea that a less politicized arena would facilitate consensus around it (Jørgensen & Costa, 2012, p. 254). Indeed, from an EU point of view, migration has traditionally been the object of venue-shopping frameworks (Guiraudon, 2000; Kaunert & Léonard, 2012), meaning that when obstacles have been encountered, there has been a tendency to find new sites that are more amenable to their preferences and goals.[1]

More to the point, the GCM was expected to be unlikely to be contested as it was supported by the EU and Member States and followed Council conclusion mandates and the guidelines agreed on within the United Nations Working Party (CONUN), which is the Council of the EU's working party for developing common policy on UN issues. Indeed, EU institutions and Member States have played such active role that the "Global Compact largely reflects European objectives and respects all our key concerns" (Mogherini, 2018). Nevertheless, during the final negotiation stages, in 2018, several European leaders joined the US rhetoric and alleged that the GCM clashed with their country's national sovereignty. As a result, the GCM might be seen as a failed European attempt to de-politicise migration as it became an object of political contention, parliamentary debate and government crisis, resulting in a small but nonetheless significant number of EU Member States announcing their willingness to pull out of the final document.

Drawing on an analysis of primary sources including statements, documents and eight semi-structured interviews with EU officials and Member States representatives, this paper maps out the structural factors that might keep contestation within the margins of consensus as well as the players driving these dynamics of dissent from 2016 to 2018. The article shows how the EU initially contained Hungary's dissent in March 2018 as Member States continued working together. This unity was maintained because through the interaction of various structural factors that were absent from the final adoption stage, when a few Member States decided to leave the GCM.

The remainder of the article is organized as follows. The following section presents the analytical framework of contestation. The third section provides an overview of the EU migration regime before the GCM was introduced. The fourth section analyses the EU's role during negotiations, with a particular focus on structural factors and the dynamics of dissent of some EU Member States. The last section concludes and discusses the main findings and further avenues for research.

Analytical framework: an approach to contestation and migration

In constructivist studies, norms are usually defined as being constitutive (i.e. they define categories of actors and actions that construct interest and identities) and regulative (i.e. they constrain and shape state behaviour by delineating what is appropriate in a given situation). Norms are perceived as legitimate by a group if they possess a sense of "ought-ness" (Klotz, 1999), in which contestation is a social practice whereby actors discursively express the nascent/continued legitimacy of norms or challenge a norm's oughtness. Depending on how actors conduct normative encounters, contestation may culminate in conflict or consensus (Wiener, 2017). Usually, when contestation addresses the

application of a norm (i.e. applicatory contestation), it reinforces the norm (Deitelhoff & Zimmermann, 2018), and normative encounters culminate in consensus. Similarly, when contestation questions the righteousness of the norm (i.e. validity contestation), dissensus between parties is highly likely to occur at some point.

In institutional frameworks, consensus around a norm is achieved when it simultaneously enjoys formal validity, social recognition and cultural validation. As Iommi (2019) suggests, formal validity is created by the document's legal language, which can take the form of a hard law or soft law instrument (Abbott & Snidal, 2000). Social recognition is related to interactions between the negotiating parties that enact and validate the norm's meaning-in-use. Lastly, cultural validation is associated with mechanisms of international dialogue that legitimise the meaning of a norm across different regions and cultures (Iommi, 2019, p. 5). This consists of normative encounters that have to be inclusive, regular and institutionalized dialogues between stakeholders.

At the international level, the EU is said to have longstanding experience in building consensus by converging different preferences and cultural validations towards a constitutive horizon upon which to act (Barbé & Badell, 2020, p. 136). Although cultural validation does not apply to the EU as it is a single community of values, cultural validation is nonetheless present in the European Commission and the European Court of Justice. The roles played by the European External Action Service (EEAS) and Member States holding the rotating presidency also embody aspects of cultural validation as they involve mediation between parties to bridge divisions within the EU bloc.

Delving into the EU's role at the international level, the concept of Normative Power Europe (NPE) corresponds to the norm entrepreneur concept and proactively promotes and furthers the development of norms in areas such as human rights (Manners, 2002). NPE tackled external challenges such as cluster bombs or anti-personnel mines and helped the EU fill a niche in world politics and gain political weight beyond its material resources during the liberal golden decade that followed the Cold War. Its role was based on the goals of promoting norms and fostering effective multilateralism. Along these lines, Costa, Kissack, and Barbé (2016) posited that in light of global power shifts, external contestation may lead the EU to choose between promoting liberal norms or enhancing effective multilateralism.

More to the point, EU foreign policy is built upon international institutions and norms, which have been instrumental to the EU building up internal consensus on issues such as the International Criminal Court (ICC) (Costa, Collantes-Celador & Badell, forthcoming). Migration, however, does not fit into this equation, as there is no international norm that can articulate the internal EU consensus on the issue. If anything, the legal regime on migration is a patchwork (Ferris & Donato, 2020, p. 52). Actors have two logics of action: they act in both an interest- and in a norm-driven way. In other words, actors do not only follow the logic of consequences as their decisions are also driven by the logic's appropriateness (March & Olsen, 1998). This resonates with the EU's principled pragmatism, according to which interests and values need to go hand-in-hand in EU foreign policy (EUGS, 2016, p. 13). This thinking can certainly be applied to migration: the EU and Member States see it as a collective problem, but their interests are not aligned. The EU may act in an interest-driven way by transferring the daunting task of achieving a common solution that cannot be found at the intra-EU level to the international realm. But it is also acting in a norm-driven way, as by

mobilizing resources, the EU is creating a migration norm. Consequently, the GCM may find itself becoming the international norm that facilitates internal EU consensus.

The literature on norm contestation has recently explored which structural factors prevent a norm from falling into disuse (Deitelhoff & Zimmermann, 2019; Lantis & Wunderlich, 2018). In the EU, where foreign policy contestation can either result in contesting substantive norms and/or procedural norms (Diez, 2005; Juncos & Pomorska, 2011), there are four structural factors that enhance consensus, and thus strength (Juncos & Pomorska, 2011; Lewis, 2005; Michalski & Danielson, 2020). The first structural factor relates to expert culture and resides in different working parties establishing a common basis upon which to act (Costa & Müller, 2019). The existence of an agreement reached at this level constrains actors' behaviour. Second, the adoption of a common position is defined as a type of gradual entrapment (Thomas, 2011). This has been addressed by the literature of socialization or "Brusselisation", to some extent (Lewis, 2005; Michalski & Dannielson, 2020). The rationale behind this supposed entrapment is that it may be considered unacceptable not to agree on a common position if an EU document exists proving that the country has committed to the norm in question (Elgström, 2017). Third, when national capitals intrude at the diplomatic level (i.e. communities of practices), it may have profound consequences for EU foreign policy norms and values (Johansson-Nogués, Vlaskamp, & Barbé, 2020). Diplomats usually soften the noise coming from their capitals for the sake of reaching a compromise or mutual trust. When the presence of national capitals is strongly felt at the diplomatic level, however, we can expect that the community of practice will act simply as messengers of their capitals' national interest, privileging this over the agreed compromise between parties. Finally, the chair – in the form of the EEAS or the EU Member State holding the rotatory presidency – is tasked with mediating between parties to bridge divisions within the bloc. If this role is hindered or absent, EU unity will be hard to maintain.

We can break the structural factors down into three stages of contestation moving from greater to less consensus. In the first stage, contestation is normal and relies on EU foreign policy that is developed according to the agreed common guidelines and position. Bouts of dissensus are channelled through institutional instruments such as procedural mechanisms and remain unnoticed. Second, contestation as contention (c.f. Petri and Biedenkopf, this issue) deals with safeguarding the norm to preserve its content from internal and external attacks. Although some capitals may interact to block the EU from presenting a common voice, factors such as the agreed guidelines, the common position or the role of the chair may prevent EU unity from being watered down. The third stage is unrestrained or open contestation. At this stage, if there is no restraint in the form of the lowest common denominator outcome or the diplomatic firewall (i.e. community of practices), it will be impossible to protect the norm from validity attacks. This can result from strong objections coming from the national capital or a chair being deterred where neither the agreed guidelines nor the common position can channel contestation into consensus.

The EU's construction of an external migration regime

The EU migration regime has both internal and external dimensions. The first steps were taken in the 1970s and 1980s, when Member States addressed migration in informal

forums. The 1992 Maastricht Treaty identified migration as a matter of common interest for the first time, yet the initiative was led by the Member States in the Council. In any case, this initiated the slow process towards formalization and the transfer of authority. Migration became part of the third intergovernmental pillar of Justice and Home Affairs (JHA), where cooperation between parties was not legally binding. Moreover, the European Commission was associated, and the European Parliament informed or consulted if need be.

Later, the Treaty of Amsterdam slowly moved migration towards communitarisation by establishing an Area of Freedom, Security and Justice (AFSJ) (Zaun, 2017). It also introduced a five-year transition period during which unanimity prevailed. Once the Treaty of Lisbon was adopted, migration became a shared competence (Trauner & Ripoll Servent, 2016). Again, ordinary legislative procedure applies to different aspects of migration (e.g. family reunification) but not to legal migration. Article 79 of the TFEU states that the development of common immigration policy will not affect the rights of Member States to determine the number of third-country nationals seeking work that they accept. In other words, labour migration remains the competence of Member States.

Two EU Council formations are involved in managing migration: the JHA Council and the General Affairs Council. The most senior staff work at the Strategic Committee on Immigration, Frontiers and Asylum and the High-Level Working Group on Asylum and Migration, which covers the external dimension of migration. Working parties also discuss aspects such as integration, migration and expulsion, JAI-RELEX (coordinating the external migration dimensions), and borders and visas.

In addition, the European Council has become the migration agenda-setter as it has been responsible for issuing Council conclusions providing overarching guidelines. This was the case of the 1999 Tampere Conclusions, 2004 Hague Conclusions, 2009 Stockholm Conclusions and 2014 Brussels Conclusions. However, the latter marked a shift towards a less ambitious agenda that rapidly began to collapse in response to the 2015 migration crisis. Due to the internal disagreement on how to deal with the events that were unfolding, the European Commission replaced the European Council as the migration agenda-setter by launching the European Agenda on Migration (EAM). The EAM provided a comprehensive strategy concerning the migration agenda. For instance, in the short term, the EAM stated the need to mount rescue operations and save lives in the Mediterranean (e.g. Operation Mare Nostrum/Triton), while in the medium term, fighting smugglers was considered necessary (e.g. Operation Sophia/Irini). Although the European Parliament has slowly gained greater legislative power, its role regarding accountability for and scrutiny of the external dimension of EU policy has been decreased, when possible, to a minimum.

Furthermore, while migration was not mentioned in the European Security Strategy in 2003, it occupied a prominent position in the EU Global Strategy in 2016, both as a challenge and an opportunity (Ceccorulli & Lucarelli, 2017). The EU sees the external dimension as a way to give non-EU actors a voice in the decision-making process. It seeks to influence migration from non-EU locations and these countries' migration policies by linking these to development policy (Lavenex & Kunz, 2008; Reslow, 2019).

The European Commission also developed the 2016 Migration Partnership Framework (MPF), which combined aspects such as the mobility partnership, repatriation

and the visa facilitation agreement to use them as leverage for third-country cooperation around migration. More to the point, the EAM, the MPF and the 2015 Valetta Summit have allowed the EU to solve internal discrepancies between different Directorate Generals (interviews 1, 2 and 5). Since then, coordination between services has improved and now takes place weekly at a high level, ensuring that the Commission speaks with one voice (interviews 1 and 2)

The 2017 European Consensus on Development (ECD), for instance, speaks clearly to this new framework as it aims to fight irregular migration, resorting to the diaspora to improve development in countries of origin and establishing mechanisms for the temporary mobility of regular migrant workers (Cassarino, 2018, p. 401). In a similar vein, non-legally binding political frameworks for cooperation have also been developed, such as the EU-Lebanon Compact and the EU-Turkey Statement.

Recently, in March 2019, the European Commission declared that the migration crisis was over (European Commission, 2019). The announcement enabled the European Council to take the helm on matters of migration and become the main agenda-setter within the EU, by means of the EU Strategic Agenda (European Council, 2019).

When the EU reaches out to different international organisations (IOs), it can adjust its responses through the external governance of migration. According to Lavenex (2016), when the EU is interacting with IOs, three strategies may be followed: (1) IOs complementing or correcting EU policy; (2) IOs acting as subcontractors for the EU project; and (3) IOs transferring EU rules to other countries.

The EU and the UN Global Compact for migration

The UN Global Compact for migration at a glance

In December 2018, it appeared that the GCM had been granted formal validity, social recognition and cultural validation. Indeed, codification through a soft law instrument would facilitate agreement between parties and regional groups (i.e. cultural validation). The soft law instrument was seen as the lowest common denominator and facilitated global consensus over the meaning and validity of the norm. The migration norm was codified ambiguously to retain its flexibility, which relates to its non-binding status as well as the right of the state to explain its position or vote. In turn, contestation was regulated through different regional and international review conferences that will enable dialogue, compromise and consensus on the meaning and validity of norms, thus endowing these with legitimacy. Moreover, adherence to the GCM is voluntary, which suggests that formal validity would be something leading to consensus, not conflict. At the end of the process, an overwhelming majority of states supported the agreed norm and its scope: 164 states endowed the norm with social recognition when the GCM was adopted in Marrakech and then recognized by the UNGA.[2] Although the GCM is non-binding, the document reaffirmed "the sovereign right of States to determine their national migration policy" (United Nations, 2018). In other words, the document did not leave any doors open for potential clashes between national sovereignty and migration. If anything, the GCM states that national sovereignty is the fundamental norm of the migration regime.

Dynamics of dissent in the EU and Member States

As mentioned above, the migration crisis showed how EU migration governance was suffering from "low harmonization, weak monitoring, low solidarity and lack of strong institutions" (Scipioni, 2018, p. 1 366) and the policy responses during the crisis were seen as harming people's lives (Schimmelfennig, 2018, p. 979). More specifically, southern countries such as Greece, Italy and Spain started to doubt that other Member States were willing to help them with arrivals, while the main asylum countries did not trust that southern countries would record these appropriately (Fine, 2019). This led to a governance crisis within the III Dublin Regulation and the Schengen Area.

This opened up a window of opportunity for the European Commission to become an agenda-setter in migration policy. Three examples of this are the 2015 EAM, the 2015 Valetta Summit and the 2016 MPF. The EAM hopes "to build up a coherent and comprehensive approach to reap the benefits and address the challenges deriving from migration" (European Commission, 2015), while the MPF puts security at the core. This is based on a containment strategy aimed at preventing flows of irregular migrants into Europe, mainly by improving border management, strengthening surveillance and combating smuggling networks (Knoll & Weijer, 2016).

In this line, the EU started to address the relocation of asylum seekers through a temporary, Europe-wide instrument with specified rules and procedures, but it then seemed to be move backwards to engage in relocation with less formality, fewer players and more room for discriminatory practices (Fine, 2019). At the same time, the EU has signed ad hoc bilateral agreements such as the Emergency Trust Fund for Africa or the EU-Lebanon Compact and the EU-Turkey Statement. These agreements followed in the footsteps of the GCM: they were political frameworks for cooperation and were not legally binding, which allowed the European Parliament to be bypassed.

The EU also aimed to increase collaboration with third-party countries and IOs such as the UN and the IOM. The 2017 ECD already stressed that the EU and its Member States would "take a more coordinated, holistic and structured approach to migration […] support[ing] the further implementation of the joint 2015 Valetta Action Plan and the elaboration of the UN Global Compacts on Migration and Refugees" (European Union, 2017e, p. 18). This was further institutionalized in different Council conclusions such as those of the 2018 European Council, where – in close cooperation with relevant third countries – it was agreed that regional disembarkation platforms would be established to "eliminate the incentive to embark on perilous journeys" (Council of the EU, 2018).

Migration was promoted through the norm leadership of the German Chancellor Angela Merkel, it received media attention and became a topical public issue, and the scale of the crisis led governments to take some action (Hall, 2019). However, at the intra-EU level, actors were defending increasingly polarized positions. For instance, the Hungarian prime minister Viktor Orbán's advocating for an EU anti-immigrant narrative or former Italian minister Salvini's views on Operation Sophia are clear examples of this (Hopkins, 2019). Events such as these prompted the EU to take migration to the international level as a way of solving internal disagreements, which it did by resorting to the 2016 Council conclusions on Migration and the ECD. Transferring such a delicate matter to an international institution might be seen as an attempt to de-politicise the

issue. The less politicized an issue becomes, the more it will be dealt with through institutional norms and rules such as procedurals mechanisms (Jørgensen & Costa, 2012, p. 254). The rationale was two-fold: moving the issue to the international level would bring more actors to the table to discuss it, and the outcome would be more legitimate as it would give a voice to origin, transit and destination countries. Secondly, tackling migration, which is a low politics issue and is characterized by weak institutionalization, would influence the intra-EU policy-making process by disempowering Member States, thus diluting harsh views on the issue and empowering EU institutions (Kissack, 2012). In this line, the UN was seen as a venue that was more amenable to EU preferences and goals (c.f. Guiraudon, 2000; Kaunert & Léonard, 2012).

Channelled contestation (December 2016–March 2018)

The 2016 New York declaration set the mandate to negotiate a GCM.[3] The EU was rapidly seen as a key actor and it remained so throughout the drafting and negotiation process. The GCM rules of procedure granted the EU a standing status to participate in negotiations (United Nations, 2017). During the thematic sessions in Geneva and New York, the EEAS represented by the EU delegation and its appointed chair worked with the Member States to present the EU's lines in the sand in the negotiation. More importantly, the EU interventions were based on the task mandated by the Council conclusions but also by the EU Guidelines agreed by CONUN (European Union, 2017c). The presence of the structural factors including the absence of national capitals led the EU discussion to be described as a boring everyday multilateral negotiation (interview 3).

Not only did the GCM set out the shared commitments to improve migration governance, but it also used goals that were already part of the EU's internal and external dimensions as the framework in which the document was formulated. At this point, no internal actor was contesting the negotiation process, and a shared red line was clear: migration is not a human right and therefore the document should not reflect that idea (interview 6). Indeed, the EU delegation in New York delivered statements on behalf of the 28 Member States that confirmed the existence of a common position regarding the GCM. The EU delegation recalled the "sovereign right of states to determine whom to admit to their territories and under what conditions, subject to that state's international obligations" (European Union, 2017d, p. 1) while reinforcing "the principles of solidarity and shared responsibility in managing large movements of migrants" (European Union, 2017b, p. 1). This should be developed in line with "the core international humans rights treaties and States must fully protect the human rights of all migrants, regardless of their migratory status" (European Union, 2017a, p. 3).

In a nutshell, Member States not only aligned themselves with the statement made by the EU delegation but also pushed to introduce new areas. Bulgaria, which later left the agreement, advocated addressing the rights of the child in the GCM: "migrant children are children first and foremost [... and] they [are] entitled to all human rights" (Bulgaria, 2017). At this stage, it seemed that the EU had successfully externalized and solved an internal problem while producing the first intersubjective agreement on migration.

Contained contestation (April–August 2018)

In December 2017, before the Puerto Vallarta meeting, the US pulled out of the agreement, noting that "unlike standard titles for international instruments, 'compact' has

no settled meaning in international law, but it implies legal obligation" (United States, 2018). This instance of external contestation resulted in delayed contestation at the EU level. In March 2018, Hungary started to voice discomfort with the GCM and challenged the EU's common position by claiming that "migration is an unfavourable and dangerous process". The country's rhetoric followed the normative claims used by the US. Hungary stated that "migration is not a basic human right" and claimed that "the international community must realize that migration is not beneficial for anyone" (Hungary, 2018).

More importantly, even though Hungary intervened by means of its Foreign Minister and decided to block the EU from speaking with one voice, this did not cause any spillover effect. The European Commission was aware that the situation could result in the repolarization of migration, this time at the international level. For that reason, after the EU delegation in New York tried to persuade Hungary by referring to the entrapment of the common position and even involving HR/VP Mogherini to bridge the division between parties (interview 4), the European Commission proposed two Council Decisions in April 2018 authorizing the Commission to conclude the GCM on behalf of the EU and its Member States. The President of the European Commission may have defended this approach when he claimed that "[i]f one or two or three countries leave the United Nations migration pact, then we as the EU can't stand up for our own interests" (European Commission, 2018). At the end of the day, the Council and European Commission legal services got involved and worked to achieve a compromise. As both services reached different conclusions, the European Commission's proposals were not adopted by the Council and were later withdrawn (interviews 4–8). Finally, an agreement between the remaining 27 Member States authorized Austria to speak on their behalf (interviews 4–8), containing the episode of internal applicatory contestation.

The EU found a pragmatic solution by appointing Austria to the rotatory presidency to speak on behalf of the EU. The country had the EU delegation's material and logistic support to present a common position in the form of lines to be followed on behalf of the EU as a whole and the 27 Member States (interviews 5–7 and), so much so that the EU seat in the General Assembly was empty as Members rallied behind Austria (interviews 4 and 5).

In light of these events, the European Parliament passed a cross-party resolution calling the EU to live up to its commitments as a global actor and focus on the need to show unity and speak with one voice (European Parliament, 2018b). Member States continued to work in line with CONUN guidelines and the agreed common position. The Foreign Minister of Hungary decided to attend subsequent meetings, the only minister present. In procedural matters, this led Hungary to be the first speaker on the list followed by regional blocs such as the EU-27 (interview 4). Concerning Hungary's attempts, Bart De Wever, the leader the New Flemish Alliance (NVA, a right-wing populist party), which party was part of the Belgian coalition government, pointed out that "neither Trump's nor Orbán's withdrawal from the Global Compact caused a turning point for the party's support of the international instrument" (De Weber quoted by Cerulus, 2018). Moreover, the withdrawal of the US left the EU as the main actor during the drafting of the final document (Martín Díaz & Aris Escarcena, 2019, p. 273), when it presented a list of 23 objectives it conceived as best practice guidelines. Ultimately, EU unity was preserved and, as one interviewee pointed out, this owed to the

fact that other delegations such as the Holy See's reacted to Austria's statements by referring to it as the EU (interview 4).

Open contestation (September–December 2018)

Between the final negotiating round in July 2018 and its final adoption in December of that year, the latent political conflict over migration re-emerged. Although the EU contained Hungary's contestation by appointing Austria as the EU speaker, with support from the EU-27 and the EU delegation in New York, the lack of a communication campaign in the months leading up to the Marrakech Conference sealed the fate of the GCM (interviews 4 and 6). Far right and right-wing populist influencers started to spread fake news on Twitter, Facebook and YouTube (Colliver cited by Cerulus & Schaart, 2019). This marked a turning point, as it was the first time that the significance of the GCM reached the public sphere. This led to a political clash within the Austrian cabinet: the Foreign Minister was in favour of the agreement and Chancellor Kurz was against it.[4] Ultimately, it was Kurz's vision of the GCM that prevailed, and Austria decided not to support the agreement by claiming that "migration is not and should not become a human right" (Murphy, 2018). Comparing the episodes of Austria's and Hungary's dissent, interviewees have stated that while the Hungarian diplomats were very aggressive on the subject, the Austrian diplomats tried to be as respectful of their EU colleagues as possible (interviews 6–8).

Austria's decision to withdraw sparked a series of doubts at a time when the diplomatic level was no longer present. The withdrawal is important because Austria was also negotiating on behalf of the EU and its Member States, which is significant because the Member State holding the rotating presidency of the EU usually plays a mediating role and bridges divisions within the bloc (interviews 4, 6–8). This explains why Austria's decision had an immediate impact on the other Member States, rapidly triggering uncertainties and opening the door to greater political conflict, which had been contained up to that point.

As a result of Austria's decision to withdraw, the NVA quit the Belgian cabinet, since it refused to support the GCM, and the Belgian government collapsed. If Austria showed that civil society organizations were starting to take an active part in the GCM debate, Belgian Flemish nationalist parties paved the way to popular mobilization. Poland and the Czech Republic also echoed Austria in speaking out against the GCM. They felt that the agreement did not guarantee countries' national sovereignty, and Poland also deemed that the agreement was not be in line with "the priorities of the Polish government, which are the security of Polish citizens, and the maintenance of control over the migration flow" (PAP, 2018), while the Czech Republic argued that the document should have stated that illegal migration was undesirable. The countries that referred to the GCM as a norm creating a right to migration that clashed with national sovereignty were seen by their opponents as having laid the groundwork for a more hostile migration agenda (Squire, 2019, p. 160). This contestation was also echoed by the Italian government, which split along party lines: the prime minister, Giuseppe Conte (Movimento 5 Stelle), expressed his support for the GCM at the UN, while the former minister of the interior, Matteo Salvini (Lega Nord), announced that the government would not support it. Member States such as Germany decided to transfer the decision to approve the GCM to the German Parliament, due to the polarization triggered by the

far-right party Alternative for Germany. Throughout this process, the only institution that criticized the campaign of disinformation and strongly opposed countries' decisions to leave the agreement was the European Parliament (European Parliament, 2018a).

It could be argued that the dynamics of dissent emerged at a time when none of the EU foreign policy structural factors were present and thus EU Member States' actions can be framed as contesting EU both the application and validity of procedural norms and more precisely the EU's norm of sincere cooperation (Melin, 2019). Tensions were rising between actors and arenas in relation to the expected moral reach of the migration norm, the implementation of which was also contested. This resulted in EU actors dividing into four major blocs according to the degree of normativity given to the migration norm. Some 14 Member States (Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Luxembourg, Portugal, Slovenia, Spain and Sweden) approved the GCM without an additional note and agreed on the need for a norm on migration to be created. Four Member States (Denmark, Malta, the Netherlands and the United Kingdom) approved the GCM while attaching an explanatory note that restated that national sovereignty prevails over migration matters, emphasizing that migration normativity had to work hand-in-hand with the norm of sovereignty. The third bloc was made up of the three Member States that opposed the GCM (Czech Republic, Hungary and Poland), which claimed that migration was merely a norm derived from the fundamental norm of sovereignty. Finally, five Member States abstained from voting (Austria, Bulgaria, Italy, Latvia and Romania), while the Slovakian Foreign Minister who helped to set the GCM in motion did not attend the vote after the Slovakian Parliament voted against signing the agreement.

Conclusions

This article has explored the structural and agent factors accounting for the dynamics of dissent within the EU and its Member States regarding a particular event in EU foreign policy: the UN Global Compact for Migration. It has argued that structural factors may account for the resilience of EU foreign policy norms.

The 2015 migration crisis led the EU to develop pragmatic entrepreneurship by taking the need to address migration to the international level. The rationale behind this initiative was to produce an international agreement on migration for the first time. The move was pragmatic and was driven not only by normative EU needs but also driven by EU interests in finding common ground in an area where Member States' interests are not aligned at the EU level. By moving the debate to another arena, the EU hoped to address migration in a less politicized manner by adopting the GCM as the migration norm that could eventually produce internal consensus at home. In other words, the UN framework was seen as a venue that was more amenable to the EU's preferences and goals.

More to the point, this article has argued that there are four structural factors that may channel contestation into consensus. Firstly, the existence of a common position enabled parties to entrap reluctant members and get them to commit to what has been agreed. Similarly, the involvement of CONUN as the working party during negotiations led guidelines to be agreed on based on an expert culture. Thirdly, the absence of national capitals in the debate allowed diplomats defined as a community of practices to find

common ground. Lastly, the role of the chair proved critical when disagreements were about to cause bouts of dissensus. These four factors were operationalized over three stages, moving from greater to less consensus.

During initial negotiation for the GCM, from 2016 to early 2018, the EU was seen as a key actor. It framed the agreement in line with the common position – namely the 2017 ECD as well as the CONUN guidelines which structured the EU voice, such that the GCM will engage in transferring EU rules to third-party countries. The capitals were fairly silent at this stage, and the process was described as another classic multilateral negotiation.

However, during the official negotiations that followed this stage (early 2018 to July 2018), the EU faced internal objections from Hungary and its foreign minister. Although the interference of the capital prompted Hungary to step outside the EU's common position and block any formal presence by the EU, different structural factors interacted to reach a pragmatic solution, which proved that EU foreign policy norms were resilient. At that stage of contestation, even though Hungary mobilized resources to hinder EU unity and EU voice, the presence of different structural factors facilitated the agreement over EU presence and its nature. The existence of a common position and agreed guidelines, together with a commitment from EU Member States, led the Austrian delegate being appointed to speak on behalf of the EU-27 during plenary sessions. In other words, the EU-27 continued to work collaboratively by preserving the image of EU unity and channelling contestation within the margins of consensus. Some Member States were troubled that this new way of working might set a precedent for other areas of EU foreign policy.

The agreement was concluded in July 2018 after the EU-27 gave it the green light, but structural factors such as the existence of a common position or CONUN guidelines were no longer present. This explains why the political level represented by the capital was of greater influence in the lead up to the intergovernmental conference in Marrakech in December 2018. This was mainly due to the role of the public sphere, in the form of both mass media and far-right activists who had started to notice the GCM. But the most important factor was Austria's role as both the speaker appointed by the EU-27 during negotiations as well as being the country holding the Council presidency at that time. Austria's decision to not adopt the GCM triggered a domino effect in which reluctant countries such as Poland and actors such as far-right parties in governments like Italy's or Belgium's contested the agreement, and the absence of structural factors paved the way to dissensus.

All in all, the contestation of the GCM not only entailed internal tensions between migration and national sovereignty but also led to the contesting of substantive EU norms such as multilateralism, and procedural norms such as the principle of sincere cooperation. Although the GCM can be read as an EU fiasco at the international level, the EU and its Member States proved that EU foreign policy was more resilient than one might have expected due to the presence of structural factors inhibiting dissensus.

Migration remains a divisive issue and in contrast to what might be expected from the contestation literature, the GCM highlighted that the more abstract the agreement, the more likely dissensus is. The first follow-up conference will take place in Europe, while the International Migration Review forum is scheduled to take place in 2022. These forums might serve to regain the confidence of opposing parties if a peer-learning

methodology is adopted. Looking beyond the specific topic of this paper, it has pointed out that national populist networks might be starting to develop international partners. More attention is needed to understand how domestic networks shape the foreign policy views of right-wing populist parties as well as how international networks influence them. In addition, the debate around migration case shows that contestation of EU foreign policy is profoundly endangered when actors decide to prioritize their domestic agenda or national preferences and abdicate the responsibilities and duties that lie within their institutional power.

Notes

1. See Bonjour, Ripoll Servent, and Thielemann (2018) for a more recent discussion of EU migration policies and the limitations of venue shopping.
2. Three drafts have been negotiated: the Zero Draft on 5 February 2018, the Zero Draft Plus on 5 March 2018 and the Final Draft on 11 July 2018. The Final Draft was ultimately adopted and recognized.
3. The New York Declaration also mandated state parties to negotiate a compact for refugees.
4. Chancellor Kurz supported the GCM when he was Minister of Foreign Affairs during the grand coalition cabinet and opposed it when he led the government in coalition with the Austrian far-right party.

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Interviews

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