

PhD project – Felix Peerboom

‘A Legal Scrutiny of Instrumentalised Migration to the EU’

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Outline

- Setting the scene
- Added value of my research
- Research question(s)
- Methodology
- Structure

Setting the scene

A 'new' kind of inflow:

- Summer of 2021:
 - Lukashenko accused of deliberately organising travel (flights) to Belarus in order to facilitate movement towards EU
 - No clarity on exact numbers, reportedly: several thousands
- Why?
 - i. Retaliation for EU sanctions
 - ii. Humiliate EU/MS
 - iii. Sow division
 - iv. De facto recognition of Lukashenko as President
- Labelled as 'instrumentalised migration (IM)'
- Public discourse: a wholly new era of international power politics
- EU Institutions (JOIN(2021) 32 final): "a significant new threat to EU/MS security"
 - Not foreseen in original pact, but is it new?



Nothing new:

- K. Greenhill (April 2022): “States and non-state actors have resorted to this tactic **at least 81 times – and possibly many more** – since the advent of the 1951 Refugee Convention”.
- Similar EU accusations against:

Morocco:

Reduction of surveillance of borders with Spain, e.g. in May 2021
(+ 8000 arrivals)



Türkiye:

Opening borders with Greece in February 2020
(+ 20.000 arrivals)



‘Instrumentalised’ migration:

- No legal definition (yet)
 - Art. 2(27) SBC revision (French Presidency text - May 2022)
 - Art. 1(3) Crisis, Instrumentalisation and *Force Majeure* Regulation (compromise text - June 2023)
 - EP opposition, discussion on whether EP might agree in return for mandatory monitoring bodies at borders in screening process, e.g. by nat. HR institutions/ombudsman, int. org., NGOs (LIBE - Draft Report on Screening Regulation)
 - Let’s see what happens in negotiations
- Working definition for my study:
 - *The deliberate creation/exploitation by states of migration flows with the aim of obtaining political; military; and or economic concessions from, and or destabilise/humiliate, a recipient entity.*

Added value of my research project

- IM generally discussed in (*quasi*)-legal/*jus ad bellum* language:
 - *E.g.* ‘violation of sovereignty/territorial integrity, ‘aggression’, ‘attack’, ‘threat’, ‘warfare’, etc.
 - Legal appropriateness remains wholly unclear
- IM remains underexplored political sciences
- Even worse in legal academia
 - My project thus aims to analyse IM from a (predominantly) legal perspective

Research question(s)

Legal uncertainty on three levels:

1. Public International Law:

- What is IM, and how could it be conceptualised under PIL?
- To what extent is the use of IM practices (il)legal under PIL?

2. EU Migration Law:

- To what extent have the EU/MS been confronted with IM in recent years?
- How is the EU legal framework concerning asylum, immigration and external borders organised, and in what ways does it enable/constrain the EU/MS in responding to IM?

3. International/EU human rights law:

- How is the EU's human rights framework organised, and how does — or should — it affect the ability for the EU/Member States to respond to IM?

Main research question:

How can 'instrumentalised' migration be legally conceptualised, and to what extent do EU and Member States' responses to the claimed occurrence of this phenomenon show compliance with migrants' fundamental rights?

Methodology

- **Doctrinal elements of the study**
 - Predominantly doctrinal legal analysis + case study approach
 - Desk research of relevant primary sources of PIL and EU law
 - Supplemented by reference to secondary sources (incl. from other academic disciplines, *i.e.* the political sciences)
- **Interdisciplinary elements of the study**
 - Before legal analysis: state of the art of the contemporary (largely political scientific) literature
 - Existing theories and understandings will not be criticised for internal logic/convincingness in own academic discipline □ juxtaposed with my project's legal findings
- **Empirical elements of the study**
 - Approx. 15 interviews with relevant stakeholders
 - Room for state/policy-maker perspective
 - Understanding of how the phenomenon is dealt with 'on the ground' □ existing data is very limited
 - ❖ Limitations: findings might not be generalised + socially desirable/partial answers

Structure

- Introduction
- Chapter 1: Theorising IM
- Chapter 2: PIL conceptualisation of PIL
- Chapter 3: IM in a European context
 - Case study approach:
 - i. Belarus
 - ii. Türkiye
 - iii. Morocco
- Chapter 4: FR law analysis of EU/MS responses to IM
- Chapter 5: Common trends & main findings
- Conclusion

Questions/comments?