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## Strategic non-regulation as migration governance

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### Abstract

Over the last decade, critical migration scholarship has been increasingly concerned with how state actors in both the Global South and Global North deploy forms of inaction and ambivalent action to govern migrants. Scholars have mobilized and developed concepts to capture such strategic non-regulation, ranging from notions of standoffishness, ignorance, indifference, ambiguity, adhococracy, and informality in political science, IR and sociology, to necropolitics, ignorance, opacity, obfuscation, non-recording and liminality in anthropology, socio-legal studies and political geography. Scholars thus seem to agree that the strategic use of non-regulation by state actors is a significant aspect of migration governance. Yet, conceptual and methodological advances remain fragmented and scattered across geographical regions and disciplines. This paper argues that much can be gained by putting the different conceptual and methodological innovations on strategic non-regulation into dialogue. First, consolidating insights from different bodies of scholarly work moves analyses of strategic non-regulation from the fringes of migration scholarship to its center and demonstrates that strategic non-regulation is a core feature of migration governance. Second, bringing these different works together enables us to synthesize the variety of analytical strategies that scholars have devised to empirically locate the elusive phenomenon of strategic non-regulation. Overcoming disciplinary and geographical divides in the study of strategic non-regulation will also be key to advance broader social science debates on the political functionality of policy failure and on the interplay between state capacity and political will - in migration governance but also beyond.



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## 1. Introduction

2014 – hoping to understand the prospects for refugee integration in Egypt, a country without a comprehensive domestic asylum policy, interviews with government officials, international organizations, local NGOs, and migrants and refugees themselves, expressed a version of: *“Egypt might not have a formal policy, but the government certainly knows and monitors what’s going on.”*

2016 – exploring how and why restrictive migration policies had remained in place in democratizing Tunisia, one Tunisian respondent concluded: *“Tunisia does not want to be held accountable by something that is written, that is palpable, like a residence card, a law, a circular [...] Whatever domain you are looking at, you will find the same logic, keeping the ambiguity, so that discretion remains the basic framework for managing migration.”*

2017 – discussing with a Lebanese human rights lawyer why it seems so impossibly hard to pinpoint status regulations for Syrian refugees in Lebanon, even for experienced professionals, he suggested: *“in one way or another [uncertainty] is something that’s used across our region by governments to control - whether it is associations or whether it is to control migrants or whether it is people. Like, to put you in a place where you don’t really know; it’s neither black nor white, you don’t know, it’s a grey area.”*

At the time of our respective fieldworks across the ‘Middle East and North Africa’ throughout the 2010s, there was no ready-made theoretical framework within migration studies that would allow us to make sense of our fieldwork observations and our respondents’ statements indicating the strategic nature of non-regulation – something we did not initially aim to study but which surfaced as crucial for our analyses of migration governance. In search of conceptual inspiration, each of us turned to a different body of scholarship outside of migration studies: to discussions around ad-hocracy in organizational and public policy studies (Natter, 2022); to research on informality and state regulation of smuggling, street vending and protests in sociology and political science (Norman, 2021); and to studies on ambiguity in political geography and ignorance studies in sociology (Stel, 2020).

Obviously, we were not the only ones struggling to empirically ‘capture’ and theoretically situate such (strategic) non-regulation. Within migration studies, many anthropologists and socio-legal scholars have observed that migrant experiences are defined as much by the presence of regulation as by its absence or ambivalence, creating feelings of insecurity, exhaustion and disorientation (Agier, 2008; Ansems de Vries and Guild, 2019; Horst and Grabska, 2015; Tazzioli, 2019). At the same time, an abundance of studies in political science and political geography has challenged statist claims that migration is governed through coherent state action or concerted decision-making by highlighting gaps, inconsistencies, and ambivalences in migration governance (Lenner, 2019; Norman, 2021; Schiltz et al., 2018). Detailed accounts of informal governance, the consequences of piecemeal legislation, implementation gaps, and ambiguous decrees have accumulated to the extent that we can no longer see non-regulation as the exception to the rule of regulation, but rather need to acknowledge it as a core facet of migration governance.

The often implicit but quite dominant assumption in the literature has been that such non-regulation signals governance failures, deficits and limited capacity (Czaika and De Haas, 2013; Dini, 2017; Freeman, 1994; Sadiq and Tsourapas, 2021; Ulusoy, 2021) or reflects the inevitable compromises produced by political decision-making (Pugh, 2021) and the inherent complexities of modern bureaucracies ‘muddling through’ (Kalir, 2014; see also Eule et al, 2019; Gazzotti et al., 2022; Triandafyllidou, 2022). Importantly, this reading of non-regulation is often also the default understanding - or claim - of many of these governance actors themselves: ‘we want to govern comprehensively and reliably, but we unfortunately do not have the means to do so’ - a position adopted for reasons varying from genuine conviction to attempts to maximize funds or to avoid accountability.

However, critical migration scholarship since the mid-2010s has shown that many instances of non-regulation emerge and persist precisely because they serve the interests of those seeking to control or benefit from migration (Anderson, 2014; Biehl, 2015; Chimni, 2003; De Genova, 2002; Kalir and Van Schendel, 2017). As proposed by Stel (2020: 13-14), non-regulation can have different, and mostly intertwined, functions in the governance of migration. First, strategic non-regulation can be a form of outsourcing responsibilities to other actors, such as migration and refugee service providers or international and domestic NGOs (Davenport and Leitch, 2005; Gammeltoft-Hansen et al., 2017; Kassoti and Idriz, 2022; Norman, 2021). Second, it can be a means to maximize flexibility and leeway, where inaction and ambivalence allow actors to placate different audiences or stakeholders at the same time (Matland, 1995; Frost, forthcoming; Natter, 2021; Oomen et al., 2021). Third, it can be a tactic to avoid accountability, where vague, ill-defined, or absent rules and mandates obstruct transparency and allow for impunity (Davitti, 2020; Costello and Mann, 2020; Feith Tan and Gammeltoft-Hansen, 2020). Fourth, strategic non-regulation can operate as a disciplinary strategy, where it creates an institutional landscape determined by uncertainty and unpredictability that increases the discretionary power of authorities and undercuts the possibilities for concerted collective action of migrant communities (Ansems de Vries and Welander, 2017; Ilcan et al., 2018; Stel, 2020) – even if strategic non-regulation may also be beneficial to migrants, something we return to in the conclusion of this article.

What we call non-regulation – operationalized as state actors’ use of inaction and ambivalent action – is thus not merely a ubiquitous phenomenon, it is also often

strategic – something we conceptualize as encompassing both intent, in the sense of conscious and deliberate choice, and convenience, in the sense of more systemic or structural functionality. This article thus departs from the assumption that migration is not just governed *despite* non-regulation, but often is also governed *through* it; that strategic non-regulation is a form of migration governance in its own right that deserves to become a more central and systematic object of scholarly inquiry. Yet, strategic non-regulation is tricky to empirically study. While the pertinence of strategic non-regulation resonates with many migration scholars, it is an elusive object of analysis. In fact, as was the case for us, other scholars working on different empirical contexts from across the Global South and North, especially the Middle East, North Africa and Europe, have largely stumbled on forms of strategic non-regulation without necessarily having set out to study it in the first place. To make sense of these empirical realities, they have turned to a wide variety of literatures and concepts.

Notions like standoffishness and indifference originated in Political Science and IR, concepts such as ambiguity, adhococracy and uncertainty in Sociology and Public Administration, terms like the politics of waiting and liminality have been mobilized in Anthropology and Geography, and Law has developed concepts such as irregularity and informality. Interestingly, while both non-regulation and its strategic nature have often been cast as ‘typical’ for states in the Global South considered ‘illiberal’ and ‘weak’, many of the conceptualizations of strategic non-regulation in fact originate from case-studies of states in the Global North that are considered ‘liberal’ and ‘strong’ (Gatta, 2019; Kubal, 2013; Nawyn, 2016). However, these diverse scholarly works often do not engage with each other (Natter, 2018; Stel, 2021), which risks underplaying the significance of strategic non-regulation as a core facet of migration governance worldwide.

Our aim in this paper is to move beyond this nascent stage of individual and disciplinary conceptualization, to connect and synthesize these different concepts, and to offer scholars interested in studying strategic non-regulation a more concerted vocabulary and set of empirical strategies. As developed below, we propose the notion of ‘strategic non-regulation’ as an umbrella term to bring together a wide variety of concepts that engage with the use of inaction and ambivalent action by state actors in ways that serve these actors’ stated and/or unstated interests and objectives as relating to the governance of migration.

In this paper, we consolidate this emerging, yet still fragmented, literature on strategic non-regulation by proposing a concerted framework (introduced in the next section) that organizes concepts exploring aspects of strategic non-regulation along three dimensions: whether they focus on policy-making or are more interested in policy implementation; whether they address inaction or rather ambivalence; and whether they emphasize intent or focus on convenience. In doing so, the paper makes three core contributions: First, it offers new ways to escape some of the tenacious binaries defining the field of migration studies, contributing in particular to de-exoticizing (migration) governance in the Global South and de-idealizing it in the Global North (Jaffe and Koster, 2019), as well as to connecting scholarship on the disciplinary strategies of state actors and the autonomy of migrants to yield a more overarching analysis of governmentalities of migration. Second, it sheds crucial light on theoretical questions of how to consider policy failure and success in migration governance and the related intersections between state actors’ capacity and will (Castles, 2017; Norman, 2021; Stel, 2020). Recognizing the strategic dimensions of non-regulation has important

implications for political and policy engagement that now often, and we would suggest misguidedly, considers capacity-building and funding as a panacea for ‘better’ migration governance, routinely avoiding the more pertinent question of political will to which we return in the conclusion. Third, since strategic non-regulation has profound repercussions for migrants in that it often, although not automatically or always, diminishes their protection and undercuts their agency, understanding and analyzing the phenomenon might help counter these pernicious impacts (Cullen Dunn, 2012; El-Sharaawi, 2015).

In the remainder of this paper, we first, in section 2, conceptualize strategic non-regulation as the proposed umbrella term to capture both convenient and intentional inaction and ambivalent action in migration governance. In section 3, we systematically discuss specific concepts that seek to grasp strategic non-regulation in migration governance across disciplines, identifying different approaches to conceptualizing and empirically studying ‘non-regulation’ on the one hand and ‘strategy’ on the other. While the pertinence of studying strategic non-regulation intuitively resonated with scholars and practitioners familiar with migration governance, we always met the inevitable pushback: ‘but how do you *prove it?*!’ In section 4, we therefore discuss concrete pointers on not just how to *think about* strategic non-regulation, but how to actually *empirically study* it. In the concluding section 5, we then zoom out to highlight what our analysis of this emerging body of work might mean for the study of migration governance as well as governance writ large.

## 2. The Umbrella Concept: Strategic Non-Regulation

We have started off this paper noting that the salience of strategic non-regulation is evidenced by the fact that it comes up, albeit under different terms, across disciplines and geographies. We find instances of strategic inaction and ambivalence in different disciplinary contributions to migration studies and in cases across the Global North and South. This also means that our discussion below encompasses a vast array of different practices and institutions. We are convinced that it is analytically productive to consider them under one and the same umbrella term – strategic non-regulation – because, as argued above, it allows us to see the significance as well as the variation of strategic non-regulation and because it makes possible an analytical and methodological cross-fertilization in terms of rendering strategic non-regulation empirically researchable. In this section we motivate our choice for the term strategic non-regulation in migration governance as an umbrella concept and operationalize its two core components – non-regulation and strategy – to provide the foundation for the remainder of this paper.

### *Migration Governance*

We consciously use the term ‘governance’ to signal that regulation, in this case of the field of migration, is not solely the domain of ‘government’ (i.e. the state) but rather that it emerges through the interaction of a complex assemblage of public, private, and societal stakeholders ranging from politicians, bureaucrats, NGOs and CSOs, humanitarian agencies, entrepreneurs and businesses, and international organizations. Yet, we also consider that within these assemblages, state actors take on a particularly central role in migration governance. Indeed, the very phenomenon of migration only exists due to the prevalence of an international nation-state system and its bordering practices (Van Houtum and Van Naerssen, 2002; Van Houtum and Bueno Lacy, 2020).

Despite developments of governance moving ‘up’ and ‘down’ from the national ‘level’ and the increasingly transnational nature of migration governance, it is arguably still state actors that shape the parameters for migration governance (Betts, 2011; Hansen and Stepputat, 2005). In this paper, we therefore focus on non-regulation by state actors. However, our conceptual work in this paper could fruitfully be put into conversation with other work that evidences how inaction and ambivalence might be strategically used by humanitarian and development organizations (Cullen Dunn, 2012; Fejerskov, Clausen and Seddig, 2023) or international organizations (Krause, 2022; Stricker, 2019) active in the migration governance field.

### ***Non-regulation: inaction and ambivalence***

Non-regulation is per definition elusive as it regards things that are absent, partial, and vague. To clarify the scope of our discussion, we follow Stel (2020) in conceptualizing non-regulation as combining inaction and ambivalent action. Inaction refers to the absence of decisions and actions (Barber, 2017) and ‘not dealing with’ modalities of governance (Kalir and Van Schendel, 2017: 6); to instances where state actors have the mandate to act but do not do so (McConnell and ‘t Hart, 2014) and where they engage in nonperformativity (Ahmed, 2006 in Stel, 2020), claiming to act while remaining inactive. Ambivalent action concerns the inconsistent, ambiguous or contradictory aspects of policies or actions toward migrants (Best, 2012; Norman, 2017; Pinker and Harvey, 2015), where decisions are conditional or temporary, regulations are vaguely formulated, mandates left imprecise, and implementation guidelines are contradictory or partial (Nassar and Stel, 2019). Crucially, these two dimensions of non-regulation often go hand in hand. Inertia and avoidance are never total and often enable forms of ambivalence. Our understanding of non-regulation encompasses both inaction and ambivalence in formal law and policy-on-paper, as well as in informal policy and practice. As the discussion later on will show, formality and informality are tightly related to one another: inaction in the formal realm might generate ambivalence in both formal and informal dimensions of governance; ambivalence in formal laws and policies might legitimize or incentivize inaction in formal governance and further ambivalence in informal practices.

### ***Strategy: intent and convenience***

Inaction and ambivalence – in migration governance as in other realms of governance – is neither surprising nor necessarily problematic. As we flagged in the introduction, non-regulation is a natural contingency of political consultation and compromise, of the temporal divergencies between decision-making and implementation, of the administrative complexities of modern multi-scalar bureaucracies, and of the inherent scarcity of resources. Here, however, we are interested in *strategic* non-regulation. This excludes the extensive scholarship that considers forms of non-regulation in migration scholarship solely or primarily from the angles of complexity, capacity, contingency or ‘muddling through’. Instead, we discuss and synthesize scholarship that has acknowledged that many of the gaps and loose ends we consider as forms of non-regulation are contingent on finite resources and inevitable organizational intricacies and path-dependencies, but that this only tells part of the story that many forms of non-regulation are at least partially either created or maintained because they serve the stated or unstated aims of government actors better than regulation.

Strategy, in this paper, refers to the productive and functional nature of non-regulation, with various forms of inaction and ambivalence as discussed in the next section potentially serving as tactics towards these strategies. As we noted above, non-regulation serves interests: it allows for de facto outsourcing, for flexibility, for avoiding responsibility and accountability, and for controlling migrants and other stakeholders in migration governance. Calling non-regulation strategic thus aims at revealing and tracing these functions. All the concepts we discuss in section 3 under the umbrella term of strategic non-regulation assume, in essence, that state actors benefit from non-regulation and thus might seek to create and extend it. In this sense, strategy is often intuitively associated with intent, by which we mean the deliberate, conscious choice for a particular course of action or inaction, clarity or ambivalence (Natter, 2021), or with the purposeful pursuit of explicit objectives. This is certainly a crucial aspect of our understanding of strategy.

Yet, we complement this intentional aspect of strategy with an understanding of strategy as convenience (Stel, 2020). From this perspective, non-regulation is understood as having functions and serving interests, but the focus is less on tracing the direct agency behind these interests and functions and linking them to specific state actors and more on understanding the systemic dimensions of forms on inaction and ambivalence. Strategy as convenience seeks to understand how non-regulation follows from, but also upholds, legitimizes, and reproduces, migration regimes that serve the interests of state actors over those of migrants (Lemaire 2019; Tazzioli, 2019).

These two forms of strategy complement each other in terms of the units of analysis and data sources they privilege and their understanding of the types and extent of ‘proof’ or ‘evidence’ for identifying ‘strategy,’ as we will discuss in relation to empirical and methodological strategies later in the paper. As such, considering intent and convenience jointly allows for a more comprehensive understanding of both the implicit and explicit, the agential as well as structural, forms of strategy. Indeed, as our discussion of the literature in the next section demonstrates, it is precisely in reading together these different understandings of strategic non-regulation that we can bridge disciplinary divides, connect fragmented discussions, and reveal the centrality of strategic non-regulation to migration governance at large.

### ***Policy-making and policy implementation***

One final conceptual clarification is necessary before moving to the core of the paper: In making sense of strategic non-regulation, we look both at works that focus primarily on the level of policymaking as well as at studies that focus on dynamics surrounding policy implementation (Schulz, 2020). Policymaking includes the construction of laws, policies, decrees, regulations, and other forms of governance, while policy implementation examines the enactment, carrying out and completion of such decisions, whether through the actions of bureaucrats, state security agents, asylum officers, or the ways that such policies are experienced by individual migrants (Dekker, 2017). Admittedly, this can be a difficult delineation to make, and we acknowledge that some concepts look at both policymaking and policy implementation. Nonetheless, including this distinction helps us to better understand how scholars choosing to focus primarily on either policymaking versus implementation develop a concept, marshal evidence in support of it, and examine the effects on various state and migrant actors.



### 3. The State of the Art of Studying Strategic Non-Regulation

Scholars have explored strategic non-regulation through different lenses and from different disciplinary and methodological angles. In this section, we put into dialogue relevant work on strategic non-regulation in migration governance by asking two fundamental questions that follow from our theorization above: How do relevant concepts define and demarcate non-regulation in relation to inaction and ambivalence? And how do relevant concepts empirically operationalize and capture the strategic nature of non-regulation in relation to intent and convenience?

This exercise merits two preliminary disclaimers. First, we do not see the below exploration as a judgment of what is the right or best way of studying strategic non-regulation. Rather, we start from the assumption that the different disciplinary and epistemological positions underlying the various concepts we discuss – with their differing levels of analysis, data sources, case material and theoretical prioritizations – each bring in essential pieces of the puzzle that strategic non-regulation constitutes. This also means that we do not aim or claim to provide a comprehensive overview of all conceptualizations potentially falling under our umbrella concept. Rather, we have pragmatically selected various conceptualizations that we think illustrate specific dimensions of strategic non-regulation particularly well.

Second, the grouping of concepts in this section has been developed inductively and is not an attempt at providing a typology of strategic non-regulation. We acknowledge that many of the conceptualizations of strategic non-regulation address both inaction and ambivalence, and consider strategy as partially intentional and partially systemic. We use intent and convenience here as organizing principles to indicate more “input” oriented understandings of strategy that focus on the origins of non-regulation, and more “output” oriented understandings that engage with the consequences of non-regulation. We do this not to argue that these are opposing schools of thought or that they are mutually exclusive phenomena. In fact, almost all the concepts we discuss here under the umbrella term of strategic non-regulation assume, in essence, that state actors might benefit from non-regulation in some situations, and in different ways and on different levels could seek to create and extend it. Where they differ – and this is predominantly an epistemological concern – is to what extent this strategic “will” can be “proven.” Some approaches are simply not concerned with substantiating evidence on the intent and will of state actors to enact a non-regulatory policy even if they might be convinced that such will is present, but instead focus mostly on its effects. In other words, they deduce the convenience of non-regulation for authorities from the impact of non-regulation on migrants and refugees. That we nevertheless categorize various concepts based on the emphasis they put on either one of these dimensions is because we are convinced that this can help us to theorize, operationalize, and empirically identify different dimensions of strategic non-regulation.

Ultimately, this section aims to structure the discussion of commonalities, respective strengths and distinctions between the different concepts falling under the umbrella term of strategic non-regulation in order to initiate a common conversation across disciplinary and geographic divides. For each dimension of strategic non-regulation, we discuss two key concepts we consider particularly helpful in analytically operationalizing and empirically identifying inaction or ambivalence as well as intent or convenience. Thus, rather than trying to exhaustively *represent* all instances of strategic non-regulation, the sixteen examples we discuss *illustrate* how scholars operationalize

and empirically capture the eight dimensions of strategic non-regulation. These dimensions complement each other and conceptually overlap, but, we argue, distinguishing between them is useful to peer inside the “black box” we face when studying a mode of governance that is elusive – and, crucially, in many cases is meant to be elusive.

Table 1: Strategic Non-Regulation and its Dimensions.

	<u>Inaction</u>		<u>Ambivalence</u>	
	<u> Policymaking</u>	<u> Policy implement- ation</u>	<u> Policymaking</u>	<u> Policy implement- ation</u>
<b><u>Intentional</u></b>	Strategic indifference  Standoffish policymaking	Non-recording  Strategic ignorance	Ad-hocracy  Calculated informality	Politics of discretion  Governance by arbitrariness
<b><u>Convenient</u></b>	Necropolitics  Politics of uncertainty	Strategic ignorance  Politics of non-knowledge	Semi-legality  Strategic institutional ambiguity	Protracted uncertainty  Politics of disorientation

***Inaction***

As conceptualized above, inaction is one of the two key dimensions of strategic non-regulation. In this vein, we identified four sets of concepts that are particularly helpful in revealing the intentional and convenient aspects of such inaction, be it at the level of policymaking or implementation.

(1) *Intentional inaction in policymaking*

We begin by examining concepts that address manifestations of intentional inaction in the realm of policymaking, or the ‘input’ side of strategic non-regulation (Boswell, 2007; Boswell et al, 2011). Two concepts drawn from the discipline of Political Science and both looking at the Middle East and North Africa use similar approaches to address national-level inaction with regard to migrant and refugee policymaking. Specifically, we highlight ‘strategic indifference’ as developed by Norman (2019, 2020) and ‘standoffish policy-making’ from Mourad (2017). Norman and Mourad explicitly address the question of intent in inaction by showing how the absence of action or intervention in the field of migration governance is not the result of lacking capacity, but beneficial for state actors in two ways: by lowering the level of resources required to keep control over migration and by minimizing the responsibilities for governing it. Concretely, they point at changes in state policy that move away from non-regulation to argue that inaction was a choice rather than an indication of lacking capacity.

Norman (2019, 2021) analyses the experiences and motivations of policymakers in Egypt, Morocco, and Turkey to explain how state actors are ‘strategically indifferent’ to the presence of migrant and refugee groups, thereby inviting IOs and NGOs to step in and provide basic services. To operationalize intent, Norman argues that in each of her three cases, changing from a policy of strategic indifference to other more resource-

intensive policies (be it a liberal or a repressive policy) demonstrates that the previous indifference was a choice. She also argues that state actors' willingness to use resources to monitor migrants, refugees, and NGOs in contrast to its unwillingness to expend resources on service provision for these groups shows that they are intentionally exercising restraint rather than being unable to act.

Mourad (2017) builds on work on 'no-policy-policies' (El Mufti, 2014; Ghaddar, 2017) and introduces the concept of 'standoffishness' – first developed with regard to Southeast Asia – to capture how, in the early period of Syrian arrivals, Lebanese central authorities preferred to have minimal involvement in the regulation of Syrians within their borders and thus abstained from policy-making in this realm, enabling – and at times encouraging – this space to be taken up by local and international authorities. Similar to Norman, Mourad points to Lebanon's ability to move toward a more actionable and direct policy in 2014 with regards to Syrian refugees to demonstrate that the state's previous inaction was not due to incapacity but rather intentional restraint.

## *(2) Intentional inaction in policy implementation*

A similar set of concepts examines intentional inaction but primarily focuses on policy implementation (outputs) rather than policymaking (inputs). Although coming at it from different disciplinary perspectives, conceptualizations of 'non-recording' (Rozakou, 2017), 'irregularity as statecraft' (Kalir and Van Schendel, 2017), 'obfuscation' (Tazzioli, 2020) and 'strategic ignorance' (Scheel and Ustek-Spilda, 2019) all focus on the (non-)creation and suppression of data as part of a wider politics of (non-)knowledge. They evidence how knowledge is intentionally avoided, suppressed, ignored or silenced by state actors tasked with implementing migration policies to increase their legitimacy in inter-actor dynamics or to avoid responsibility and accountability. Here we specifically discuss the notions of 'non-recording' and 'strategic ignorance' as developed by Rozakou (2017) and Scheel and Ustek-Spilda (2019), respectively, to tease out specific analytical strategies to study intentional inaction in migration policy implementation.

Rouzakou (2017) introduces the concept of 'non-recording' to capture the practices used by Greek officials toward asylum seekers as a form of inaction in the realm of policy implementation: while there is a policy directive to register asylum seekers, this is systematically avoided in practice. Non-recording allowed the Greek state to avoid responsibility and generate leverage vis-a-vis the EU, while simultaneously allowing migrants free mobility. To tackle intent, Rozakou (2017: 37) considers that non-recording is a form of statecraft rather than state failure, something she substantiates through ethnographic fieldwork and formal interviews with agents of the state who criticized what they considered to be the government's intentional strategy of non-recording and who found "the practices of the state (which they embodied) illegible... [and] also totally 'irregular'".

In an alternative approach to intentional inaction in migration policy implementation, Scheel and Ustek-Spilda (2019) leverage ignorance studies. They understand 'ignorance' to be a particular type of non-knowledge that is actively produced and which involves the obfuscation or suppression of otherwise available knowledge. They pinpoint such strategic ignorance through identifying four different ways of perpetuating non-knowledge, and assess their intentionality through the degree of consciousness with which this is done: (1) omitting the significant gap between recorded immigration and

emigration events, (2) compressing different accounts of migration into one ‘world migration map,’ (3) deflecting knowledge about the specificity of different methods to production sites of statistical data, and (4) using metadata for sanitizing the statistical production process of any messy aspects. To evidence those mechanisms, they conducted a multi-sited, collaborative ethnography and studied the practices of statisticians, data scientists and other stakeholders through interviews, participant observation and workshops, as well as an analysis of produced documents, showing how numerification is performative and how strategic ignorance can result from the ‘non-transfer’ of knowledge from one epistemic community to another (Scheel and Ustek-Spilda, 2019: 668).

### (3) *Convenient inaction in policymaking*

Instead of focusing on intention, other scholars have approached inaction as a form of strategic non-regulation through the lens of convenience, exploring the more systemically functional aspects of inaction through the notions of the ‘politics of uncertainty’ (Stel 2020) as well as ‘necropolitics’ and the ‘politics of abandonment’ (Estevez, 2021; Pinelli, 2018; Round & Kuznetsova, 2017; Davies, Isakjee, and Dhesi, 2017). To identify helpful ways to study such convenient inaction at the level of policymaking, we offer a closer look at the concepts of ‘necropolitics’ as used by Davies, Isakjee, and Dhesi (2017) and the ‘politics of uncertainty’ as developed by Stel (2020).

Bringing Mbembe’s (2003) notion of necropolitics – the deliberate ‘letting die’ (refusing to save, rather than active killing) of populations – to the field of migration studies, Davies et al. (2017) see inaction as a form of structural violence, looking both at state withdrawal as well as state action. The authors see such abandonment and withdrawal as deliberate, but they are analytically interested in evidencing the convenience of violent inaction rather than in proving intentional design. Specifically, Davies et al. (2017: 1264) study such convenience by tracing ‘the connections between the political abandonment of refugees and the physiological violence they suffer’: showing that migrants suffer not as a consequence of mobility, but as a consequence of state practice. They study such convenience through two steps. First, they show that the violence generated by abandonment serves authorities’ explicated aim of ‘coercing onward migration.’ The structural abandonment of migrants they identify can thus only be understood in relation to this explicit aim of discouragement and expulsion. Second, they demonstrate that authorities are exercising willful ignorance toward the violence generated by abandonment, ‘turning a blind eye’ to conditions known and publicly documented by other relevant actors.

Leveraging a range of concepts discussed above that were initially developed in the Global North context, Stel (2020) uses the notion of ‘the politics of uncertainty’ to argue that while the precarity and uncertainty that governs the lives of Palestinian and Syrian refugees in Lebanon is typically blamed on a lack of state capacity and political and economic ‘crises,’ these explanations mask the political utility of refugees’ uncertainty for state actors. While the notion of a ‘politics of uncertainty’ encompasses inaction and ambivalence, we leverage it here to illustrate fruitful approaches to studying convenient inaction in policymaking. Stel offers a framework to home in on inaction in policymaking by assessing the presence or absence of laws and decrees in the domains of refugee status (whether there are legal guidelines for residency and asylum), refugee shelter (how encampment or self-settlement is officially regulated), and refugee representation (who is formally recognized as representing refugees in interactions with

the state). To determine the convenience of state inaction in terms of refugee status, shelter, and representation, Stel turns to ethnographic work on refugees' lived experience and interviews with refugee representatives and 'experts' to look at the way in which these forms of inaction contribute to controlling, exploiting, and/or expelling refugees, tracing interests to demonstrate strategy.

#### (4) *Convenient inaction in policy implementation*

A growing literature concerned with unknowing, non-knowledge and ignorance in migration studies has tried to locate inaction at the level of policy implementation, sometimes seeking to show intent and at other times to demonstrate convenience (Bradley, 2023; Eule et al. 2019, Canning, 2018; Krause, 2022; Scheel, 2021). To offer ways to operationalize inaction and pinpoint its convenient aspects in policy implementation, we specifically highlight recent work on the 'politics of non-knowledge' by Aradau and Perret (2022) and 'strategic ignorance' by Borrelli (2018).

Aradau and Perret (2022) present the production, contestation and circulation of what is not known or claimed to be unknown as an entry point for studying inaction. Their empirical focus is on what they call border controversies, or disputes and disagreements about knowledge claims regarding specific migration governance practices, and they focus specifically on migrants' status determination processes and court cases on subsidiary protection. While the absence of knowledge among authorities is construed as 'error' or mistakes made in good faith, migrants who lack knowledge are considered fraudulent or acting in bad faith. These epistemological differentiations (re-)produce normative and legal hierarchies and power relations: where errors are correctible and thereby produce credibility, 'fakes' assume deception and undermine credibility. Tracing the processes through which absence of knowledge is designated as either 'error' or 'fake' can hence serve as an analytical instrument to empirically reveal the different forms in which unknowing as a form of inaction is convenient in migration policy implementation.

Adopting a different approach to account for the strategic aspects of inaction at the policy implementation level, Borrelli (2018) draws on ignorance studies. While Scheel and Ustek-Spilda (2019), discussed above, leverage ignorance studies to concretize intentionality behind inaction in policy implementation, Borrelli's work teases out the ways in which the strategic nature of ignorance as inaction can be studied as a form of convenience as well. Based on work in Switzerland, Latvia and Sweden, Borrelli (2018) views 'strategic ignorance' as a tool used both consciously and unconsciously by state officials to manage the moral and emotional implications of their work, allowing them to deal with difficult, sensitive, or uneasy tasks, while simultaneously subjecting migrants to precarious legal statuses and structural violence. Strategic ignorance, here, is a coping mechanism more than a disciplinary strategy. Yet, she points out, its effects serve functions of strategic non-regulation such as outsourcing, creating leeway, avoiding responsibility, and undermining migrants' collective action that are more than byproducts of bureaucrats' struggles. Borrelli's reading of ignorance as convenient thus also points to the structural incentives that uphold ignorance and prop up the convenient status quo of a repressive migration regime, but cannot be traced back to a single identifiable actor.

#### *Ambivalence*

Next to inaction, we have identified ambivalence as the second crucial pillar of strategic non-regulation. Here too, we discuss four sets of concepts that elucidate the intentional

and the convenient dimensions of strategic ambivalence and engage with its dynamics on either a policymaking or implementation level.

#### (5) *Intentional ambivalence in policymaking*

In investigating the intentional aspects of ambivalence as manifested in decision-making processes, scholars have advanced notions such as ‘ad-hocracy’ (Carpi, 2015; Natter, 2021), ‘calculated informality’ (Mielke, 2022), ‘strategic institutional ambiguity’ (Tekin, 2022), ‘intentional ambiguity’ (Frost, forthcoming; Memisoglu and Ilgit, 2017) or ‘uncertainty’ (Volinz, 2021). These conceptualizations explicitly discuss how ambivalence is deliberately used by state actors across various phases of the policy-making process to navigate domestic and international policy audiences. As such, these complement how Norman and Mourad have pinpointed intentional non-regulation in the form of inaction. In order to shed more light on ways in which to empirically locate and analytically process forms of intentional ambivalence in policy making, we discuss the notions of ‘ad-hocracy’ and ‘calculated informality’ in more detail.

Natter (2021) locates ambivalence in the manner in which authorities use temporary, conditional and exceptional policy tools to regulate migration. She evidences how state actors secure their power over immigration by deliberately preferring ‘ad-hoc’ policy tools that increase their governance leeway and avoid setting anything in stone. In this vein, state authorities avoid parliamentary law-making, and instead deliberately mobilize policy tools such as (1) executive politics and so-called rule by decree, (2) exemption regimes, and (3) case-by-case arrangements. These ‘ad-hoc’ policy tools, Natter shows through careful document analysis and interviews, are consciously – i.e. intentionally – adopted to allow Moroccan and Tunisian officials to selectively respond to external and bottom-up demands for more immigrant rights while at the same time securing the state’s margin of maneuver over immigration.

Mielke (2022) engages with similar dynamics in national and international policymaking, but opts for a different vocabulary to reveal ambivalence and interrogate its potential intentionality. She discusses ‘calculated informality’ in the context of Pakistan’s rhetoric of returning Afghan nationals versus its de facto policy of non-return. Ambivalence, then, is located in the gap between public rhetoric and formal policy. Calculated informality entails state actors’ successful navigating of the domestic and geopolitical arena over time based on practices of deregulation, opacity and ambiguity, constituting a strategically and purposefully applied governance mechanism that reflects a state-sanctioned mode of deregulation. Mielke gets at the intentionality of this governance mode by reconstructing the various policy options Pakistan has had since 1980 in regard to the return of Afghan nationals and by assessing the extent to which eventual choices followed from conscious (informal) decision-making or structural path-dependency. Identifying such ‘critical junctures’ in policy-making, she demonstrates how the Pakistani state has utilized informality and the de facto non-return of Afghans as an instrument to appease both domestic political audiences demanding return and international audiences opposed to return.

#### (6) *Intentional ambivalence in policy implementation*

The intentional aspects of ambivalence in migration governance are also evident in policy implementation. The notions of ‘politics of discretion’ and ‘arbitrariness’ have become commonplace in a broader literature engaging with discretionary power in

migration policy implementation (see for instance Alpes and Spire (2014), Darling (2022), Heyer (2022), Oomen et al. (2021), Mindus (2020), Schultz (2020); McClusky (2020); Pannia (2020) or Rigo(2020)). These works focus on the dynamics of street-level bureaucracy, dissecting the gap between policies-on-paper and implementation practices, as well as the link between formal laws and informal practices that characterize the so-called ‘grey area of government’. In contrast to other groups of concepts that tend to focus predominantly on either Global South or Global North contexts, these works of anthropology and socio-legal studies encompass both studies of EU and non-EU countries, using similar vocabularies and methodological approaches. Here, we discuss work by Oomen et. al (2021) on ‘politics of discretion’ and by Mindus (2020) on ‘governance by arbitrariness’ as exemplary for this broader group of concepts around intentional ambivalence at the implementation level.

Mindus (2020) approaches ambivalence as manifested in legal arbitrariness – characterized by a ‘lack of reason-giving, legitimacy, well-foundedness’ and associated with unpredictability. This allows her to distinguish between discretion – entailing a legally defined and demarcated range of flexibility for decision-making grounded in competence and proportionality – and arbitrariness. Legal arbitrariness locates ambivalence in the breaches of legality (as being at odds with a defined legal rule, often at a superior level), rationality (as evident in internal inconsistencies between declared means and ends), and equality (as seen in discrimination either within or before the law). The intentionality of legal arbitrariness is considered by Mindus (2020: 22) as either process-based, i.e. showing a generic disregard for the law, or as interest-based, i.e. showing a disregard for the law in view of context-specific political objectives. She evidences how legal arbitrariness has been deliberately produced and used “by states in order to obtain a variety of border control effects” (Mindus, 2020:22), and approximates intent in two ways: by asking whose purposes are leading in the production of certain laws and by juxtaposing the extent to which laws appear inconsistent for those subjected to them and for those producing them.

Oomen et al (2021) use the term ‘politics of discretion’ to study strategic ambivalence by looking at the strategies of ‘divergence’ from national-level migration policies used by local authorities in Greece. Distinguishing between explicit and implicit divergence, as well as divergence within or outside the law, they identify four main strategies of ambivalence in implementation: (1) ‘defiance’, in which local authorities vocally oppose national policies (explicit and extra-legal), (2) ‘dodging’, whereby local authorities challenge national policies by evading attempts of the central government to exercise their authority (implicit and extra-legal), (3) ‘deviation’, whereby local authorities maximize their legally defined space of discretion (explicit and within the law), and (4) ‘dilution’, whereby local authorities deliberately diverge from national policies but without challenging any existing norms (implicit and within the law). By tracing the decision-making processes through which local authorities navigate and diverge from central-level policies and norms, Oomen et al. (2021) evidence the intentional aspects of policy ambiguity.

#### *(7) Convenient ambivalence in policy-making*

In contrast to works pinpointing the intentionality of ambivalent action, another set of concepts has approached its strategic character through convenience. Here, legal (anthropology) scholars’ work on ‘liminal legality’ (Menjivar, 2006), ‘legal illegality’ (Rigo, 2011) or ‘informal legal orders’ (Urinboyev, 2020; Üstübici, 2019), and political

geographers' theorization of spatial liminality (Katz, 2019; Papoutsi et al., 2019; Ramadan and Fregonese, 2017; Sanyal, 2018; Turner, 2015) and institutional ambiguity (Martin, 2015; Oesch, 2017; Stel 2016) have been of great inspiration. We discuss Kubal's (2013) notion of 'semi-legality' and Nassar and Stel's (2019) interpretation of 'strategic institutional ambiguity' to tease out specific analytical strategies to study convenient ambivalence in migration policy making.

The idea of semi-legality offers a legal perspective that locates ambivalence in the absence of binary il/legality. It urges us to not discard legal ambiguities and 'in-between statuses' as part of a bulk notion of illegality but to interrogate their origins and engage with their effects to understand governance through ambivalence. Semi-legality can then be studied through migrants' lived experiences with regard to legal processes related to entry, stay, and rights regimes (seeking out the 'mechanisms that allow them to be regular in one sense and irregular in another') as well as through state practices of 'uneven enforcement,' 'low repatriation rates,' 'mass or case-by-case regularization methods' and 'de facto tolerance of irregular presence' (Kubal, 2013: 582, 570). The concept of semi-legality helps to pinpoint the convenience of ambivalence by evidencing the ways it allows states to balance fluid and fluctuating economic and political interests through alternating or simultaneous inclusion and exclusion. Accordingly, Kubal (2013: 555) sees semi-legality as 'not only tolerated,' but 'fueled and perpetuated' by states.

Nassar and Stel (2019) propose the concept of 'strategic institutional ambiguity' to highlight that inconsistent policies directed at Syrians in Lebanon cannot be (fully) understood as failures. Nassar and Stel show that ambiguity in the realm of entry, stay and protection policies, which can be seen in incomplete and vague policy formulations, crucially depends on authorities pretending not to know things they demonstrably could have known, such as information publicly available or even presented to them, in order to legitimize policy inaction or vagueness. They thus suggest to engage with convenience through examining how and why shifts between explicit and vague policy come about and exploring how such shifts align with three sets of consequences – marginalization of refugees, fragmentation of responsibilities, and securitization of engagement – that demonstrably serve the interests of authorities to control refugee populations through minimal means. This leads them to conclude that institutional ambiguity is beneficial, and thus strategic, even if intentionality cannot be fully proven.

#### (8) *Convenient ambivalence in policy implementation*

Earlier, we discussed the concept of the 'politics of uncertainty' to grasp the convenience of *inaction* in migration policy-making. Our final set of concepts also mobilizes the concept of uncertainty but in a specifically temporal sense to highlight the convenient *ambivalence* of policy implementation through migrants' experiences of uncertainty (rather than through the experiences of street-level bureaucrats as in the above section) (Agier, 2008; Anderson, 2014; Brun, 2015; El-Shaarawi, 2015; Hasselberg, 2016; Franck, 2017; Hage, 2009; Khosravi, 2018). By definition, such studies are not invested in tackling the question of intent of state actors given that these are not their object of inquiry. Grounded largely in anthropology or socio-legal studies, they delve both into European and non-European contexts to make sense of 'protracted uncertainty' (Biehl, 2015; Horst and Grabska, 2015), 'politics of waiting' (Griffiths, 2013; 2014; Sanyal, 2018), and 'disorientation' (Tazzioli, 2021; 2022). Working up from such migrant experiences, these works trace the functionality of ambivalence and look at the effects of implementation dynamics on migrants' everyday lives in terms of uncertainty, risk,



opacity, liminality, and informality. Of the incredible wealth of studies available on this, we highlight Griffith's (2013, 2014) conceptualization of 'governing through uncertainty' and Tazzioli's (2022) concept of 'disorientation.'

Griffiths (2013, 2014) applies extant literature on the 'politics of waiting' to cases of immigration detention in Britain. She proposes to study such temporal ambivalence through examining migrants' access to relevant information and through tracing instances of confusion and miscommunication. Specifically, she examines timeframes in relation to the unpredictable 'temporal ruptures,' and the alternation between endless waiting and sudden and dramatic change. For Griffiths, the avoidable and hence willful aspects of the situations of her interlocutors are rendered researchable through the incongruity between extreme spatial control, confinement, and containment on the one hand, and radical temporal indeterminacy on the other hand. Imposed waiting and the stealing of time are understood as 'a technique of power, with governance through uncertainty constructing certain immigrants extendible, transient and, ultimately, deportable' (Griffiths, 2013: 263). Convenience is then implicitly understood as pinpointing the ways in which outcomes of specific policies and practices serve stated and unstated objectives of the authorities that have designed them. As with some other illustrations we have brought to bear, this reading of 'governing through uncertainty' (Griffiths, 2013) does not preclude conscious design, which Griffiths explicitly keeps on the table as an option, but analytically foregrounds convenience.

Looking at the experiences of asylum seekers in Greece, Tazzioli (2022) argues that 'disorientation' as a manifestation of ambivalence should not be considered a side effect of refugee humanitarianism but, rather, a constitutive political technology of refugee governance. In line with many other scholars that opt to analytically foreground convenience and the tracing of interests over the attempt to prove intent, Tazzioli (2022: 432) is explicitly uninterested in the intentionality behind policies of disorientation. She argues that because 'the boundaries between states' intentionality or non-intentionality are often quite blurred,' it is more apt to focus on 'disorientation that fragmented and disjointed knowledges generate on asylum seekers' rather than 'what migration agencies know, don't know or disregard.'

#### **4. Synthesizing Strategies to Study Strategic Non-Regulation**

As mentioned earlier, most of the studies discussed in this paper largely 'stumbled' upon strategic non-regulation during the research process, rather than setting out to study it from the start. However, we believe that the phenomenon of strategic non-regulation should be more than an inductive by-product of migration scholarship. It deserves to be an explicit subject of inquiry in its own right. Building on the above overview, this section therefore draws out some key focal questions for those interested in deliberately studying specific dimensions of strategic non-regulation in migration governance.

Reflecting on the previous section, both scholars engaging with inaction and researchers focusing on ambivalence showcase the importance of analytically foregrounding issues that are easy to overlook or dismiss. Studying strategic non-regulation, whatever form it takes, requires 'reading between the lines' and being attuned to glitches and apparent mistakes (Stel, 2020: 16-17). They highlight the importance of revealing and

interrogating a wide variety of gaps and inconsistencies in their data not as ‘measurement errors’ or ‘thin data,’ but as research findings in their own right that offer a relevant window onto the broader institutional context in which they are generated (Mazzei, 2003: 357). It is such silences and absences on the one hand, and vagueness and ambiguities on the other that scholars interested in strategic non-regulation would want to actively seek out in specific domains or at different scales of governance.

This always entails a critical juxtaposition of policy and practice, of statements and behavior, of what is said and what is known. As illustrated by the concepts leveraged above, this requires a particular form of qualitative, triangulated, and contextual data and iterative, critical, and reflexive analysis that resonates with Olivier de Sardan’s (2016: 121) ‘anthropology of gaps, discrepancies and contradictions.’ Following Stel (2020: 17), whatever specific data is generated – from observations to interviews to documents – and whatever analytical strategy is used – from process tracing to archival analysis to institutional ethnography – , studying non-regulation always requires asking a specific set of questions: What is not being said? What is not being done? What is inconsistent? What is sensitive? And what is taken for granted?

When and how such questions surface and what insights their asking might yield is fundamentally tied to the positionality of the scholar in question. Interest in strategic non-regulation often starts from the confusion and uncertainty experienced by researchers themselves to map or trace particular regulations and policies. This constitutes a challenge, because determining whether something is a matter of (strategic) non-regulation or rather of genuine lack of access, information, knowledge, or understanding of the researcher is not straightforward and might be tied to their academic training, gender identity, race, nationality, and set of experiences.

At the same time, leveraging insights from ignorance studies (Code, 2007; Rappert and Balmer, 2015), it is exactly for studying the origins and functions of silences, absences, ambiguities, and inconsistencies that researcher positionality can be usefully instrumentalized. Taking our own bewilderment and doubts as a form of ‘productive irritation’ (Sedlacko and Dahlvik, 2017: 2 in Stel, 2020: 229), as a starting point for systematically cross-checking with stakeholders and experts so as to be able to determine when and how inaction and ambivalence are (not) contingent on capacities and complexities demonstrates how reflexivity is not merely a validity chore but an actual analytical strategy.

When it comes to pinpointing and understanding the potential strategy behind non-regulation, the previous section shows that scholars working in this field use a variety of methods, scales and conceptual approaches. Those considering strategy predominantly as ‘intent,’ which are often engaging with macro-level decision-making rooted in Law, Political Science, International Relations and Sociology, take a relatively top-down approach to seek out direct forms of ‘evidence’. For them, confessions by state actors themselves are the ultimate standard of proof. While government officials sometimes adhere to official lines and may not always be forthcoming, direct acknowledgements of the unwillingness – rather than inability – to act or implement policy may be more frequent in the course of immersive, qualitative research than one might think.

Such stakeholder reflections on the respective salience of capacity and political will might be prompted in various ways. When conducting interviews, researchers might

confront interviewees with information and knowledge that is publicly available but is not used as a basis for policymaking. Discrepancies between publicly known data and information versus what government officials are willing to acknowledge can reveal inconsistencies that are indicative of strategic non-regulation. Researchers can also perform an analysis of the inconsistencies between different legal instruments – laws, directives and regulations – and confront policymakers and bureaucrats with their findings, potentially leading to acknowledgements of strategic non-regulation (Frost, forthcoming).

Researchers interested in intent in policymaking can also examine shifts from inaction to more resource-intensive action – whether this is a more inclusive policy, or a more repressive one – to retrospectively establish whether inaction was a choice or a capacity issue (Norman, 2019; 2021; Mourad, 2017). They might trace how local authorities navigate and diverge from central-level policies in order to demonstrate the awareness and intent of state officials in carrying out strategic non-regulation (Oomen et al. 2021; Stel, forthcoming). Finally, researchers might utilize process-tracing to understand why certain policy tools or decisions were mobilized by policymakers on a particular issue, and why potential alternatives were discarded (Mielke, 2022; Natter, 2021).

In contrast, scholars approaching strategy as an accumulation of ‘convenient’ outcomes that can be studied via a more bottom-up tracing of interests draw on studies of local governance and micro- or meso-level implementation that can be primarily located in traditions of Anthropology and Political Geography. Rather than equating strategy with intent and deliberate or conscious action, they seek to study strategy through more indirect forms of ‘evidence’ that may ‘shift the burden of proof’, meaning that if scholars can evidence that non-regulation serves actors’ stated or unstated political and/or material interests, then it is on these actors to make credible that this non-regulation was not deliberately designed or pursued.

This could entail turning to budgets as an indicator for institutional priorities and to identify areas of action versus inaction. For example, if a host country is heavily investing in border control versus contributing little to no investment in refugee care, researchers can investigate the discrepancy between the availability and utilization of state resources to pinpoint convenient inaction (Davies et al., 2017). It could also mean systematically comparing the differential treatment and policies between groups – such as migrants versus citizens, or different categories of migrant groups – to show that non-regulation does not follow from capacity or complexity issues but rather from political will.

What the reflexive synthesis above proposes is that no matter whether scholars are interested in evidencing intent or showcasing convenience, the empirical material collected should aim to demonstrate how strategic non-regulation is not a result of lacking capacity or institutional complexity, but rather how it serves state actors’ interests by fulfilling one of its four functions: de facto outsourcing of service tasks, maximizing flexibility and consensus across different audiences, avoiding responsibility and accountability for decisions, and disciplining migrants and other stakeholders involved in migration governance.

## 5. Towards a New Research Agenda on Migration Governance

This paper sought to bring together emerging work on strategic non-regulation by highlighting its key dimensions and exploring the varying analytical approaches that scholars across a wide range of disciplines have used to capture and conceptualize it. It is important to reiterate that our paper is not an exhaustive overview of all studies on strategic non-regulation in migration governance. Rather, our contribution lies in gathering together and showcasing potential ways of approaching the study of strategic non-regulation and in analytically consolidating some of the commonalities as well as differences among recent works. By drawing out three primary dimensions – intent and convenience, inaction and ambivalence, and policymaking and policy implementation – our aim was to facilitate the use of concepts to an even broader range of topics within migration governance and to generate trans-disciplinary dialogue on the empirical phenomenon at stake.

In doing so, this paper also interrogates two persistent binaries that continue to define the field of migration studies. First, our analysis contributes to a growing literature within migration studies that attempts to bridge the historically often separated studies focusing on the so-called Global South versus North (Chimni, 1998; Garcés-Macareñas, 2018; Fiddian-Qasmiyeh, 2020; Natter, 2018; Stel, 2021). By including concepts derived from geographies that bridge this divide – especially the Middle East, North Africa and Europe – we call attention to how strategic non-regulation is used across states with varying ‘capacities’ and irrespective of political regimes and governance systems in place. While instances of strategic non-regulation originating from cases in the Global South are sometimes dismissed as simply the result of ‘illiberal’ or ‘weak’ governance characteristic of ‘failed’ or ‘fragile’ states, our analysis shows that allegedly ‘strong’, ‘liberal’ states in the Global North are just as likely to employ forms of strategic non-regulation (Stel, 2021).

Demonstrating that non-regulation is a central aspect of governance worldwide contributes to the process of de-exoticizing migration governance in the Global South and de-idealizing it in the Global North (Jaffe and Koster, 2019). While there are crucial contextual differences – with non-regulation perhaps more apparent in the realm of policymaking in the Global South and potentially more evident in terms of policy-implementation in the Global North – our analysis suggests that it is not so much the nature and extent of strategic non-regulation that differ across geographies, but the way in which these aspects are assessed, judged, or explained (Stel, 2021).

Second, as flagged before, in focusing on strategic non-regulation of state actors, the conceptualizations discussed in the paper tend to focus on the disciplinary effects of non-regulation: the ways in which policy gaps, discretionary implementation, and everyday unpredictability and uncertainty undermine migrants’ collective subjectivities. Crucially, however, the literature on strategic non-regulation is in fact quite consistent in pointing out how non-regulation is not inherently bad for migrants and how people on the move also generate and appropriate forms of inaction and ambivalence. Tazzioli (2022) shows how asylum seekers tactically utilize disorientation by state actors for their own purposes. Eule et al. (2019) elaborately discuss how the various strategies of coping and resistance of migrants and those that support them might make absent or contradictory regulations work for them. Norman (2020) points to how strategic non-regulation can provide flexibility and the opportunity for migrants and refugees to engage in de facto integration practices – through participation in informal economies,

for example – that might not be permissible or possible under a more rigidly controlled system of governance. Stel (2016, 2020) shows how refugees can turn strategies of temporal liminality and spatial informalization against state authorities in aiming to secure residence and political protection. Thus, in bringing together the disciplinary strategies of state actors and the autonomy of migrants (Casas-Cortes et al., 2015; DeGenova, 2017; Tazzioli et al., 2018), the perspective of strategic non-regulation can connect different elements of the overarching governmentalities of migration.

In light of this, the study of strategic non-regulation is prone to normative and political questions. Measured against human rights and migrant protection benchmarks, is strategic non-regulation necessarily undesirable – and if so, do we need to advocate against it? Do we inadvertently aid those seeking to control or exploit migrants by pointing towards ‘flaws’ in their non-regulation strategies? A full consideration of these fundamental questions is beyond the scope of the current paper. Considering the overall repressive and punitive nature of statist migration governance in our day and age, however, non-regulation often follows the interests of those in power more than those of people on the move. Explicating and analyzing these practices thus has the potential for both positive and negative normative impacts beyond academic scholarship (Lynch, 2014). We cannot rule out that researching strategic non-regulation may serve to further fine-tune the strategies of state and non-state actors aiming to exclude, punish or repress migrants and refugees. At the same time, such analyses may also be instrumentalized by politicians, civil society actors or rights organizations seeking to call out the detrimental or problematic dimensions of inaction and ambivalence as forms of governance and more effectively mobilize to fight them.

Finally, the above reflections further illustrate that the utility of studying strategic non-regulation does not merely extend the field of migration studies but can inspire other disciplines and domains of study. While the phenomenon of migration combines certain aspects that make it perhaps more prone to non-regulation (volatility, transnationalism, ‘crisis’), we see non-regulation as relevant to all domains of governance – whether it is people, capital, labor, or territory. This, in turn, would enable migration scholars to not merely borrow *from* disciplinary literatures interested in what we have here discussed as strategic non-regulation – such as for instance work on discursive gaps in linguistics (Mazzei, 2003; Randazzo, 2015), hypocrisy in political science (Egnell, 2010; Krasner, 1999), and non-intervention in IR (Little, 1993) – but theoretically contribute to them. This is particularly the case for broader social science debates on policy failure (Castles, 2017; Chabal and Daloz, 1999; Ferguson, 1994). Our paper serves as a reminder that we can and should trace the political functionality of branding policies as failure and that in doing so political will is often a more pertinent focus of analysis than state capacity. In the end, migration governance is a weathervane for the workings of political power more broadly (Bakewell, 2014; Eule et al., 2019). Our synthesis of the ways in which strategic non-regulation is salient and can be studied in the domain of migration thus has ramifications beyond that domain, perhaps specifically for the study of the governance of society’s ‘marginalized’ and ‘undesirables’ (Agier, 2008, Bayat, 1997, Chomsky, 2012 in Stel, 2020: 222) and the handling of all files ‘sensitive’ or ‘classified’ (Gould and Stel, 2021). Introducing strategic non-regulation as a focal point of migration scholarship, then, is a promising way to live up to the often-recognized but not always realized interdisciplinary potential of this field of study (Favell, 2022).

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