Yale FOX INTERNATIONAL FELLOWSHIP

FORTRESS EUROPE: THE CONSEQUENCES OF EXTERNALIZING MIGRATION CONTROL IN THE EU

Lena Riemer

2018 POLICY BRIEF SERIES

Recent migration policies in Europe, Australia, the United States and elsewhere are characterized by increasing "Ostrichization": i.e. engaging in fortification, externalization and outsourcing of migration control.

For over a half century, only five border walls existed as a means to stop migration between countries. By 1989, there were fifteen. Today, there are seventy.[1] In many instances, this fortification trend is complemented by what is known as "externalization" – i.e., the shift of border controls outside a state's territory and "outsourcing" of migration control. These trends are manifest in the European Union (EU), which has increasingly relied on implementing measures of both fortification and externalization. Border fences and walls have been erected in several European countries including Hungary, Greece and Austria. Simultaneously, the EU and individual member states have entered into numerous migration cooperation agreements with African states in order to ensure the curbing of arrivals of migrants in Europe.[2]

FACTUAL AND LEGAL CONSEQUENCES OF THE NEW MIGRATION CONTROL POLICIES

While the numbers of reported arrivals by sea to Europe between 2016 and 2018 has more than halved from 263,504 to 104,455, the number of deaths has remained the same. From January to December 2018, 2,075 migrants lost their lives trying to cross the Mediterranean.[3] Research shows that simply sealing off borders has not been an effective long-term measure for permanently keeping people from migrating.[4] Instead, migrants increasingly rely on human smugglers and switch to more dangerous routes to reach their country of destination. Recent changes of migrant routes towards Europe support this finding. During the mass influx of people in 2015 to Europe, the major migration route shifted from the Balkan route, which was suddenly closed, to more dangerous routes via the Mediterranean. This route remains one of the deadliest routes for migrants worldwide. Besides that, EU externalization policies have also fostered massive human rights violations including torture and arbitrary killings in transit countries. The emergence of inhuman migration detention centers and violent interceptions of migrant boats in Libyan territory can be partially traced back to the EU. Pressure from the EU,

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[1] Vallet, Élisabeth Borders, Fences and Walls: State of Insecurity? (Ashgate Publishing 2014), available at: https://www.migrationpolicy.org/article/borders-and-walls-do-barriers-deter-unauthorized-migration, figure 1.

[2] See Riemer, Lena Keep out! – Libya's "Search and Rescue Region" to ban NGO rescue vessels violates international law (FlüchtlingsforschungsBlog 2017), available at: https://fluechtlingsforschung.net/keep-out-libyas-search-and-rescue-region-to-ban-ngo-rescue-vessels-violates-international-law/.

[3] International Organization for Migration Missing Migrants: Tracking Deaths along Migratory Routes, available at: https://missingmigrants.iom.int/region/mediterranean.

[4] Jones, Reece Borders and Walls: Do Barriers Deter Unauthorized Migration? (Migration Policy Institute 2016), available at: https://www.migrationpolicy.org/article/borders-and-walls-do-barriers-deter-unauthorized-migration.

including financial and material support, on Libyan authorities to deter migrants from moving onwards to Europe has intensified the dire situation of many migrants in this transit country. Other authoritarian regimes such as Sudan were also equipped with technology, weapons, financial support, and promises of cooperation in other areas. Increasingly, this policy has also shifted towards using subtle threads of withdrawing aid if the partner country refuses to cooperate.

Even if the legal accountability of the EU and its member states for such indirect assistance has not (yet) been established in court, scholars and activists are questioning the morality of cooperating with states that violate the migrants' human rights. Others claim that fortification and externalization policies such as pushing back migrants at the border violate international law.[5] They point to international law obligations such as the *non-refoulement* principle and the prohibition of collective expulsion that require states to grant every individual the right to have their claim for asylum assessed and/or not to be returned to another state's territory if their life is at risk. Yet, in the vast majority of cases, asylum can only be claimed once the asylum seeker has entered a state's territory. By sealing off the physical border or pushing people back, asylum seekers are being deprived of their rights to apply for asylum.

SUGGESTIONS FOR A MORE JUST AND HUMANE EU MIGRATION CONTROL POLICY

1) **Development aid and migration control must not be interdependent**

   Development aid from Western countries to the Global South must not be used as a tool for migration control. Equipping totalitarian regimes in order to reduce migration is not the right approach. Financial aid must always be linked to upholding a certain Human Rights standard.

2) **Safe and secure passages, binding global minimum human rights standards**

   There is a need for safe and secure passages and opportunities to apply for asylum outside a state's territory. International organizations such as the *United Nations High Commissioner for Refugees* or the *International Organization for Migration* could serve as mediators and advisers. This could lead to fewer people crossing the Mediterranean owing to more regular resettlement opportunities.

   EU member states must maintain international law by ending efforts to force migrants back to war-torn countries. They must also hold partner states

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[5] *Hirsi Jamaa et al v. Italy* European Court of Human Rights, Grand Chamber Application No. 27765/09, judgment of 23 February 2012, available at: http://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509 and N.D. and N.T. v. Spain European Court of Human Rights, Chamber Application Nos. 8675/15 and 8697/15, judgment of 3 October 2017, available at: http://www.asylumlawdatabase.eu/en/content/ecthr-nd-and-nt-v-spain-nos-867515-and-869715-article-4-protocol-4-article-13-echr-3-october.

accountable for violations. This will also require effective monitoring tools reaching from diplomatic pressure to legal proceedings.

Binding international agreements could also be established to set a minimum human right standard for all migrants. Current legal instruments are either insufficiently effective or voluntary soft-law instruments.