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Challenges and Proposed Alternatives for EU Policy in Managing Migration from its Southern Borders

Introduction

The current EU policy of managing southern Mediterranean migration through the externalisation of border control has proven to be ineffective in alleviating the acute humanitarian concerns that migrants face, and respecting international laws and conventions regarding human rights protection and the right to asylum. This paper will present the challenges that the EU faces from the growing burden of irregular migration on its southern shores, and offer proposals as to how the EU could resolve the situation.

The Arab Spring revolutions that started about four years ago, the ongoing civil wars in Syria and Libya, the rise of the Islamic State, and continuing instability in the Western Sahara and North Africa, have caused the number of forcibly displaced persons worldwide to reach almost 60 million, and while the number of deaths and displaced persons continue to increase, the refugee crisis has become the worst since the Second World War.¹ It has caused an unprecedented surge of asylum seekers on the EU's southern shores, and has demonstrated the EU's inefficiency in creating coherent policies to uphold proper standards of human rights protection, and the right to asylum.

While the EU's Global Approach to Migration and Mobility (GAMM) is aimed at working 'in partnership and solidarity with countries of emi-

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¹ <http://static.guim.co.uk/ni/1434356535972/The-Global-Refugee-Crisis-a.pdf> [last visited 16.06.2015].

gration and transit', to formulate coherent and comprehensive policies regarding migration, from 'border management and readmission' to 'legal migration', 'migrant rights and asylum', and 'professional training schemes for migrants and the like',² in reality, the EU has continued focusing on a policy of externalisation; securing migration control on its external borders, and attempting to make readmission agreements and Mobility Partnerships with MENA countries, to the detriment of migrant rights.

With its Dialogues for Migration, Mobility and Security, the core of the GAMM, the EU's current practice allows for 'only restricted, temporary, and highly selective forms of immigration into the Union',³ which in hand prompt the most threatened migrants to seek illegal means to enter EU territory. This reflects the 'inherent contradiction of liberal democratic states' in 'attempting to restrict entry of unwanted migrants while trying to respect human rights and civil liberties'.⁴

While the Lisbon Treaty, and its renewed Common Security and Foreign Policy (CSFP), was expected to make the EU more integrated and geared to take on a bigger role in managing external threats and problems on its borders and beyond, the increased popularity of Eurosceptic and anti-immigration far right parties across member states suggests that any major reforms to migration policy, especially aimed at protecting the right to asylum, are unlikely.

The EU's policy of barring entry has caused thousands of migrants to turn to smugglers, and to attempt life-threatening journeys across the Mediterranean Sea. It was only in October 2013, when a migrant smuggling boat with 366 passengers on board capsized on the coast of the Italian island of Lampedusa, that the migratory crisis gained worldwide attention, and led to the European Commission (EC) to create a Task Force for the Mediterranean, with the goal 'to better address migratory and asylum flows, and prevent migrant deaths in the Mediterranean'.⁵ It also

² J.P. Cassarino, S. Lavenex, *EU-Migration Governance in the Mediterranean Region: The Promise of (a Balanced) Partnership?*, „IEMed Mediterranean Yearbook Med. 2012”, http://www.iemed.org/observatori-en/arees-danalisi/arxius-adjunts/anuari/med.2012/cassarino%20Lavenex_en.pdf [last visited 19.06.2015].

³ <http://www.mei.edu/content/arab-spring-and-eus-immigration-policy-critical-sociology-global-approach-migration-and> [last visited 16.06.2015].

⁴ A. Triandafyllidou, A. Dimitriadi, *Migration Management at the Outposts of the European Union. The Case of Italy's and Greece's Borders*, „GriffithLawReview”, Vol. 22, No. 3/2013, p. 616.

⁵ http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2014/20140527_01_en.htm [last visited 24.03.2015].

prompted Italy to launch its sea rescue operation called Mare Nostrum, which lasted 364 days, and managed to rescue 150,810 migrants,⁶ the bulk of the total average of 480 arrivals per day in Italian seas in 2014.⁷ The operation has since been replaced by the smaller scale Frontex-run Joint Operation Triton, which has recently been allocated the same level of funding as Mare Nostrum.

The number of deaths of illegal migrants traveling across the Mediterranean Sea has risen exponentially since the beginning of the Arab Spring, with the International Organization for Migration (IOM) reporting the number of deaths by April 2015 at almost 1800,⁸ a number already half of the total of around 3,500 reported by the UNHCR in 2014, and three times as high as the total of about 600 in 2013.⁹ The Mediterranean Sea is in fact the most penetrable border for crossing into the European Union, but it is also ‘the most dangerous border in the world between countries that are not at war with each other’, with estimates in a Migration Policy Centre publication showing the risk of dying when crossing through the Mediterranean Sea at around two per cent.¹⁰

Due to its migration and mobility policies, the EU can be faulted for indirectly provoking an increase in human smuggling across the Mediterranean, and it is therefore its responsibility to make appropriate policy reforms to improve the situation. If the EU is to maintain its reputation as an international moral actor that safeguards democratic values, it is paramount that it does not favour certain groups of migrants over the more desperate and desolate ones, and does its best to alleviate the humanitarian crises by all means possible. Under EU law, the Charter of Fundamental Rights of the European Union, and international conventions ratified by all member states, the EU is responsible in upholding the rights and freedoms of migrants seeking to enter its territory.

This paper will firstly introduce the ideas and problems created by the securitisation and externalisation of EU policy towards migration and

⁶ <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx> [last visited 24.03.2015].

⁷ *Central Mediterranean Sea Initiative*, The UN Refugee Agency (UNHCR), <http://www.unhcr.org/542c07e39.html> [last visited 24.03.2015].

⁸ <http://www.iom.int/news/iom-monitors-migrant-arrivals-deaths-mediterranean> [last visited 16.06.2015].

⁹ <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=531990199&query=Mediterranean> [last visited 16.06.2015].

¹⁰ P. Fargues, S. Bonfanti, *When the best option is a leaky boat: why migrants risk their lives crossing the Mediterranean and what Europe is doing about it*, Migration Policy Centre (2014), EUI, http://cadmus.eui.eu/bitstream/handle/1814/33271/MPC_PB_2014-05.pdf?sequence=1 [last visited 19.06.2015].

mobility. Thereon, the paper will bring the attention to the increased support for anti-migratory far right parties across member states, and the challenges it poses to the EU's unity in matters such as migration. Afterwards, this paper will discuss and analyse the most recent developments and recommendations for the EU in finding a sustainable solution to the migration crisis, which will be followed by concluding remarks.

1. Securitisation of border control

In the aftermath of the 9/11 attacks on the World Trade Centre in the US, it could be seen that 'irregular migration became fully embedded in the security discourse' of the EU.¹¹ As 9/11 was followed by terror attacks in Europe, notably the 2004 train bombings in Madrid, and the 2005 London bombings, the EC 'placed the pillar of Justice and Home Affairs as the central priority in the external relations of the EU'.¹²

The 9/11 attacks caused EU interior ministers to talk about the connection 'between migration and Islamist terrorism', as the instability and bad governance in the Middle East and North Africa (MENA) 'was seen to offer fertile ground for radicalisation and instability, and some saw immigrants and asylum-seekers as potential vectors of this cross-border menace'.¹³ Recently, the fear of Islamic terrorism throughout Europe has only been further increased by Europeans joining the Islamic State fighters in Syria and Iraq, and the terror attacks in London (murder of Lee Rigby in May 2013), Paris (Charlie Hebdo shootings in January 2015), and Copenhagen (shootings in February 2015).

The danger of international terrorism and religious fundamentalism has been seen as a shared threat that necessitated further cooperation between governments in the EU and outside. According to a paper published by the Observatory of Euro-Mediterranean Policies, the new '*security paradigm*' of international terrorism became the 'necessary evil', which directly affected 'the way in which cooperation on migratory governance was addressed, readjusted and codified'.¹⁴

The paper asserts that the new 'security paradigm progressively gained ground as a necessary evil in the need to "manage" international migration' at the cost of disregarding 'fundamental human rights – i.e. those of

¹¹ A. Triandafyllidou, A. Dimitriadi, op.cit., p. 599.

¹² Ibidem.

¹³ R. Parkes, *Integrating EU Defence and Migration Policies in the Mediterranean*, Madrid 2014, p. 10.

¹⁴ J.P. Cassarino, S. Lavenex, op.cit.

the migrants and asylum seekers'.¹⁵ This paradigm could be seen as a tool to give priority for combating illegal migration through 'bilateral cooperation on migration and tighter border controls', thus diverting the attention from more traditional causes of migration, such as 'social inequality, poverty, underdevelopment, underemployment and political violence and repression'.¹⁶ In this way, externalisation of border control has been seen as the answer to the perceived threat of Islamic terrorism entering the EU through irregular migration.

2. Facets of externalisation

Triandafyllidou and Dimitriadi argue that the '*migration and asylum controls*' have been developed along strategies of 'fencing' and 'gate-keeping'.¹⁷ They define 'gate-keeping' as the restriction of the 'practical legal access to a nation and its institutions', whereas 'fencing measures actively target illegal migrants in order to arrest and then expel them'.¹⁸ They argue that there are 'two levels of externalization' that use 'fencing or gate-keeping' in managing 'irregular migration and asylum'.¹⁹

The first level allocates 'migration and asylum controls to the peripheral countries of the EU at its southern and eastern external borders', while the second level delegates 'the responsibility for migration and asylum management to third countries'.²⁰ The first level is enforced through the EU's Dublin Regulation, which primarily allocates the responsibility of processing asylum applications to the country where a migrant first arrives, and the EURODAC system, which is the EU-wide database of fingerprints of asylum seekers, while the second level is mainly realised through readmission and partnership agreements, especially developed in the European Neighbourhood Policy (ENP) framework.²¹

Externalising asylum and migration policies to these internal and external facets, the peripheral EU member states and third states, 'revolve around a complex web of policies and mechanisms', which are organised so that 'unwanted irregular migrants and asylum seekers do not reach the 'inner countries' to the west and north of the EU'.²² Moreover, these poli-

¹⁵ Ibidem.

¹⁶ Ibidem.

¹⁷ A. Triandafyllidou, A. Dimitriadi, op.cit., p. 601

¹⁸ Ibidem.

¹⁹ Ibidem.

²⁰ Ibidem.

²¹ Ibidem, p. 602–603.

²² Ibidem, p. 610.

cies do not guarantee protection of the migrants' and asylum seekers' fundamental rights in third countries, which are often extremely unstable.

The externalisation of migration policy is controversial on both levels, due to its application, which constitutes 'the potential violation of European and international law (especially indirectly preventing exit from a country)', the non-transparency and lack of accountability of actors, and the risks posed to migrants' safety.²³ In fact, externalisation directly influences the 'access to asylum, right to asylum (claim) and...entering a territory unharmed',²⁴ which are all rights protected under the EU Charter of Fundamental Rights.

Moreover, the internal externalisation risks fundamentally damaging the solidarity within the EU, where southern member states feel increasingly overwhelmed by the irregular migration at their coasts, and neglected by northern member states. The imbalance in burden sharing in managing the migrant crisis in the Mediterranean is further complicated by the southern border countries often differing in their understandings of responsibilities, 'especially at sea',²⁵ while many EU member states do not even share the same duties and obligations.²⁶

For instance, some EU member states have not signed amended versions of conventions regarding the protection of human rights at sea, namely the Convention on Safety of Life at Sea (SOLAS) and the Convention on Maritime Search and Rescue at Sea (SAR).²⁷ Such asymmetries, for instance between Italy and Malta, where Malta has not signed neither Convention, have caused both countries to hesitate in rescuing 'migrants in a timely manner despite their situation of distress'.²⁸ The southern EU member states often even disagree on what can be defined as a signal of distress at sea, with reports of detected migrant boats having to wait more than 16 hours at sea before being rescued.²⁹

Policy-makers in the EU have claimed that the involvement of its border agency, Frontex, and implementation of the EUROSUR surveillance

²³ Ibidem, p. 615.

²⁴ Ibidem, p. 615–616.

²⁵ <http://www.hrw.org/news/2013/10/23/eu-improve-migrant-rescue-offer-refuge> [last visited 5.05.2015].

²⁶ *Prioritising Border Control over Human Lives: Violations of the Rights of Migrants and Refugees at Sea*, Euro-Mediterranean Human Rights Network (EMHRN), <http://www.euromedrights.org/eng/wp-content/uploads/2014/06/Policy-brief-ENG-2014-06-25.pdf> [last visited 27.03.2015].

²⁷ Ibidem.

²⁸ Ibidem.

²⁹ Ibidem.

technology, could save more lives at sea, although the ‘system is structured around prevention and early warning’ to stop migrants from reaching EU member’s territorial seas.³⁰ Triandafyllidou and Dimitriadi argue that while the externalisation policy is based on ‘the facade of ‘saving’ human lives, the blame for deaths is shifted to the migrants themselves, who continue to attempt to bypass the strict border controls and Frontex’.³¹

Although European powers supported the Arab Spring revolutions, most of the southern EU member states cooperated in migration matters with the authoritarian regimes before the revolutions. The EU’s first reaction to the Arab Spring was to send Frontex near to the coasts of Tunisia and Libya to stop ‘populations freed from dictatorships from’ reaching the EU.³² It is ironic, that while the EU supported the democratisation process in the MENA region, their very own actions violated some of the most fundamental treaties regarding human rights protection and rights to asylum, all of which are core characteristics of a democratic system.

For instance, Libya, one of the main transit countries for irregular migration through boat smuggling to the Italian coast, is considered a failing state that lacks even the basic institutions of a working government.³³ Frontex described the Libyan Coastguard ‘as one of the few institutions in Libya still capable of functioning’,³⁴ whereas the ongoing civil war makes the country a prime example of an unsafe place to return migrants to. Therefore, cooperation with its Coastguard in detaining irregular migrants before they reach EU territory, effectively violates the principle of *non-refoulement*, defined in Article 33 of the 1951 Geneva Convention, which prohibits states from returning migrants to countries where their lives may be at risk.

While Algeria and Morocco were unwilling to make readmission agreements, which would force them to take back both their own nationals that had irregularly migrated to Europe, and foreign nationals that had transited through their territory on their way to Europe,³⁵ ‘a dense web of informal cooperation activities’ developed within and outside the European Neighbourhood Policy (ENP) framework.³⁶ Moreover, it triggered the creation of Mobility Partnerships, which according to the Eu-

³⁰ A. Triandafyllidou, A. Dimitriadi, op.cit., p. 615.

³¹ Ibidem, p. 615–616.

³² *Shifting Borders. Externalising Migrant Vulnerabilities and Rights?*, Red Cross EU Office, Brussels 2013, p. 9.

³³ <http://www.economist.com/news/leaders/21638122-another-front-global-mayhem-emerging-not-helped-regional-meddling-and-western> [last visited 16.06.2015].

³⁴ R. Parkes op.cit., p. 3.

³⁵ J.P. Cassarino, S. Lavenex, op.cit.

³⁶ Ibidem, p. 2.

ropean Commissioner for Home Affairs, Cecilia Malmström, could ‘be an important part in the democratisation process in countries across North Africa’.³⁷ However, these Mobility Partnerships *de facto* resemble readmission agreements.

The Mobility Partnerships ‘should reflect the three main facets of the comprehensive approach’ included in the GAMM: ‘legal migration, development, and the fight against irregular migration’, while ‘analyses of existing mobility partnerships’ with Morocco, Tunisia, and Jordan, have clearly shown ‘that they emphasise projects in the field of migration control, readmission and return’, barely creating any different or new ways to migrate into the EU.³⁸ Moreover, with a few exceptions, such as the Schengen Visa, the Lisbon Treaty maintains that the ‘competence over the admission of migration quotas shall remain with Member States’.³⁹

The Mobility Partnerships further portray how the EU has become increasingly focused on involving third countries in controlling migration and securing its outer borders, particularly in southern Europe. The EU’s neighbourhood policies seem to use financial aid to poorer regions as leverage for increased, and externalised, control of migration with ‘countries whose democratic development is by no means secure’.⁴⁰

2.1. Accountability

Externalisation of border control has also made it difficult to expose human rights violations, since NGOs and other organisations are unable to make clear and objective judgements about such abuses, due to the many actors involved. Whether or not it is a purposeful or consequential effect of externalisation of border control, ‘the role of civil society organisations advocating on behalf of asylum seekers and migrants’ has diminished.⁴¹ The externalisation of border control has reduced ‘democratic accountability and commitments to fundamental rights which EU Member States have ratified’, and has further encouraged migrants to pursue increasingly hazardous routes to enter EU territory.⁴²

Fundamentally, externalising border control ‘has led to serious human rights violations’.⁴³ The non-transparency in the application of border

³⁷ *Ibidem*.

³⁸ *Ibidem*.

³⁹ *Ibidem*,

⁴⁰ R. Parkes, *op.cit.*, p. 10.

⁴¹ *Shifting Borders. Externalising Migrant Vulnerabilities and Rights?*, *op.cit.*, p. 9.

⁴² *Ibidem*.

⁴³ *Ibidem*, p. 12.

control allows such violations to continue unchecked.⁴⁴ The absence of scrutiny creates ‘a permissive environment in which migrants, refugees and asylum-seekers are left vulnerable and are denied protection of human rights’.⁴⁵ There is plenty of evidence of returning migrants to countries where they risk human rights violations.⁴⁶ Such violations include ‘indefinite detention in extremely poor conditions, beatings and other ill-treatment’, torture, ‘violation of the right to claim asylum and the right not to be subjected to collective expulsions’.⁴⁷

2.2. Frontex

The involvement of Frontex and its Joint Operation Triton has not reduced the number of deaths at sea, since it is ‘not a Search and Rescue (SAR) agency’.⁴⁸ Conversely, an EU official reportedly stated that ‘Frontex’s job is rather to help member states improve the flow of paperwork at the border’.⁴⁹ The involvement of Frontex seems to serve the purpose of convincing Europeans and the global community of a ‘*coherent and solidary EU solution*’, while in truth, it eliminates the sense of shared responsibility, by shifting the problem on to third countries.⁵⁰

Moreover, the current regulations for Frontex operations are problematic, due to the ‘definition of a “place of safety”’ not being limited to the EU, which allows for non-EU countries to be considered as safe places for disembarking rescued migrants.⁵¹ Furthermore, while push-backs are illegal, Frontex and EU member states may order vessels ‘detected in the territorial sea or contiguous zone of an EU Member State to alter its course to another destination’.⁵² Current regulations also allow for push-backs in third states, in whose waters Frontex can operate.⁵³ Because ‘Frontex is presented only as the coordinator of maritime surveillance although it can initiate joint operations’, it leaves the agency free of ‘any direct responsibility in the case of human rights violations during maritime operations’.⁵⁴

⁴⁴ Ibidem.

⁴⁵ Ibidem.

⁴⁶ Ibidem.

⁴⁷ Ibidem.

⁴⁸ R. Parkes, *op.cit.*, p. 3.

⁴⁹ Ibidem.

⁵⁰ Ibidem.

⁵¹ *Prioritising Border Control over Human Lives: Violations of the Rights of Migrants and Refugees at Sea*, *op.cit.*, p. 11.

⁵² Ibidem.

⁵³ Ibidem.

⁵⁴ Ibidem.

A report by the Red Cross bluntly suggests that Frontex's interceptions of migrants 'in the Mediterranean Sea are designed to prevent would-be migrants and asylum seekers from reaching' Europe, while the EU pressures the 'migrant's countries of origin or transit' to cooperate 'in its migration policy to the detriment of respect for human rights'.⁵⁵ Controversially, fishermen in Lampedusa have claimed that they were 'hindered in rescuing people in the water' due to fearing persecution for 'aiding and abetting illegal immigration'.⁵⁶ Commercial ships are often also reluctant to conduct the rescues due to the high costs in having to 'deviate from their original route', and not knowing where to disembark the migrants.⁵⁷ The EU's Carriers' Sanctions directive in fact 'provides for sanctions against those who transport undocumented migrants into the EU',⁵⁸ which makes commercial ships and seamen liable to be penalized for disembarking illegal migrants at EU ports.⁵⁹

By push-backs, and cooperation with third states to detain migrants before they enter the EU territory, the EU is effectively undermining the rights of migrants to claim asylum, and to be properly processed in the legal context of EU and international laws and conventions. Even though member states should do their utmost to 'identify intercepted migrants, assess their circumstances and inform them of the place of disembarkation' and right 'to make a non-refoulement claim, interpreters and legal advisors on shore must only be provided for "when necessary" – leaving excessive discretion to officials on borders as to when this is the case'.⁶⁰

3. Increasing popularity of far right parties

The far right parties, which have recently gained support in many member states, blame slow economic upturns and high unemployment on austerity measures, and the rise, or perceived rise, in immigration from within and outside of the EU.⁶¹ Cas Mudde, an expert on far right parties

⁵⁵ *Shifting Borders. Externalising Migrant Vulnerabilities and Rights?*, op.cit., p. 7–8.

⁵⁶ A. Triandafyllidou, A. Dimitriadi, op.cit., p. 615.

⁵⁷ *Prioritising Border Control over Human Lives: Violations of the Rights of Migrants and Refugees at Sea*, op.cit., p. 5.

⁵⁸ *Handbook on European Law Relating to Asylum, Borders and Immigration*, Luxembourg 2014, p. 21.

⁵⁹ *Prioritising Border Control over Human Lives: Violations of the Rights of Migrants and Refugees at Sea*, op.cit., p. 11.

⁶⁰ *Ibidem*, p. 11–12.

⁶¹ D. Halikiopoulou, S. Vasilopoulou, *Support for the Far Right in the 2014 European Parliament Elections: A Comparative Perspective*, „The Political Quarterly”, Vol. 85(3)/2014, p. 285–288.

in Europe, says that while far right parties in countries such as Greece and Hungary blame non-European migration and EU-imposed austerity measures for their domestic problems, in richer EU states, far right rhetoric uses ‘nativist stereotypes’, which ‘argue that elitist and wasteful Eurocrats force “us” to pay money to the corrupt and lazy “them”’. On top of that, they present the image of “our nation” being threatened by criminal immigrants from South and Eastern Europe’.⁶² In this way, far-right parties are often unwilling to even accommodate EU migrants, let alone refugees from third countries, and see the very EU as a problematic institution that burdens states with migrants.

Most member state governments’ *de facto* actions are directed by *raison d’être*, where they refrain from allowing more migrants into their countries, due to the risk of losing votes to far right parties. Moreover, if EU Member States would embrace the EU’s fundamental standards, and allow more immigration from third countries, the numbers of migrants that would seek entry is impossible to evaluate. With open doors into the EU, the numbers could rise to many more thousands, or even millions.

Many Europeans feel that integration of migrants into their societies has been unsuccessful, with German Chancellor Merkel most famously saying that ‘multiculturalism has “utterly failed”’, with a study presenting that more than half of the German population regarded Arabs, the largest group of migrants in the country, as ‘unpleasant people’.⁶³ Thus, allowing more migrants from very different cultures to enter the EU risks polarising societies, and causing a rise in racism and openly anti-Islamic groups, as exemplified by the Patriotic Europeans against the Islamisation of the West (PEGIDA), a group formed in Germany that holds anti-migration protests in different cities, and has gained popularity in many other parts of Europe.⁶⁴ European leaders will surely be taking note of this phenomenon in their migration discourse.⁶⁵

Although EU members debate the benefits of migration, the declining number of working age people in EU, and the higher dependency

⁶² C. Mudde, *The Far Right in the 2014 European Elections: Of Earthquakes, Cartels and Designer Fascists*, „The Washington Post”, 30.05.2014.

⁶³ M. Weaver, *Angela Merkel: German Multiculturalism Has ‘Utterly Failed’*, „The Guardian”, 17.10.2010.

⁶⁴ L. De Bode, *PEGIDA Movement Spreads across Europe, Stirs Anti-immigrant Sentiment*, „Al Jazeera America”, 14.01.2015.

⁶⁵ Understanding the fundamental reasons for the rise in such anti-migration and anti-Islamic groups would be a topic for further research.

ratios caused by it, mean that migrants will be needed in the EU,⁶⁶ even if a huge baby boom would erupt today. However, with the current influx of migrants mostly including poor and uneducated refugees from conflict-ridden countries in the MENA region, the EU has seemingly opted for readmission agreements and Mobility Partnerships with third countries, where the best suited migrants are handpicked and allowed entrance into the EU, thus adding to the economy, whilst others are left resorting to illegal means to reach the continent. Moreover, it seems that many European countries favour eastern European, and preferably Christian, migrants.

4. Recent developments

On Sunday the 19 April 2015, over 800 migrants perished in the single biggest capsizing of a boat,⁶⁷ which was on route from Tripoli towards Italy,⁶⁸ causing EU leaders to hold emergency meetings in Luxembourg, where they created a ten point list of new initiatives for alleviating the situation.⁶⁹

The ten point list included points for increasing financial resources for the Frontex operations in the Mediterranean area, ‘a systematic effort to capture and destroy vessels used by smugglers’, increased cooperation of EU agencies in investigating smugglers’ operations, sending EASO teams to aid Italy and Greece in the ‘processing of asylum applications’, ensuring that Member States take fingerprints of all migrants, considering ‘options for an emergency relocating mechanism’, implementing an EU wide ‘pilot project’ for the resettlement of migrants, establishing ‘a new return programme for rapid return of irregular migrants coordinated by Frontex from frontline Member States’, further cooperating with countries that surround Libya, and deploying ‘Immigration Liaison Officers (ILO) in key third countries... to gather intelligence on migratory flows and strengthen the role of the EU Delegations’.⁷⁰

The UN deemed the EU’s ten point list as ‘minimalist’,⁷¹ as these points seem to continue the EU policy of securitisation and externalisation of migration control. Similar pledges have been made in the past, as many human rights groups remain critical towards the EU for ‘failing to

⁶⁶ P Taylor, *Aging Europe Needs the Migrants It Doesn’t Want*, „Reuters”, 1.12.2014.

⁶⁷ <http://www.bbc.com/news/world-europe-32420900> [last visited 22.04.2015].

⁶⁸ <http://www.bbc.com/news/world-europe-32390941> [last visited 21.04.2015].

⁶⁹ http://europa.eu/rapid/press-release_IP-15-4813_en.htm [last visited 20.04.2015].

⁷⁰ Ibidem.

⁷¹ <http://www.bbc.com/news/world-europe-32435230> [last visited 24.04.2015].

expand the operational area of EU-led naval patrols', which could be seen as a fundamental step in actually saving more lives.⁷²

The ten points seem to be aimed at making sure that irregular migrants can be returned faster to third countries, their asylum applications can be processed outside of EU territory, and that surveillance of migrants is increased by further cooperation between EU organisations, member states, and third countries, while human rights protection are not seen as a priority. Moreover, the points seem to focus on combatting the smugglers, in the hope that destroyed boats and smuggling operations will decrease the amount of irregular migration through the Mediterranean Sea. Any military operation would be extremely hazardous and controversial, due to the risk of collateral damage and its applicability to international laws.

On 18 May 2015, the EU launched the EUNAVFOR Med mission, with the primary aim to tackle 'human smuggling and trafficking networks' through 'surveillance and assessment', after which the European Council will possibly decide to move to searching and seizing 'suspicious vessels', the 'disposal of vessels and related assets', and apprehension of smugglers and traffickers, 'taking into account a UN mandate and the consent of the coastal states concerned'.⁷³ While western powers do not acknowledge the legitimacy of the group governing most of the coastal part of Libya, where the majority of smuggling takes place from, it is unclear if the group's consent would be sought in case of an intervention on the territory it controls.

The European Commission has recently proposed for Frontex 'to be granted new powers to initiate and carry out forced deportations' to increase the effectiveness of returning irregular migrants.⁷⁴ However, most of the irregular migrants, who would not be granted asylum, come from countries where their safety is by no means assured, and their return would most likely risk violating the principle of *non-refoulement*. In a European Council meeting in late June 2015, leaders emphasised the need to utilize all possible tools to deter illegal migration, to accelerate ongoing readmission negotiations with third countries, and for 'development policy tool' to 'reinforce local capacity-building' in matters such as 'border control, asylum, counter-smuggling and reintegration'.⁷⁵

⁷² Ibidem.

⁷³ http://www.consilium.europa.eu/press-releases-pdf/2015/6/40802199633_en.pdf [last visited 2.07.2015].

⁷⁴ <http://www.theguardian.com/world/2015/jun/23/eu-to-create-new-quarantine-system-for-mediterranean-migrants> [last visited 2.07.2015]

⁷⁵ EUCO 22/15, CO EUR 8, CONCL. European Council meeting (25 and 26 June 2015) – Conclusions, <http://www.consilium.europa.eu/en/press/press-releases/2015/06/26-euco-conclusions/> [last visited 2.07.2015].

The EU seems to continue its policy of externalising migration control to third countries, although the readmission and partnership agreements appear to more strongly prioritize developmental aid programs to stabilize MENA countries, in order for them to be regarded as safe and stable places to return migrants to. However, the ongoing instability, often growing in vast parts of the region, suggests that much more needs to be done for MENA countries to be considered safe enough to return refugees, especially in the long run.

The proposed plans do not take into account the protection of human rights of migrants, and do not implement any further mechanisms to ensure transparency and accountability of different actors in border control and rescue activities.

4.1. Refugee quota

Currently, five of the EU's member states are receiving 75 per cent of all refugees, while half of the members don't accept them at all.⁷⁶ Especially Italy, Germany and France are currently pushing for better allocation of refugees amongst European states, by means of a refugee quota (European resettlement scheme).⁷⁷ Such a scheme could suspend the Dublin Regulation.⁷⁸

Although a refugee quota system would relieve the burden on southern EU member states in managing migration, allow for detention facilities to be less crowded, and speed up the processing of asylum applications, forcing states to accept such a system, while simultaneously creating sustainable solutions that respect the fundamental freedoms and rights of migrants, is extremely difficult.

The quota plan would create emergency instruments that oblige all member states to share the burden of hosting refugees 'in clear need of international protection'.⁷⁹ The suggested distribution key allocating refugees to member states would be based and weighted by the following criteria: population size (40%), GDP (40%), 'average number of spontaneous asylum applications and number of refugees per 1 million inhabitants over the period 2010–2014 (10%)' and unemployment levels (10%).⁸⁰

⁷⁶ B. Riegert, *EU Mulls Quotas for Refugees*, „Deutsche Welle”, 10.10.2014.

⁷⁷ *Ibidem*.

⁷⁸ *Ibidem*.

⁷⁹ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_annex_en.pdf [last visited 19.06.2015].

⁸⁰ *Ibidem*.

On 26 June 2015, the European Council agreed on a voluntary system for the temporary resettlement of 60,000 asylum seekers, 40,000 of which are already in Greece and Italy, and a further '20,000 displaced persons' from third countries, within a two year period.⁸¹ By the end of July 2015, the European Council is to adopt a decision regarding the distribution of the asylum seekers, as Member States will boost financial aid and resources to 'frontline Member States' in order to 'alleviate the costs of receiving and processing applications', and with the inclusion of EU agencies, create 'reception and first reception facilities'.⁸²

The number of migrants to be resettled is still very small, when considering the magnitude of the migrant crisis, and it is hard to believe that such a system will deter migrants from turning to smugglers. Moreover, the implementation of the quota system is widely contested amongst member states, as it may have serious repercussions for their future demographic profiles.

In fact, migrants cannot be sent to just any member state according to a quota, since they must agree to such a relocation, and it would be unimaginable to move them forcibly. Furthermore, many EU member states do not have facilities for hosting large amounts of migrants, with reports of mainly eastern European countries, such as Poland, having poor conditions for refugee protection.⁸³ Although Italy and Greece hardly exemplify decent treatment of migrants, it would be unjustifiable for the EU to send migrants to other member states, where minimum reception conditions are not met, especially against their will.

The quota system faces heavy resistance from many sides in the EU, with the most vocal opponents being the UK and Hungary.⁸⁴ The UK has already opted out of the resettlement system, while the Hungarian PM, Viktor Orbán, an outspoken critic of EU migration policy, has described the quota proposal as 'mad' and 'unfair'.⁸⁵ Moreover, due to the migrant stream seeing an almost nine-fold increase in the Balkans, especially between Serbia and Hungary, the Hungarian government has started to draw up controversial plans to build a wired fence along its Serbian border.⁸⁶ Resistance towards a quota plan is large in most eastern member

⁸¹ EUCO 22/15, CO EUR 8, CONCL. op.cit.

⁸² *Ibidem*.

⁸³ <http://www.globaldetentionproject.org/countries/europe/poland/introduction.html> [last visited 12.05.2015].

⁸⁴ I. Traynor, op.cit.

⁸⁵ <http://www.bbc.com/news/uk-31519319> [last visited 18.02.2015].

⁸⁶ <http://www.theguardian.com/world/2015/jun/26/eu-leaders-hash-out-voluntary-system-to-address-mediterranean-migrant-crisis> [last visited 26.06.2015].

states, due to which any distribution system will most likely be made on a voluntary, rather than forced, basis.⁸⁷

Forcing a refugee quota upon member states would worsen the already weakening solidarity in the union, by ordinary citizens feeling that the problems of border countries are unfairly forced upon their countries. However, the border countries feel a similar lack of solidarity with the current arrangement, where the Dublin Regulation burdens them disproportionately with migrants. The Italian PM Matteo Renzi recently described the migrant crisis as a test of European solidarity, labelling unwillingness to help as 'selfishness'.⁸⁸ He claimed that Italy was perfectly able to handle the situation alone, but that it was in the best interest for the integrity of the EU to stand united in fighting for the values the EU was founded upon, and to respect the right of asylum in unity.⁸⁹

While migration on the southern shores of Europe persists, according to the Internal Displacement Monitoring Centre (IDMC), the conflict in eastern Ukraine has produced over one million internally displaced persons,⁹⁰ causing central and eastern EU Member States to receive increased migration on their own borders. In this way, migration is testing the institutions and foundations of the union, as radical changes to migration policy seem rather unfavourable in the current political climate.

5. Double standard

The efficient migration and mobility policies that are necessary for the functioning of the EU are currently not in place. To put it boldly, the EU should stop its double standard on maintaining harsh migration controls, based on securitisation and externalisation, coupled with an idea of being the forerunners of human rights promotion, and to make a clear, uniform distinction, in consistency with its member states, on a coherent future of migration and mobility policy. The double standards of EU policy is criticised by the Human Rights Watch, who state that 'the EU's greatest asset is soft power – its ideals and values; a reputation for demanding respect for human rights. Standing by as cemeteries in Lampedusa fill up

⁸⁷ <http://www.theguardian.com/world/2015/jun/23/eu-to-create-new-quarantine-system-for-mediterranean-migrants> [last visited 2.07.2015].

⁸⁸ <http://www.theguardian.com/commentisfree/2015/jun/23/mediterranean-migrant-crisis-not-italy-but-europe> [last visited 2.07.2015].

⁸⁹ *Ibidem*.

⁹⁰ <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis> [last visited 19.06.2015].

with the bodies of those lost at sea is not consistent with those values. It is time for Europe to act in accordance with them'.⁹¹

If the EU wants to live up to its standards of respecting fundamental human rights, the right to asylum, and rule of law, it must face the consequences of hosting a huge stream of migrants from the southern Mediterranean. On the other hand, if the EU decides to reject migrants from entering the EU, it must acknowledge its withdrawal from being an exemplary moral actor internationally, and face the consequences of further violations to human rights on its external borders. In this way, it would admit that its previous policies were wrong, and that it does not wish to host more migrants, whether they are refugees or not. Without making such a uniform decision, the EU risks damaging its reputation in international relations.

While the EU's externalisation and securitisation policies of border management have been prioritised over human rights protection and the right to asylum, it must be noted that the union is facing a dilemma, where member state governments and the EU at a supranational level, do not share the same philosophy on immigration into the EU. While the EU seeks to maintain a reputation as a moral actor, which promotes democracy, human rights, the rule of law, and other humanitarian principles, member states are reluctant to actually enforce such principles in their policies, especially in northern and central EU countries, where increased support for far right parties reflect a growth in anti-immigration and Eurosceptic sentiments.

6. Recommendations

There are many policy recommendations suggesting that the EU should shift its migration and mobility policy paradigm from securitisation and externalisation towards human rights protection and developmental aid in the MENA region. A 2013 report by the Human Rights Watch summarizes the most acute issues that are still current, and need to be tackled by the EU:

The EU should make sure that surveillance of the Mediterranean Sea focuses on 'rescue at sea'; 'broaden the circumstances in which a boat is considered to be in distress and its occupants in need of rescue'; adopt rules and guidelines for border agencies to bring intercepted or rescued migrants 'to the closest safe port of call in an EU country' as fast as possi-

⁹¹ B. Ward, *The EU Stands By as Thousands of Migrants Drown in the Mediterranean*, „Human Rights Watch“, 22.02.2015.

ble; assure private vessels that by rescuing people at sea, they will not risk 'prosecution on charges of abetting irregular migration'; and make sure that the principle of non-refoulement is respected by all actors.⁹² Moreover, cooperation in the field of immigration with third countries should respect all fundamental human rights.⁹³ The report asserts that the EU should 'avoid detention except as a last resort and for the shortest time possible', and that 'unaccompanied children and families with children' should not be detained, but provided 'with safe reception accommodations'.⁹⁴

Generally, the EU must make amore concerted, and transparent, effort to safeguard human rights of migrants, and to create stability in the MENA region. The EU should strive to solve the root causes of migration, which in addition to the current conflicts in much of the MENA region, are caused by more classical variables, such as unemployment, hunger, repression etc., all of which well managed streams of developmental aid could alleviate. The colonial pasts of many EU members in the MENA region have caused dependencies between the continents, which should not be exploited to the greater benefit of Europe, but should also restore peace, stability, jobs and working institutions within the MENA countries.

Moving away from externalisation policies towards creating more ways for migrants and asylum seekers to legally enter the EU, where their asylum applications would be processed by all 28 EU member, could create better safeguards for the protection of fundamental human rights and right to asylum, if the proper adjustments were made equally amongst all member states. Once the situations in the home countries of such migrants would be stable, they could be readmitted.

The EU should create more transparent and separated obligations for all actors involved in the congested field of migration management, and implement databases and arenas for discussion and resource-sharing on issues related to migration. This would deter human rights abuses, allow for migrants and would-be migrants to be better informed of their rights, and to take part in developmental projects that are being implemented in their very own home countries.

The current prioritisation on externalising migration control has not proven to alleviate the increasingly volatile situation. Therefore, a more

⁹² <http://www.hrw.org/news/2013/10/23/eu-improve-migrant-rescue-offer-refuge> [last visited 5.05.2015].

⁹³ Ibidem.

⁹⁴ Ibidem.

humanitarian approach, where the EU would intake more migrants for a period of time, could reduce the number of lives lost on route, deter human smuggling, and allow for migrants to claim their asylum rights, and to be treated with dignity. Moreover, it would allow for the EU to live up to the core values it promotes.

Conclusion

It is evident that the current policies of the EU towards the increased migration from the Mediterranean Sea are not efficient in maintaining a proper standard of human rights protection or safeguarding the right to asylum. While the EU's policy makers are constantly trying to find new ways to manage the situation, by measures such as the ten point plan, it is clear that the focus on externalisation and securitisation of border controls is not being changed.

The burden on the southern EU member states in managing the migration crisis have been made disproportionately challenging by the Dublin Regulation. With the 'internal fragmentation', 'lack of transparency and a predominance of home affairs and security actors'⁹⁵ in EU politics, the Lisbon Treaty, that was supposed to further integrate the EU member states to an unprecedented level, is being tested.

The EU has "contracted" the management of the migratory movement to MENA countries, which often have 'abusive policies and practices' of migration control, through facets of 'development funding', 'readmission agreements', and participation in 'joint patrols'.⁹⁶ The contradiction between restricting the entrance of migrants whilst respecting 'human rights and civil liberties' is apparent, especially when it comes to 'the right of access to asylum for all, irrespective of country of origin'.⁹⁷ While the ENP for the MENA region is based on the promotion of cooperation in many sectors, from economic and social spheres of life to democratisation and mobility, in reality, the EU's policies seem to leave 'political reform and human rights' entirely side-lined.⁹⁸

⁹⁵ S. Carrera, L. Den Hertog, J. Parkin, *EU Migration Policy in the Wake of the Arab Spring: What Prospects for EU-Southern Mediterranean Relations?*, MEDPRO Technical Report No. 15/August 2012, <http://www.ceps.eu/system/files/MEDPRO%20TR%2015%20EU%20Migration%20Policy%20in%20wake%20of%20Arab%20Spring.pdf> [last visited 19.06.2015].

⁹⁶ http://www.hrw.org/sites/default/files/reports/morocco0214_ForUpload.pdf [last visited 19.06.2015].

⁹⁷ A. Triandafyllidou, A. Dimitriadi, op.cit., p. 616.

⁹⁸ S. Carrera, L. Den Hertog, J. Parkin, op.cit.

In the current situation, where illegal migration is organised by smugglers, the increased policing measures on borders have failed to deter irregular migration, while human rights violations persist, and refugees are unable to access their rights to asylum as stated in the Geneva Convention. Moreover, the congestion of actors in migration control has led to unclear divisions of tasks and responsibilities, causing further problems in monitoring accountability and transparency of the participating authorities, and leaving many areas of human rights unprotected.

The migration crisis has also prompted social discontent and unrest amongst many Europeans, well reflected by the rise of racism and xenophobia in popular arrival countries, such as Greece and Italy, and has contributed to the increased popularity of far right, anti-migration and anti-Islam, parties in other European countries.

The EU must act to end the double standard policy of playing a moral actor in international relations, while in reality, its Member States act in accordance with national interests and public opinion. It must make a more concerted effort to alleviate the situation, and this effort must come from within the EU, amongst all of the 28 EU members.

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Key words: Migration, Asylum, Human Rights, Securitisation, Externalisation

Abstract

The aftermath of the Arab Spring revolutions in the Middle East and North Africa, and the ongoing instability in the southern Mediterranean region, have caused an unprecedented wave of irregular migration towards southern EU borders. The exponential increase of irregular migration, es-

pecially by smuggling boats, through the Mediterranean Sea, has led to growing numbers of deaths and human rights violations of migrants. The EU's current migration and mobility policy towards the southern Mediterranean region is widely focused on the paradigm of securitising border control, and the externalisation of its management to the EU's periphery member states, and to third countries. This policy frame has not succeeded in producing sustainable solutions for migratory management on the EU's southern borders, and has been detrimental to the protection of human rights. While EU leaders are looking for solutions to decrease the pressure of migratory management experienced by its southern members, and to sway irregular migration in general, the Eurosceptic and anti-migratory political climate that prevails in many parts of the EU has made any decisions regarding migration controversial. This article will analyse the current paradigms of EU policy towards migration from the southern Mediterranean region, and discuss the alternatives and necessary adjustments that could be made to alleviate the situation.