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The European Union's migration management: border externalization and the negligence to human rights

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Introduction

Migrations are not a recent phenomenon. On the contrary, they have been going on for centuries and are an essential element in "building the national identities of different countries around the world" (Schumache & Salum, 2017, p. 19). In the post-Cold War period, globalization, which has as one of its most striking features the increase in various cross-border flows, such as people, commercial goods, and cultural values, among others, was seen by many as something irreversible (Castles & Miller, 2004). However, despite the fact that globalization facilitated the movement of some individuals, restrictive migration policies made this process more difficult for others (Castles, 2010, p. 15).

On the one hand, post-Cold War conflicts increased refugee flows around the world (Degnbol-Martinussen and Engberg-Pedersen, 2003); while on the other hand, the migratory flows have begun to be considered within a security perspective (Brancante & Reis, 2009). In this context, the securitization of migration, which is associated with the process of framing migrants as a security matter, as well as the enhancement of migration and borders controls, became part of the set of changes that happened worldwide with the end of the Cold War (Domenech, 2018). As a result, unwanted migrants have been prevented from entering certain states (Velasco, 2014).

In some situations, the presence of immigrants is important for the European Union (EU), for instance, when the national workforce is insufficient and the migrants help to compensate for it. However, in other scenarios, the immigrants become unwanted people and might even be treated as a threat. In these contexts, a procedure which became one of the main measures of the European Union to deal with these migratory flows is known as border externalization.

In general, the externalization of migratory measures tend to be presented in relation to security or humanitarian matters and not as a strategy of control and migration restriction (Frelick, Kysel & Podkul, 2016). Nonetheless, externalization procedures are widely criticized for opening the door to denying the rights of asylum seekers and irregular immigrants (Osso, 2016), while controlling and restricting migratory flows. Considering this scenario, the question that guides the development of this paper is: What is the relationship between the European border externalization procedures and the respect for human rights in the migratory context?

This essay is divided into three sections. The first succinctly approaches the securitization of migration outlook. The next part presents one of the securitization of migration's measures, namely, the border externalization procedure. The third and last section analyzes to what extent the implementation of securitization measures, especially border externalization, has neglected human rights.

1. Forced migration and the understanding of the migrant as a threat

The securitization of migration and border externalization processes include an ample variety of migration profiles. However, considering the vast amount of literature on these themes, this paper focuses on the issue of forced migration. Accordingly, it is important to highlight that in recent years, the number of individuals forced to migrate has reached record highs (UNHCR, 2019). This scenario corroborates the reinforcement of border externalization measures in the context of securitizing migration in the European Union.

More recent data show that at least 79.5 million individuals worldwide have been forcibly displaced due to war, violence, and persecution, including 45.7 million internally displaced persons¹; 26 million who achieved the refugee status²; and 4.2 million asylum seekers³ (UNHCR, 2019). From the total number of refugees in the world, around 2.5 million are in the European Union, which represents only 0.6% of its population (EU, 2019). However, European citizens overestimate these figures. For instance, in 2015 an inquiry held in 10 European countries showed that people interviewed believed that there were many more migrants in their countries than in reality (OIM, 2018).

Like domestic affairs, pressures from international issues also shape foreign aid (Lancaster, 2007). For example, in response to immigrant flows, many Global North countries started to adopt restrictive control measures, mainly after the September 11th episode in 2001 (Ferreira, 2011; FGV, 2012; Velasco, 2014). Ferreira (2011) reports that the participants in this terrorist attack were immigrants. After that, with the dynamics of the War on Terror⁴, the securitization of European migration gained even more prominence (Ibidem). Pinyol-Jiménez (2012) also cites 9/11 as a very significant event for the process of securitizing migration, especially in the Mediterranean region. Nonetheless, this terrorist attack did not inaugurate the securitization measures.

The securitization of migration procedures were already underway in the European Union since the foundation of the EU⁵. As Velasco (2014) states, the attack on the World Trade Center represents "a political circumstance that led to the reinforcement of security measures, which [...] were already underway" (p. 80). This episode only paved the way to their strengthening. Prior to the attack on the World Trade Center, there were already groups of unwanted immigrants who were prevented from entering certain states.

¹ Internally displaced people are the ones "who have been forced to leave their homes to go elsewhere in their own country, in search of protection and safety" (Nações Unidas, 2018).

² Refugees are the people who were "forced to leave their country of origin and require 'international protection' due to the risk of violence or persecution if they return home. This [also] includes people fleeing wars" (Ibidem).

³ An asylum seeker is a "person who has individually applied for refugee status and is awaiting the outcome of his/her application" (Ibidem).

⁴ "Europe, while historically sensitive to US securitization [...], has internalized the war on terror" (Ferreira, 2011, p. 48).

⁵ To cite, the Maastricht Treaty (1992), which stipulated the creation of the European Police Office); the Schengen Agreement, which entered into force in 1995; the Amsterdam Treaty (1997); the European Council of Tampere (1999); the Seville European Council (2002); the Hague Program (2004); and the Lisbon Treaty (2007) are normative frameworks that linked migration to security issues and established securitization measures.

This group of immigrants is represented by individuals who do not have financial resources, are not professionally qualified, and are seen as possible future users of social welfare services, unlike entrepreneurs, tourists and skilled workers (Ahlbäck, 2006). From time to time "asylum seekers are perceived as defrauding the European welfare state and as a threat to states' homeland security" (Morgades, 2010, p. 6). For these unwanted migrants, migration control has surpassed the European Union's external borders. Therefore, border externalization is the securitization of migration's process which will be presented in section two.

2. Border externalization

Externalization of migration or border externalization controls are a set of extraterritorial actions by the state, or a union of states, to prevent migrants from entering their territory (Frelick, Kysel & Podkul, 2016), or returning them once they have already arrived in their jurisdiction. As part of this securitization process, the European Union and its Member States started to sign agreements with third countries⁶ to scale down migratory flows that intend to reach their territory or to return the immigrants refused by the EU. However, as mentioned before, the context and the way in which these agreements are implemented have engendered criticism. Many researchers, organizations and institutions consider that these procedures do not respect the migrants' rights.

It has been more than a decade since Degnbol-Martinussen and Engberg-Pedersen (2003) reported that European Union countries had offered foreign aid to reduce migratory flows from the Middle East and Africa to Europe. Therefore, limiting the international migratory flow can be considered one of the motivating issues for foreign aid. In this sense, the International Organization for Migration (2018) has noticed a growing interest in international cooperation in the field of migration.

It should be noted, however, that when the liberalization of resources occurs in the migratory context, there are great incentives for the allocation of most of these to be directed to exclusion and retention actions to the detriment of refugees' and asylum seekers' protection (Betts, 2008). The "EU humanitarian aid is becoming a tool for Europe to 'keep' refugees and migrants off their shores" (MSF, 2016). Likewise, this aid has also corresponded to a reward given to the states that receive those people that the European Union did not accept in its territory (Degnbol-Martinussen & Engberg-Pedersen, 2003).

The European Union has justified the externalization of migratory control as a measure that prioritizes humanitarian assistance while increasing protection in migrants' regions of origin and transit (Palm, 2016). However, these agreements focus on improving border control capacity or guaranteeing the return of irregular migrants through processes that often do not respect asylum protections or human rights (Ibidem). Gemma Pinyol-Jiménez (2012) reports that, in response to these flows, instruments, actions, and policies have been

⁶ In this case, "third countries" are the countries that are not a part of the European Union.

developed based on the belief that protecting and controlling borders is a key issue for national and the EU's security.

Garcés-Mascareñas and Montijano (2017) indicate that the European Union considers the externalization of migration control to be effective because it is easier to prevent immigrants from arriving than to return them once they are already in their territory. Moreover, it is easier to return these people when a third country agrees to accept them. It is also necessary to take into account that the most economically powerful countries use economic blackmail and political pressure in order to curb migration (Via Campesina, 2018). They build walls and detention centers which resemble concentration camps, criminalizing the migrant, militarizing the borders, and carrying out mass deportations (Ibidem).

In general, countries that seek to shirk their responsibilities for asylum seekers, as well as to control people's mobility, have an interest in extending their borders beyond the area covered by their territorial sovereignty (Guild, 2001). Nevertheless, these border externalization agreements between third countries and the European Union, as well as between third countries and the EU member countries individually, have increased the relevance of the inability of the North and South to cooperate with regard to the refugee regime (Betts, 2008). Moreover, this situation has direct implications for the well-being of these individuals (Ibidem).

According to Betts (2008), the countries of the South require the governments of the North to assume more responsibility within the migratory context. Meanwhile, the countries of the North tend to behave in a way that makes other states serve as buffer zones for migratory flows, which overloads South countries even more, instead of effectively helping them to deal with this issue (Ibidem). On this topic, Frelick, Kysel and Podkul (2016) highlight that the European Union has made efforts to shift responsibilities from its Member States to countries of transit and/or origin of migratory flows.

Alexander Betts (2008) reiterates that although the world is not clearly divided between North and South, in the context of the refugee crisis this dualism comprises an interesting dynamic. The North corresponds to countries that, in general, do not belong to the regions of origin of refugees and tend to control their borders and exert influence beyond their territories (Betts, 2008). In contrast, the South encompasses the countries of generation, as well as transit of asylum seekers and refugees; however, these are still welcoming states (Ibidem).

In many cases, migrants are forced to stay in neighboring countries, which are often poor and politically unstable, and few are able to move to other places with better economic and social conditions (Castles & Miller, 2004). Because of these measures, neighboring countries also assume a disproportionate responsibility when it comes to accepting these migrants (IOM, 2018). While the rhetoric of the European Union's external action presents strategies to deal with the migration matter from different angles, in practice, it keeps its focus on strengthening external borders (Palm, 2016).

These attitudes reflect the security concerns of EU Member States, which are not balanced with adequate protection of human rights (Ibidem). For instance, Mark Akkerman (2018) signals that, of the group of countries that the European Union considers to be priorities for border externalization agreements, almost half have an authoritarian government. Additionally, they are not considered free countries, and one third of these states pose an extreme risk to human rights (Akkerman, 2018).

In 2003, the Maastricht Human Rights Center organized a seminar with experts on human rights treaties⁷, who agreed that the applicability of these agreements should consider the conduct of states in their respective territories and in other places where they exercise control (Mirra, n.d). According to the same experts, countries must maintain externally the same standards of application of human rights exercised within their borders (Ibidem). That is, these Global North governments must ensure that the country with which a border externalization agreement has been concluded offers the same human rights protections that the migrants would have received in those same northern territories.

Based on this interpretation, countries that provide assistance in the practice of an act deemed illegal internationally can be held responsible under international law for violations of rights outside their territory (Frelick, Kysel & Podkul, 2016). In contrast, it is possible to perceive that the imagery of a threat, personified in the migrant, is capable of legitimizing actions that breach European and international rules (Cunha, 2014). Accordingly, the relation between border externalization and human rights' respect will be analyzed in the next section.

3. The negligence to human rights

The human rights regime was central to the formation of a community of states, from which the European Union was created. Nonetheless, during its integration process, "this ideal periodically confronted the resistance of national states to give away their sovereignty over matters considered as 'security' ones" (Velasco, 2014, p. 104). Nowadays, the contradiction between national sovereignty and human rights has been a fundamental political dimension of international migrations (Brito, 2013). In this context, successive repressive practices on the part of the European Union challenge the principles that it claims to defend (Ferreira, 2011).

Originally, human rights were established to protect people from the arbitrary use of state power over a given territory (Mirra, n.d). However, processes such as globalization and the war on terror have pushed the actions of states beyond their territorial borders (Ibidem). In this scenario, people have been treated differently with regard to mobility and the quality of being human (Mbembe, 2011). These aspects are instituted in a globalized society where, due to categorization and hierarchy, some of these human beings have their freedom of movement surrounded by robust control and restriction measures (Ibidem).

⁷ There were experts from four treaties: "the two 1966 UN Pacts, the American Convention on Human Rights and the ECHR [(European Court of Human Rights)]" (MIRRA, n.d, p. 10).

The European Union and its Member States declare that agreements with third countries are intended to respect their humanitarian responsibilities and, at the same time, to improve migration management (Population Council, 2016). However, EU instruments to deal with the nexus between migration and security have often neglected the humanitarian aspect of political speeches. Following this understanding, Pinyol-Jiménez (2012) reports that "readmission agreements and cooperation [with third countries] in fighting irregular migration have been further developed [by the European Union] than other instruments, such as visa facilitation or the promotion of legal migration channel" (p. 39).

While the European Union and its member states continued to pledge their commitment to human rights, foreign policy initiatives were often undermined by other national interests, including security [...]; [plus] a desire to prevent refugees, asylum seekers and other migrants from arriving in Europe; and a failure of the EU's External Action Service to provide principled leadership on behalf of human rights (HRW, 2018).

Human rights organizations warn of the need to create channels through which people in need of international protection can legally access the EU and seek protection. This could prevent suffering and death along irregular routes, a need recognized by the EU itself in official statements, despite the fact that they follow a different path in practice (Palm, 2016). However, this is not a unique position of the Union and its member countries. In general, the "economically wealthier states [...] have abandoned the universalist approach to human rights ratified in the [Human Rights] Declaration and incorporated into political discourses" (Mazza, 2015, p. 253).

On International Migrant Day, the European Commission (2017) stated that "Protecting and upholding the fundamental rights and freedoms of all migrants, regardless of their status, has always been and will always be our priority. This is at the heart of our European Agenda on Migration." However, international organizations such as the United Nations High Commissioner for Refugees (UNHCR), *Médecins Sans Frontières* (MSF), Human Rights Watch (HRW) and Amnesty International have been concerned about measures taken by the European Union in response to the Syrian migration flow, believing that they violate human rights (DW, 2016; MSF, 2016; Nações Unidas, 2016; HRW, 2018).

In June 2016, more than 100 non-governmental organizations made a statement to the European Council, in which Mark Akkerman (2018) highlighted the following claim: "The EU is about to embark on a dark chapter of its history [...] towards a foreign policy that serves one single objective, to curb migration, at the expense of European defense of fundamental values and human rights" (p. 31). He also states that the European Union's awareness of the millions of forced displaced persons tends to manifest itself only when some tragedy concerning these individuals is highlighted by the media, or when there is a significant displacement towards Europe (Akkerman, 2018).

Elspeth Guild (2001) talks about three borders imposed by the European Union. The first of these is placed as a barrier for asylum seekers, who are never able to leave the countries where they are persecuted, so

they do not become refugees. The second is when people are kept in a country outside the EU, which is considered safe⁸. The third is imposed within the European Union and refers to the power relations between the states that compose it, where those who managed to reach their territory are in the coastal countries of the European Union which, in the words of the author, 'carelessly let them in' and are now responsible for them.

In reaching agreements on the externalization of borders, the EU ignores the fact that such measures further hamper the mobility of forced displaced persons, rather than providing legal and safe paths. As an alternative, these people take increasingly dangerous routes to escape. In addition, border externalization policies and practices that prevent migrants from reaching certain jurisdictions force them to stay in third party countries (Frelick, Kysel & Podkul, 2016). However, these states generally have fewer resources and end up being overwhelmed by broad migratory flows (Ibidem), as is the case with Syrian refugees in Turkey⁹.

As a result, in recent decades, countries that have received large migratory flows have threatened to disengage from the principles of the first country of asylum¹⁰ because they do not receive adequate support for this situation, whether this support is provided by sending financial resources or by resettling refugees in other countries (Betts, 2008). In other words, these countries have announced a possible break from one of the bases of the methods of border externalization. Inside this impasse, many forced migrants find themselves in a limbo which lacks of safe opportunities to recommence their lives.

Conclusion

This analysis demonstrates that securitization measures have been substantially present in the migratory context, especially if one considers the border externalization procedures. Furthermore, these practices are not recent in the European Union's management of migratory policies. The literature indicates that the post-Cold War was a turning point for the onset of migration securitization, and the attack of September 11th 2001 was one of its main catalysts. Although globalization expanded different kinds of mobility flows in the 1990's, including the flow of people, some migration policies restrained it for certain groups of people.

These migration restrictions affected inclusively forced migration flows and reduced accessibility to legal paths for refugees and asylum seekers to recommence their lives in a safe and reliable place. Agreements with third countries have sent migrants to places that cannot offer enough protection of their rights. As a result of this situation, the European Union has been accused of not respecting human rights and/or migrant's rights

⁸ Which does not mean that it is in fact safe. For instance, the European Union Commission considers Turkey to be a safe county to welcome refugees (EC, 2017). In contrast, Greece has stopped the return of migrants to Turkey based on the lack of security for these people (Garcés-Mascareñas; Montijano, 2017).

⁹ There are 3.6 million refugees in Turkey (UNHCR, 2019). This number is equivalent to approximately 5% of the Turkish population, which is made up of 71 million inhabitants (Better Life Index, 2017). In absolute numbers, Turkey is the largest recipient of refugees worldwide and more than 90% of them are Syrian (UNHCR, 2019).

¹⁰ The term is related to Article 35 of the Asylum Procedures Directive (Directive 2013/32 / EU) and refers to the maintenance of the migrant in the country where s/he has already been recognized as a refugee or where s/he enjoys sufficient protection (European Union, 2013).

established on international conventions. Nonetheless, this situation is not exclusive among European Union Member States.

There is a tendency among economically wealthier states to neglect the humanitarian approach in their attitudes towards unwanted immigrants while they strengthen securitization measures against these same groups. In contrast, the creation of legal and safe migratory paths has been overlooked and consequently has been insufficiently improved. Therefore, one could say that there has been a negative correlation between the European border externalization procedures and the respect for human rights in the migratory context. That is, the strengthening of externalization procedures has increased while the respect for human rights decreases.

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