Migration in the European Union: Mirroring American and Australian Policies

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Through the examination of theoretical concepts such as human and state security, international refugee law, places of detention and bi-lateral agreements, this essay argues that it is evident that European states have categorically adopted US and Australian 'push back' policies, although with a softer or more discrete approach. The central issue is that the European Union has abandoned its perceived humanitarian values to pursue a 'state security' ideology, which stems from the scripting of the migrant as a 'threat' to national security. This is illustrated in policies that aim to deter, detain and deflect migrants from reaching European sovereign territory. Moreover, European states as well as the US and Australia circumvent international law through 'off-shoring' and 'out-sourcing' their migration problem in the form of bi-lateral agreements with third countries and through the use of remote islands as migrant detention centres, which is particularly the case of the US and Australia. The central theme of the essay seeks to reiterate that, irrespective of human life, European states have developed policies that mirror US and Australian 'push back' methods with the ultimate goal being to protect their national borders.

Human versus state security

"You have to understand, no one would put their children on a boat unless the sea is safer than the land" explains a British-Somali poet (The New Humanitarian, 2021). When contemplating the journey countless asylum seekers have to take, one may question why would they take such extreme risks to get to their destination country? As clarified by the British-Somali poet, crossing the ocean is often safer than taking the journey by land or not taking the journey at all. The Haitian phrase "better the shark's teeth than the prison cell" echoes this sentiment by referring to migrant crises in Haiti and that travelling to the US by boat is preferable to staying in Haiti where repression and incarceration is inevitable (Loyd and Mountz, 2019, p. 79).

Human security versus state security, which takes precedence?

The 'peak' of the migration crisis in Europe came in 2015 when more than a million refugees and migrants crossed into Europe, of which 1,005,540 came by sea and just 3% by land, according to the International Organisation for Migration (IOM, 2021). This influx of migrants into Europe sparked political and ideological debates surrounding issues of sovereignty, territory, mobility, borders and human rights which illuminated the 'state security' versus 'human security' contradiction (Bicchieri and Ledwith, 2020). This paradox refers to securitizing state borders and protecting the 'normal' citizens from a perceived threat of migrants versus protecting the human security of the migrant and championing human life and dignity above all. As the migrant crisis came to a peak, the winner of the state versus human security contest was ultimately state security. To this point the EU has abandoned its perceived core values of upholding humanitarian rights in order to establish a strong response to the migrant crises in the form securing its sovereign territory.

In view of this, one could argue that the rationale for the EU's 'push back' policies is underpinned by a notion that unauthorised migrants are a 'threat' to national security, therefore securitising borders and territories takes precedence over humanitarian needs. It is evident that the securitisation of migration does not exist solely in the EU but simultaneously in the U.S and Australia. Triandafyllidou and Dimitriadi (2014) clarify that this stems from a post

9/11 world vision. Aligned to this, Briskman (2015, p.109) suggest that the September 11 attacks on the US "conflated asylum seeking with terrorism" and has allowed for the rationalisation of racism through international law which subsequently allows asylum seekers to be seen as "the threatening other" that must be kept out. Anti-migrant rhetoric expressed by former US president Donald Trump who depicted Mexican immigrants as criminals; "they're bringing drugs. They're bringing crime. They're rapists" (Scott, 2019) and Hungary's Prime Minister Viktor Orban who equated migrants to a 'poison' (Kroet, 2016) highlights and perpetuates this view of migrants as a threat to national security.

Another line of reasoning suggests a deeper cause to the current securitisation of migration and proposes that it has not simply stemmed from a post 9/11 world but in fact it has roots in imperialism. Rodríguez (2018) provides depth to this argument, fleshing out the links between racism, colonialism and migration, citing that "racism is at the center of the coloniality of power" (p.1). This plays out in contemporary forms of racism seen through the EU's, the US and Australia's migration policies. As Rodríguez (2018) illuminates, Europe's 'refugee crisis' is often seen as a singular and isolated phenomenon, which negates the influence of its history as a colonial power. Rodríguez (2018) bolsters his argument with specific examples of where migration policies were influenced by a racism; in the U.S there was the Chinese Exclusion Act and in Australia there was the Immigration Restriction Bill. This 'Othering' of migrants, based on racism, painted migrants as "objects to be governed through restrictions, management devices and administrative categories such as 'refugee or 'asylum seeker'" (p.24).

Morrissey (2018) provides a different angle to a similar argument, suggesting that the root of the current migration as securitization policies is centered in interventionism. Morrissey, who is a major critic of Western-led interventionism disguised as 'aid' contends that the current European 'refugee crisis' has a lot to do with previous interventionist roles of the EU over the last half century on the borders of Europe. Morrissey (2018, p. 227) calls this "interventionary violence in the name of a particular type of security", in this case the securitization of borders. Morrissey (2018, p. 227) powerfully highlights the irony of refugees being seen as both the "threat and the source of inequalities rather than their consequence".

Bicchieri and Ledwith (2020) raise interesting questions in relation to human security and state security; one may ask who is actually being made 'secure' or 'securitised' in this context? It appears that it is the protection of the nation's sovereign land that is prioritised. Arguably there needs to be a reframing of our understanding of migration that prioritises the human above all. This paradigm shift insists upon privileging the "needs and necessities of human life and dignity" that abandons the "Westphalian model of state security" and leaves the individual "free from fear and free from want" (Bicchieri and Ledwith, p. 2, 2020). Considering this, one may contemplate if we must render borders as obsolete? It is difficult to see how the human security paradigm can exist in the same reality that relies so heavily on the functionality of nation-state borders and territories.

International laws protecting migrants and refugees

One of the main points of contention facing governments that prioritise state security in lieu of human security is that oftentimes the human rights of the migrant are ignored or neglected. In particular, this issue is highlighted when the migrant's journey takes place over international waters. There are strong international laws surrounding the protection of life at sea that may suggest that the sea provides a more humanitarian route to migration. An alternative viewpoint might suggest that states use the ambiguity surrounding international waters to interpret the international law as they please. This approach is used by the US and Australia and in a more obscure way by the European Union.

Laws protecting refugees

Perhaps the most important law that protects the lives of migrants who are travelling over the sea is Article 98 of the UN Convention on the Laws of the Sea (UNCLOS). This article ensures that any person in danger or in need of assistance at sea will receive adequate assistance insofar as it is safe for the ship, crew and passengers to do so (Moreno-Laz, 2017). One may question if this renders the journey over sea more humanitarian than land as all states are obliged to help those in need, something that does not apply to land borders.

The 1951 United Nations Convention adopted the definition of a refugee with the goal of protecting individuals that are fleeing their country for a myriad of reasons. The definition has been adopted internationally and agreed upon by countries such as the US, Australia and the European Union. Under this definition, a refugee is a person "who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (Refugees UNHCR, 1967). In addition to this definition, the principle of non-refoulement is another layer that aims to protect refugees. Non-refoulement prohibits states from returning any person who is in fear of persecution, torture, ill treatment or any other human rights violations to their origin country (Bialasiewicz, 2012). As part of the 1951 Convention on the Status of Refugees, non-refoulement is a legally binding obligation that all states who have signed the convention must abide by, importantly Australia, the US and European Union have agreed.

How states use UNCLOS to their advantage

Moreno-Lax (2017) outlines that countries are entitled to have territorial sovereignty over 12 nautical miles from their coastline, but vessels of all countries have a right to travel through this territory once their vessel is deemed 'innocent'. Article 19 of the UN Convention on the Laws of the Sea (UNCLOS) regards a passage as 'non-innocent' when it is "prejudicial to the peace, good order or security of the coastal State" (Moreno-Laz, 2017, p. 2), questions may be raised once more about what the 'security' of the state entails. Pertinent to this principle is that a vessel is 'non-innocent' if it engages in 'loading' or 'unloading' passengers that is contrary to immigration laws and regulations of that country.

Counter arguments have suggested that asylum seeking itself makes a vessel 'non-innocent' (Moreno-Lax, 2017) but others offer that unless there has been an 'loading' or 'unloading' of passengers that it is still deemed innocent. Article 31 of the Refugee Convention states that refugees must not be penalised for how they enter the country (Moreno-Laz, 2017), this appears to render all vessels who are carrying migrants as 'innocent', yet there again is uncertainty surrounding what happens if some refugees themselves are termed 'non-innocent'. In addition to this principle, all states are allowed a 'right to visit' on vessels that are stateless or flagless, which are often used by asylum seekers (Moreno-Lax, 2017). This 'right to visit' allows state agents to board the vessel and verify its nationality, which in turn may lead to the seizure of the vessel, the apprehension of those on board, the order for the vessel to modify its course and finally the rerouting of passengers to a third country.

Although states routinely use this clause of the 'right to visit' in order to intercept migrants at sea, the legality of it has been disputed. As Moreno-Lax (2017) illustrates, under the various treaties it is not 'expressly' mentioned that the state has the right to apprehend the vessel and suggests that "the fact that asylum seeker boats may be flagless does not allow for unlimited enforcement powers" (Moreno-Laz, 2017, p. 3) and thus interfering by stopping the vessels from reaching territorial land, violates the principles of non-refoulement.

Off-shoring or out-sourcing migration?

As discussed thus far, issues of state security and human security are tied to sovereignty, territoriality and how the migrant is perceived. These issues do not play out on territorial land borders alone but oftentimes play out at sea through 'front-end' border management (Mountz, 2011). In the case of the US and Australia in particular, remote islands are central to the discussion of migration and refugee mobility. Mountz (2011) posits islands as central actors in 'the securitization of migration', where immigration authorities can 'deter, detain and deflect' migrants from entering sovereign territory. The law surrounding detaining migrants lies within a particular 'grey area' (Mountz, 2011) where the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol guide do not apply as detainees are held out of 'sovereign territory'. By detaining migrants in this way "states use geography to subvert international refugee law" (Mountz, 2011, p.120).

United States' use of islands as detention centres

The US is one example of where the 'grey area' surrounding refugee law and sovereign territory is used to its advantage to deter migrants. The US has a long history of detaining refugees intercepted at sea on remote Islands

(Mountz, 2011). Loyd and Mountz (2019) establish that during 1980s/1990s bi-laterals agreements were made between the US and Caribbean governments to 'offshore' their migration problem. Migrants found attempting to cross the ocean into US territory were intercepted and held in detention centres on Caribbean islands. However, the detention centres were not always in geographical proximity to the US; Guam, a pacific island and a territory of the US is geographically closer to China, Japan and the Philippines than the US, yet there are migrant detention facilities in operation there (Mountz, 2011). The research to date has been highly critical of how the US exploits isolation through the use of islands as detention centres and consequentially control migration (Mountz, 2011).

Australia's 'Pacific Solution'

Australia's 'migration problem' is much less extensive than Europe or the US with just over 60,000 landing since 2000 (Moreno-Laz, 2017), this is largely due to successful deterrent strategies such as the 'Pacific Solution.' This 'solution' to Australia's migration problem emerged in 2001 following the rescue of 433 Afghan asylum seekers from an Indonesian ship by the MV Tampa (Mountz, 2011). Under this policy, asylum seekers are denied access to legal protections and refugee status as they are 'irregular entrants' (Moreno-Lax, 2017). Australia uses the 'Pacific Solution' to transfer asylum seekers to third countries that are deemed safe, here Australia pays the government of countries such as Nauru, Papa New Guinea and its own Christmas Island to detain and hold migrants. Australia is unique in the fact that it uses a tactic called the 'power of excision' that deems parts of Australian sovereign territory to be no longer included in Australia for migration purposes (Mountz, 2011) thus making asylum seekers 'illegal' and subject to deportation to offshore detention islands.

Europe is no exception

Much like the US and Australia, the EU uses a policy of 'externalisation of asylum' as a key factor in state securitization, albeit, on a smaller scale. As will be discussed in depth further on, the EU uses 'preventative' policies of migration in the form of bi-lateral agreements with third countries. These bi-lateral agreements moved the processing and enforcement of migrants 'offshore' (Mountz, 2011) which in turn caused certain 'back door' entry points to become more frequented. In Europe's case these back door entry point are Italy's Lampedusa and Spain's Canary Islands (Mountz, 2011). Until 2004 migrants who arrived on Italy's Lampedusa Islands could make their asylum claim and were then transferred to Sicily (Mountz, 2011). However, following a large arrival of African migrants between 2005 and 2007 Italy began sending migrants and potential asylum seekers to Libya on chartered flights (Mountz, 2011). There are reports (Mountz, 2011) that Italian authorities did not establish if these migrants were refugees or not, which is a breach of international law.

A further look into Europe's case: bi-lateral agreements

As stated previously, one manner in which countries attempt to curb migration levels is through 'off-shoring' methods, in particular the European Union has engaged in 'push back' measures in the form of bi-lateral intergovernmental agreements between the EU and third countries. In other words, allowing third countries to curb Europe's migration problem to avoid the EU and its agencies openly violating international law. Arguably these 'push back' methods are aligned to Australia's 'Pacific Solution' policy in the fact that they violate the human rights of migrants and similarly neglect the interests of the country in which the migrants are being forced back to (Triandafyllidou and Ricard-Guay, 2019). As illuminated by Bialasiewicz (2012) and Triandafyllidou and Dimitriadi (2014) the EU has not only 'off shored' its migration problem but 'out sourced' too since joining the Global Approach to Migration and Mobility (GAMM) in 2005. To this point the EU has further strengthened cooperation through the Italy-Libya deal and the EU-Turkey deal to accentuate this approach.

Italy-Libya deal

December 2007 saw the signing of the Italy-Libya deal, this included funding for the Libyan Coast Guard to patrol the Mediterranean, intercept migrants travelling to Italy and return them to Libya (Bialasiewicz, 2012). Moreno-Lax (2017) describes this as 'indirect refoulement' as it is via third country agreements and regards it as 'forbidden' under the principle of non-refoulement. The 'Treaty of Friendship' came in 2008 in which the Italian government provided

Libya with a €5 billion euro package which included provisions for construction projects, school grants, pensions and most importantly an agreement to strengthen migration controls (Bialasiewicz, 2012). Similar agreements have been ratified since 2008 and there has been vast international condemnation of the newly agreed Memorandum of Understanding between Italy and Libya, signed in by Italian Prime Minister Gentiloni (Euronews, 2021). In March of 2021 alone, 1,948 people were intercepted at sea and 'pushed back' to Libya (IOM, 2021). Some of these migrants who were 'pushed back' are deported, but those of who are not deported are held indefinitely and subject to 'brutal conditions' in Libyan detention camps where there are reports of forced labour, beatings, torture, rape and human trafficking (Human Rights Watch, 2019).

Failings of the Italy-Libya deal and the loss of life

During the time it took to complete this essay over 130 people have lost their lives in the Mediterranean crossing from Libya to Italy, which Sea-Watch International says is the fault of the EU, Libya and FRONTEX who "lets people drown as a deterrent" (Sea-Watch International, 2021). Under the above tweet mentioned, various alternate views were expressed about who was to blame for the deaths. Many people equate blame to Sea-Watch and similar Search and Rescue NGOs. Some views expressed were; "their blood is on your hands," "you are causing this death by being there," and "you are the human traffickers" (Sea-Watch International, 2021). It is evident that there is a growing discourse surrounding the involvement of NGOs in the rescue of migrants at sea and that they may be encouraging migrants to cross in the first place. However, one has to recall that many migrants are desperate to leave their home country and will undoubtedly take the risk to cross whether there is an NGO present or not.

EU-Turkey deal

The EU further 'out sourced' its migration problem to Turkey through the EU-Turkey deal of 2016. Under this agreement, any migrants irregularly travelling from Turkey to Greece (via the Aegean Sea or by land) would be returned to Turkey, including asylum seekers (Amnesty.org, 2017). In exchange, the EU pledged to resettle one Syrian refugee who was staying in Turkey in the EU, essentially for every one migrant caught travelling illegally, one would be resettled out of Turkey, thus further incentivising Turkey to catch illegal migrants. Additionally, the EU provided Turkey with €6 billion to assist in providing for the vast numbers of refugees (Amnesty.org, 2017). There has been widespread condemnation by the international community, for instance, Amnesty International has criticised the resettlement scheme, stating it has not lived up to its promise as it has only resettled 3,500 refugees as opposed to 2.8 million Syrian refugees as of 2017 numbers (Amnesty.org, 2017). Once more Moreno-Laz (2017) condemns this policy as it violates the principles of non-refoulement by directly returning all migrants without an assessment of their refugee concerns.

Illegal push backs or 'pull backs' by Greek authorities

Having established that the EU evidently engages in push back measures in order to ensure that less migrants arrive on European territory, it is now important to explore the phenomenon of Greece's 'New Tactic'. The New Humanitarian and the New York Times have reported that Greek authorities are engaging in illegal expulsions of asylum seekers that have already been granted International Protection and handed a 'white card' (The New Humanitarian, 2021). Although reports of these pushbacks are denied by the Greek government, there have been thousands of cases documented by human rights organisations. Over 1,000 reports of pushbacks were documented between March and August 2020 (The New Humanitarian, 2021). The reports allege that Greek authorities, rounded up refugees, placed them in inflatable rafts, dragged them out to sea and abandoned them over Greek territorial waters (The New Humanitarian, 2021). Such measures are illegal under international refugee law and are the most direct attempt by a European country to restrict migration.

Conclusion

This essay has argued that European states have adopted US and Australian 'push back' policies that aim to deter, detain and deflect migrants, doing so with a more discreet approach, although in no way less cruel or inhumane. By championing state security over human security and abandoning previous humanitarian stances and human rights,

European states have scripted migrants as 'threatening others' whom Europe's sovereign borders need to be protected from. By 'off shoring' and 'out-souring' migration issues, Europe has succeeded in getting around international law through the cunning use of 'grey areas' in the form of bi-lateral agreements with third countries. Although the migration 'crisis' has been deemed 'over,' the crisis continues for the millions of refugees awaiting international protection and meaningful resettlement. Returning to the Haitian phrase "better the shark's teeth than the prison cell," it is clear that large numbers of migrants crossing the Mediterranean may possibly survive the shark's teeth but still end up in the 'prison cell' insofar as detention camps in Libya, Turkey, Greece for example or one could counter, even Ireland's brutal direct provision system.

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