MIGRANT CRISIS AND THE EXTERNALIZATION OF EUROPEAN BORDERS: CHALLENGES FOR SPAIN

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Abstract: Europe has always been a favourable destination for migrants across the globe, but at present it is facing an unprecedented influx of asylum seekers and migrants who are trying to reach the continent for existential reasons. The geopolitical implications of the instability in the countries within Europe’s proximity has given rise to a situation where millions of migrants are taking illegal routes to enter the European territory. In 2015, there were about 1.3 million applications for asylum that were lodged in the European Union. As the crisis unfolded, media and political discourses around it had an impact on the public opinion which can be seen in the resurgence of populist right wing parties across many countries of the Europe shows a shift away from an open and liberal society. Due to the shortcomings of the present system on asylum and the differences in the attitude towards immigration, a political consensus among the member states still remains a task to be achieved. Freedom of movement, despite being the core element of the Schengen agreement is restricted in the case of these asylum seekers as burden sharing is not something all member countries willing to adopt. The rise in terror activities in many countries have only added to the fear of the general population. Massive deaths of migrants during their sea journey while trying to reach the continent brought into forefront the loopholes and the inability of the system to prevent the crisis and ensure human rights for all.

As European Union struggles to seek an efficient solution to this phenomenon, questions have been raised on the normative stand of the EU on the ‘externalization process of immigration’. This paper seeks to analyses the implications of externalization of migration and relate to how such externalization of the border is contradictory to the humanitarian normative values adhered by the EU.

IndexTerms: Migration, Externalization, European Union, Spain

Externalisation of Immigration by the EU

There are various reasons why migration takes place to escape from conflicts and civil unrest, to seek better economic opportunities, to reunite with their families or to seek a better life in a new place. The recent migrant crisis in Europe is not just about people escaping the war torn areas, but it also involve those who have left their country for other reasons.

Recent estimates reveal that in 2017, there were 728,470 asylum applications for international protection in the EU (European Parliament, 2017). In comparison to the previous year, there has been a relative decrease of 44% when there about 1.3 million applications filed (European Parliament 2017). The granting of protection has also shown a decrease by almost 25% in 2017 as 538,000 people were granted asylum (European Parliament, 2017). The majority of these applications were from the war torn countries of Syria, Afghanistan and Iraq. There has also been a drop in the illegal border crossing in 2017 to 204,700 detected, which is the lowest in the previous four years (European Parliament, 2017).  

1 However, it should be noted that an individual can go through a border more than once, so the number of people entering Europe is lower, nevertheless, member states of the EU have been under immense pressure (European Parliament 2017).
This reduction in the number is not because the crisis has been resolved but due to the externalization of immigration process that was initiated in 2016 with the signing of EU-Turkey agreement. The agreement permitted Greece to return all new irregular migrants to Turkey in exchange for monetary aid and easier process of immigration to Europe for Turkish nationals. It involves repatriation to Turkey of those Syrian refugees who don’t seek asylum in Greece or have been rejected. It also involves resettlement of Syrian refugees in Turkey into the EU which has been very low in number. However, in giving away the responsibility of asylum protection to Turkey. However, the Turkish asylum system is not well equipped to manage such large number of applications. Therefore only out of 200,000 pending cases in 2017 only 38,595 were accepted (Pries 2017) In this way the migrants trying to reach Europe are intercepted and not allowed to reach the territory of Spain. Many deaths of immigrants while crossing the sea have been appearing in the news.

The externalization of immigration in the agenda has become an important topic of debate and discussion. Externalization is the transfer of border management to third countries, by providing them with monetary assistance in order to control immigration from their territory. This readmission agreement between EU and Turkey, provides Turkey with 6 billion euro to ensure that the irregular immigrants arriving at Greece are returned back to Turkey (Lopez Curzi 2016). The agreement has been widely criticized for severe human rights violation emerging from the negotiations and signing of agreements with third countries who themselves have low level of human rights standards. Geopolitical interest is the only factor considered, in negotiating with these countries, regardless of their respect for human rights (Lopez Curzi 2016). The ‘save third countries’ agreements with countries like Morocco who need to first deal with human rights violations within their territory.

The President of the European Parliament, Antonio Tajani, said that in order to staunch the flow of migrants from Africa, the European Union would need to invest billions and develop a long-term strategy to stabilize the continent: "If we do not manage to solve the central problems in African countries, ten, 20 or even 30 million immigrants will arrive in the European Union within the next ten years (Kern 2017)

However, there exists another element which is equally unethical. The funds for development aid have become incentive or penalties for successful cooperation or failure in doing so. Those who do not comply with the readmission terms are penalised for their non-cooperation (Lopez Curzi 2016). The carrot and stick policy applied here challenges the normative role of EU as a soft power within the region. The development funds have become a tool for implementing border control policies in both countries of origin and transit (Lopez Curzi 2016)

Another, distinct problem is that migrants are removed from a state’s territory quickly to prevent access to asylum or status determination procedures. . According to the United Nations Refugee Convention 1951, the principle of non-refoulement states that, “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.” (UNHCR). If EU claims to abide by the International legal norms based on human rights, the this process of returning immigrants back to an unsafe territory is completely against its humanitarian obligations.

The policy is aimed at preventing the numerous deaths at sea incidents that occur in the process of illegal migration. However, unless a safe mechanism is established, migrants will continue to risk journeys by sea. The externalisation process has shown to only worsen the whole situation by collaborating with countries from North Africa where prisoners are tortured and subjected to systematic murder (Lopez Curzi 2016).

The underlying assumption in carrying out the policy is that by allocating of development funds, migration from the region can be prevented. However, in reality, studies have revealed that development aid do not decrease the flow of migration from the country of origin (Lopez Curzi 2016). Migrants tend to seek alternate ways to reach their destinations . The process clearly violate the fundamental rights of an individual.
Externalisation of border control is not a new approach that has been adopted. The Southern member states of the EU have negotiated agreements with many of its Mediterranean neighbours as for years they have been receiving a large flow of immigrants. Southern European countries like Spain and Italy have using this policy since over a decade. In case of Spain border control measures were able to drastically stop the inflow of immigrants crossing the Mediterranean from Morocco. As a result Spain is now taken as an example to apply the same policy in other countries in the periphery.

The Development of Externalisation in Spain

From the perspective of migration, Spain as a Southern member countries of the EU is a priority to control immigration from the Western and the Central migration route. Contemporary migration from Morocco began after Spain joined the European Community in 1986. Labour migrants from Morocco found a new destination in Spain after the traditional immigration countries closed doors upon them. Until 1991, there was no visa regime governing the flow of migrants from Morocco. From this point onwards, there has been a steady increase in irregular migration from the region until recent years. In 1992, a bilateral readmission agreement with Spain was signed with Morocco. Throughout the nineties, irregular immigration through human trafficking in the enclaves of Ceuta and Melilla or by crossing the Strait of Gibraltar in boats. The government’s effort to curb immigration did not prove to be effective in controlling immigration. The EU directives formulated at the Tampere European Council of 1999 made reinforcement of external borders by member countries as a requirement to facilitate free movement for all in the Schengen area, Spain enhanced its border control measures with an increased surveillance on its border with Morocco. This led to the deployment of the Sistema Integrado de Vigilancia Exterior or Integrated External Surveillance System (SIVE) in 2000, which is a sophisticated surveillance electronic system, in the southern coast of Spain including the Canary Islands. The EU External Border Agency Frontex, that was established in 2004, complemented and funded the border management initiatives of Spain just as in other Southern Europe member states. Since 2004, there has been a collaboration in controlling immigration with the Morocco in many ways among which include readmission agreements and joint patrols of the Moroccan and Spanish security forces.

The impact of the border control measures can be seen in the increasing rejections to entry of migrants that show the majority to be from Morocco. As a result the flow of irregular migration from Morocco to Spain gradually started showing a decline from 2005 onwards and almost came to a halt till 2008\(^2\) (Triandafyllidou 2009: 80). Boats coming from Morocco were systematically detected and their passengers were sent back to Morocco (Triandafyllidou 2009: 80).

In the same way territorial borders of Ceuta and Melilla were also put under high tech surveillance and multiple barbed fences as the two enclaves have been an entry point for irregular immigrants from Morocco since many years. However, it was the year 2005 that saw a sudden influx of sub-Saharan immigrants crossing the fences of the enclaves and reaching in large numbers by boat. As a Southern border member state of the EU, Spain came under much pressure to implement restrictive border control measures which were criticized by many human rights organisations. The enclaves was a major issue in 2006 when it was estimated that nearly over 30000 migrants were waiting in Morocco and Algeria to cross over the fences. Spain was criticized for its border control measures and policies adopted and was called as being the 'doorkeeper of Europe'\(^3\).

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\(^2\) According to reports, in January of 2008, the number of residence permits issued to Moroccans nationals was higher than the number of Moroccans included in the Municipal registers, this indicates that apparently all Moroccan immigrants were regular. In the same date, estimated irregularity among all Third Country Nationals in Spain was 19%.

\(^3\) Javier de Lucas, in his book Puertas que se cierran: Europa como fortaleza (Doors that close: Europe as Fortress) argues that “España - la Europa del Sur- tiene un papel claro de miembro de segunda fila, de guardián de la seguridad, de albergue del ocio y el descanso de los europeos (más) ricos” ["Spain-Southern Europe-has a clear role of second class member, of security guardian, of shelter for the leisure and relaxation of the rich(-er) Europeans"] (Lucas cited in Flesler 2008: 31).
Nevertheless irregular migration and smuggling of migrants from this route has been ongoing with more nationals of Sub-Saharan African region and more recently Syrian refugees who use this route to enter Europe. In 2017 Spain witnessed a sudden surge of migration to Spain by sea showing a change in migration pattern from Greece and Italy. According to the International Organisation for Migration, the influx is three times more than in the year 2016.

Migrant Crisis- A Challenge for Spain?

Since the border tightening measures introduced after signing of agreements between Italy and Libya, an alternate route has been discovered in by making way through Morocco. As a result flow of the migrants entering Italy relatively decreased, the flow of migrants reaching Spain by sea or land border increased drastically. Those migrants are not just refugees but also economic migrants seeking a better life in Europe. But a majority of them are Syrian refugees.

In the words of Julio Andrade, a city councillor in Málaga, in southern Spain, that it is a balloon effect, "If you squeeze one area, the air goes elsewhere. If there is a lot of police pressure and arrests of mafias around the Mediterranean routes via Greece and Italy, for example, then the mafias will look for other routes" (Hedgecoe, 2017).

Also migrants have been using other means to reach Spain. For instance, four Moroccan men were in news for using jet skiing to enter Malaga, Spain. Human trafficking by truck also seem to be in rise. Although the flow of migrants reaching Spain by sea have increased, it is still very low as compared to the large influx of immigrants the country had faced in 2006 (See fig. 1). It is also very less in comparison to Italy or Greece. In 2015, out of the 1 million sea arrivals in Europe, there were only a few thousands who had arrived at Spain.

Due to other important issues leading the headline, the initial media coverage on the arrival of migrants has not been given much attention in 2015. According to UNHCR, the Syrian refugees entering the enclave of Melilla (which is approximately 5.000 km away from Syria) during the first half of 2015 were 4.049 (on a total of 4.849 arrivals) (Lanni, 2016). This was about twenty times the number of Syrians (252) who arrived in 2013 Lanni, 2016. This shift in migration pattern from Greece and Italy implies that Spain, which is situated only ten miles from Africa by the Strait of Gibraltar, may soon be a focus of Europe's migration crisis (Kern, 2017). According to International Organisation for Migration, about 8,300 irregular migrants have arrived at Spain by sea which is thrice as many as in all of 2016 (Kern 2017).

According to the latest available Eurostat data, there were 10.295 asylum applicants as of late September 2015, about half of whom (4.390) were Syrians. By way of comparison, there were ten times as many requests (11.195) in Italy in the same month, which means that asylum seekers in Spain in 2015 were about
a sixth of those in Italy. It should be noted that the country with the second highest number of asylum seekers is the Ukraine, a country situated very far from Spain, like Syria. Very likely, a significant portion of the thousands of Ukrainians seeking refugee status did not arrive in 2015, but were already in Spain and opted to regularize their status through asylum after the conflicts escalated in Kiev.

Further proof that the immigration factor in Spain changed during the last season has come from the so-called refugee relocation programme. According to the plan devised by the EU last autumn to redistribute a quota of refugees throughout its 28 Member States, Spain was to receive about 15,000, from Italy and especially Greece. Receive, not send. Therefore, with the choices made over the last ten years, the Spanish government has distanced itself from traditional countries of origin in the Mediterranean, from which asylum seekers arrive.

As pointed out in an editorial piece of Spain’s El País newspaper, “it was ‘obvious that migratory pressure has moved to the western Mediterranean and there is no indication that this situation will change in the near future.’ It added:

‘The migratory pressure Spain has experienced during the past several weeks is an increase of such dimensions that it exceeds all measures of surveillance and control. The massive entry of sub-Saharan people across the border of Ceuta, whether by jumping the fence or crossing the El Tarajal border, reveals the enormous difficulties in stopping the entry of those fleeing war, famine or economic hardship.... ”

"The management of migratory flows requires a strong European policy and sufficient economic resources. Spain cannot stand alone as the guardian of southern Europe’. ” (Kern, 2017)

So far the general attitude of the public in Spain has been overwhelmingly in support of refugees, however, media declarations about migrant crisis in Spain may fuel fears that the situation at Europe’s borders is uncontrollable and reinforce the myth that a tidal wave of desperate migrants from Africa are seeking a way to Europe. As of now it is too early to speak of “a crisis” in the Western Mediterranean (MacMohan, 2017). The current rise in boat arrivals of migrants requires a response which can register people who arrive, address any humanitarian and accommodation needs and provide access to international protection by giving everyone a chance to speak their case. But creating the fears of a crisis in the making can block support for and establishment of these very measures.

In Spain, the immigration policies encompass border protection and surveillance, detention and expulsion of irregular migrants, reception and integration of migrants through temporary and long-term programmes, externalisation of migration flow control, through agreements with private organisations and governments in poorer countries. Funds from the EU are allocated to these key areas. So now Spain has reinforced its externalisation process with Morocco and other countries of origin in the vicinity.

Spain lacks the resources and capacity to protect the rising number of refugees and migrants reaching it by sea (Jones and Rankin 2017). María Jesús Vega, a spokeswoman for UNHCR Spain, said police were badly under-resourced and there was a lack of interpreters and a shortage of accommodation for the new arrivals (Jones and Rankin 2017).

In terms of International obligations, “Spain  is required to comply with the principle of non-refoulement not only by the Geneva Convention, but also by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed on 10 December 1984 (Art. 3.12) and the European Convention on Human Rights (Art. 33)” (CEAR Euskadi, 2013). However, the strict migration policies adopted by Spain have had an adverse impact on the migrants right to enjoy their human rights clearly is a breach of its international obligations and treaties. The externalisation of border control measures does not mean that the state is exempt from complying with its international duties and therefore the government of Spain is thus required to comply with the principle of non-refoulement.
The bilateral agreements with countries of origin and transit use material, economic and humanitarian support to make those countries to manage the flow of migrants from their coast. In a way forces the third country to collaborate on combatting immigration in exchange of development aid. These third countries lack the resources and proper legislation and guidelines for asylum protection.

Another, aspect is the violation of human rights of those who are detained in a third country. According to a report by Amnesty International “in 2008, every month, up to 300 people were detained at the Nouadhibou Detention Centre, which is not subject to any judicial control. As a result of this report, and at the request of the Spanish Ministry of Foreign Affairs and Cooperation, CEAR travelled to the centre that same year to evaluate the situation” (CEAR Euskadi 2013).

Also, in case of Mauritania which has no law regulating migration there are no formal guidelines that are applied to detainees. In effect there is lack of administrative solutions and no approach in appealing to administrative or judicial officials. Moreover there is no legal assistance or an interpreter to help the detainees. There is also no limit on the duration to which an individual can be detained. “According to information obtained by CEAR, this ranges from 3 to 15 days, until the authorities are able to gather a group of 15 to 20 people to fill a small bus” (CEAR Euskadi 2013). In addition detainees are unaware about when and how they will be transported. They are usually made to travel very long distances from where they are left off in their village, and that they are not provided with any transport or food in order to make the journey ahead (CEAR Euskadi, 2013). Also after repatriation, the migrants tend to make another attempt.

Like other Southern European member countries, Spain also follows the systematic expulsion of migrants from its territory. On reaching the Spanish border, an individual can be denied entry or expelled without having given the opportunity to apply for asylum. “Mass expulsions are carried out through procedures that do not take each individual case into account and do not offer enough guarantees that a person will not be returned to the territory of a country in which his or her life or freedom are threatened or where he or she would face torture, inhuman or degrading treatment or other serious human rights violations” (CEAR Euskadi, 2013).

The right to asylum in Spain recognizes the responsibility to protect refugees in order to maintain its human rights standard. In the context of migrant crisis, there is a gap seen in the number of people who are able to reach Spain and apply for asylum to the number of asylum applications that are approved. This shows that the right to asylum is being systematically violated by the government in Spain. In 2011, only 3,414 people were able to enter the Spanish territory and request for international protection (CEAR Euskadi, 2013). Most of them were left in a situation of vulnerability and at risk of being returned to a country in which their lives are in danger. It is the responsibility of the state to ensure that international protection is received by the refugee against serious violations of human rights.

**Conclusion**

It can be concluded that the EU and its institutions, instead of demonstrating absolute respect for the right to asylum and the international agreements it incorporates, are primarily concerned with protecting themselves against uncontrollable migration flows and are failing to comply with their international obligations.

There is a lack of development in the social, economic, cultural and political, organized violence and forced migration which are the main factors behind migrant crisis in Europe’s periphery. If solutions don’t come to the countries of humanitarian crisis, people will come to countries where they hope to get solutions. It must be borne in mind that the current influx of migrants mainly affects the southern Member States of the EU, which are also the most affected by the economic crisis and have less capacity to manage and provide social protection to refugees. The EU approach has been to externalize the refugee challenge by ascribing the role of controlling and buffering the impact of these vicious circles to countries of transit that have a low human rights records. In short term the approach may be beneficial in reducing the migration floe. But are
the migrants in a safe situation in these third countries? EU seems to have turned a blind eye on this aspect, in order to pursue its own geopolitical interests. The challenge here for Europe is to maintain its normative values and international humanitarian obligations while managing the migrant crisis.

References


