

COMMENTARY

Migratory Crisis in the Mediterranean: Managing Irregular Flows

Susana Ferreira*†

The current migratory crisis in the Mediterranean questions the European Union's (EU) capacity to manage migratory flows. So far, the EU has placed a particular emphasis on border management, given a lack of political will that continues to prevent more in depth institutional responses. The current situation in the Mediterranean, and the EU's response is a cause of concern due to the risk it represents to the human security of migrants, and the questions it raises regarding the management of migratory flows within the EU. The major question to emerge during this crisis is: How does the EU manage irregular migration flows while safeguarding migrants' human rights?

In recent decades, the Mediterranean Sea has become a graveyard for many who seek a safe haven in the European Union (EU), or who just seek a better life in this world of inequalities. This situation peaked in 2015, with instability in the Middle East and North Africa (MENA) region fostering increased human mobility, often through new migratory channels operated by human smugglers and traffickers, leading to a growth in the numbers of people seeking international protection trying to reach the EU's shores.

In the first nine months of 2015 alone, FRONTEX¹ registered almost 280,000 detections on the Central Mediterranean route, and over 400,000 detections on the Eastern Mediterranean route (both by land and sea). Despite the current humanitarian crisis created by these flows, we should remember

that most irregular migrants currently residing in Europe have legally entered the EU (mainly through airports), and have only later fallen into a situation of irregularity. However, the current situation in the Mediterranean is a cause of concern regarding both the migrants' human security, and the management of migratory flows within the EU. The key question facing the EU has become, how to manage irregular migration flows while safeguarding migrants' human rights?

Framing Irregular Migrations in the Mediterranean

The crossing of the Mediterranean has become an increasingly perilous journey, often with fatal consequences. However, many migrants prefer to risk their lives trying to cross it than return to their countries of origin, or stay in a transit country.

The route from a migrant's country of origin to Europe's shores may take several years, depending on distance and difficulty. Resultantly, migrants often end up staying in transit countries for a variety of reasons,

* IPRI - Instituto Português de Relações Internacionais, PT

† IUGM/UNED - Instituto Universitario General Gutiérrez Mellado, ES
srsferreira@gmail.com

including travel costs or difficulties crossing borders. In fact, most sub-Saharan African migrants finish their trip in North Africa, with only a minority reaching the EU (Global Initiative Against Transnational Organized Crime 2014: 12). Considering that migrants often travel in inhumane conditions, such as in overloaded trucks or boats, face situations of famine and thirst, or become victims of exploitation and extortion, the costs of these journeys extend far beyond the financial.

Migrant transit is frequently facilitated by smuggling or organized crime networks, which supply a set of services to migrants: from transportation to fake documentation, and even the corruption of law enforcement agents. If it is true that these networks are in contact with each other, the connection between them is informal and scattered, making it more difficult to dismantle these transnational networks.

Migrations in the Mediterranean Sea basin are the result of a set of external factors. Conflicts in the MENA region, particularly in Syria where Islamic State has added to an already raging civil war, continue to destabilize the region and force outward migration. Moreover, people smugglers have taken advantage of a security vacuum in Libya to facilitate migrant crossings of the Mediterranean Sea. Over four million refugees have already fled Syria, creating the greatest migratory crisis since World War II, with over nine million internally displaced people (IDPs) (UNHCR 2015). The majority of these migrants have sought protection in neighboring countries, such as Turkey and Lebanon, and only a small percentage of the total number have tried to cross European borders. However, neighboring countries are now overwhelmed, lacking the capacity to house new migrants. The persistence of the migrant flows has prompted some countries, including Jordan, Lebanon and Turkey, to impose restrictions on new entrances. Thus, migrants have begun to take alternative routes to reach other countries, such as the EU Member States.

Furthermore, the migratory pressure in Africa, with very young age structures and large economic disparities, continues to boost economic migration and south-north mobility, particularly from sub-Saharan countries. The simultaneous existence of few legal immigration channels to the EU combines with these economic disparities to diversify the causes of irregular flows beyond that of security.

Thus, irregular migrations are a present and future reality, but their dynamics and geography will change over time.

Challenges to the EU's Management of Irregular Flows

European political leadership and the mass media often portray migrations, particularly irregular flows in the Mediterranean, as a threat to European security. Therefore, within a constructivist framework, migrations are conceived as a menace to internal and political security. Despite the pressure for action this portrayal has caused, the EU has shown difficulties in dealing with the increasing flows of irregular migrants reaching its borders.

The management of migrations in the Mediterranean can be framed within the Common Immigration, Border and Asylum policies and the European Neighborhood Policy (ENP). Thus, it is developed at diverse levels. Overall, we may distinguish three different, but complementary, dimensions: a) cooperation with third countries; b) border management; and c) the prevention of the abuse of legal migration channels (De Castro & Ferreira 2015).

The Dublin Regulation, which establishes common standards for asylum applications, is the basis of the EU's international protection system. This system ensures that only one Member State—the country the person is first registered in—is responsible for the examination of an asylum process. Nevertheless, the extent of the current migratory crisis has brought countries such as Germany and Hungary to suspend the application of this rule to Syrian refugees, in an attempt to deal with the growing number of asylum seekers

arriving in these countries. This has in part alleviated pressures on entrance countries such as Italy and Greece as migrants are not being returned there for processing.

While we are witnessing a constant reinforcement of border controls at the EU's external borders, as well as an externalization of the European border, in what way can we safeguard migrants' human rights and their right to apply for international protection? In addition, many of the measures adopted by the EU and its Member States to manage the migratory crisis, in particular border control and border management agreements with third countries, raise a number of legal issues and require some reflection.

The first step taken towards a common EU external border management policy was given with the signing of the Schengen Agreement in 1985 and the consequent elimination of internal borders, in 1995. The development of a common border policy became an essential component of the EU's area of freedom, security and justice. The EU's border policy has, however, been trapped between different agendas that have dictated its development, from its inclusion in the EU's framework under the Justice and Home Affairs (JHA) issues (third pillar), to its later inclusion under the common policies (first pillar). The mixed agendas of the EU's border policy have however become guided by the Schengen Borders Code. The code is the Union's main regulatory framework governing the crossing of internal and external borders, the checking of persons, person's conditions of entry, and border surveillance.

The creation of FRONTEX, in 2004, represents the greatest institutionalisation of the EU's border management policy. The Agency is the result of a low common denominator agreement to manage the EU's external borders, without having to adopt a more integrationist solution such as a European Border Guard, as originally proposed by the Commission. Nevertheless, with the worsening of the migratory crisis in December 2015, the European Commission once again

brought the proposal of a European Border and Coast Guard to the table. The establishment of this security body is part of the measures proposed under the European Agenda on Migration, aiming to ensure the EU's internal security through the reinforcement of external borders—proposals receiving renewed impetus in the aftermath of the Paris attacks of November 2015.

The Tampere Summit of 1999 called for an external dimension to the EU's asylum and immigration policies, a call operationalized as an emphasis on extraterritorial controls and the enhancement of cooperation beyond the EU's borders. However, this externalization of the EU's borders, through the delegation of competences in terms of border management to third countries, has created two dilemmas. As highlighted by Carrera (2007), on the one side, in a preventive action, migrants become qualified as an 'irregular immigrant' without even crossing the EU's border. This ignores the possibility that some of these migrants seek international protection, bringing into question the safeguarding of human rights. On the other side, pre-border control avoids the application of the European protections granted to those who cross the border. This questions the enforcement of the Geneva Convention and of human rights guarantees. Thus, migrants can be left in a legal limbo, since this dimension does not fall within the legal framework of the European Union (Ferreira 2015).

The development of border management missions in the Mediterranean sea by Member States, or within the framework of FRONTEX at the EU's external borders (often in cooperation with transit countries), also raises questions regarding the legality of the interception of immigrants in international waters and their forced return. Nevertheless, these missions begin to address the current situation, forming part of a short-term answer to the Mediterranean's human tragedies.

Though FRONTEX operations are not search and rescue missions, but instead are border control missions, search and rescue

becomes a priority when human life is at risk. Therefore, these missions must meet two basic principles of international law: the assistance of people in distress at sea, and the principle of non-refoulement². In this sense, the States in charge of the operation have a duty to assist migrants, identify possible cases of international protection and prepare the return process, while ensuring that these individuals receive humane treatment upon return to their countries of origin or transit—fulfilling the prohibition of refoulement established by Article 33 of the United Nations Refugee Convention, which states that no refugee should be expelled or returned to a territory where his/her life or freedom is at risk.

Following repeated tragedies in the Mediterranean in the first semester of 2015, the European Commission adopted the European Agenda on Migration in May 2015. The agenda aims to address the current migratory crisis and give a comprehensive framework to these issues by presenting a new set of immediate and medium term measures which place a particular focus on border management.

As a short-term immediate action to face the crisis, the EU launched a military mission against people smugglers in Libya – EUNAVFOR MED. Through the identification of smugglers' networks and the patrol of international waters, the mission aims to search and seize suspected ships at sea, and only with the backing of the United Nations, in Libyan territorial waters. However, critics of this mission have focused on the possible collateral damage. By destroying these vessels, those migrants who are boarding or are already on board may be affected. In addition, it destroys the only opportunity some migrants have to reach Europe, because even though it is a dangerous route, there is still some possibility of success. Leaving many migrants trapped in an increasingly unstable North Africa, particularly Libya, endangering their personal safety and human rights.

The EU has also implemented other instruments in order to operationalize European solidarity. Funding has been assigned through the Asylum Migration and Integration Fund and the Internal Security Fund; hotspot teams have been created to manage exceptional migratory flows in countries of origin or transit through the identification, registration and fingerprinting of incoming immigrants; and relocation schemes have been devised. However, the adoption of a relocation and resettlement scheme has been controversial, as home affairs and interior ministers failed to reach an exact agreement on the quota of refugees to be relocated and resettled, given the divergences and controversies between frontline Member States and central and northern ones. Even after reaching an agreement to relocate 160,000 people in September 2015, the relocation process has thus far been very slow, falling significantly behind the agreed numbers. This adds to the 'solidarity struggle' within the EU, between northern and southern Member States, regarding funding and resettlement, which threatens to undermine the success of the EU's actions.

Finally, the EU-Turkey agreement seems to be a step further in the externalization of the EU's borders, making Turkey partly responsible for the management of the EU's Eastern border. The agreement aims to address the overflowing arrival of migrants from Turkey to Greece, through the return of any new 'irregular migrant' that arrives in Greece to Turkey. Nevertheless, the agreement raises several questions regarding its legality and even its operationalization, as it violates EU laws regarding detention and the right to international protection.

Final Remarks

The EU is struggling with the thousands of irregular migrants who enter its territory or die within its borders. The EU has entered *crisis mode* to address this situation, adopting a set of emergency actions that place a particular focus on border management.

Furthermore, the measures approved so far point towards a close connection between the issues of immigration and security, and feed off of and contribute to the perception of irregular migrations as a threat to European security. Along with the EU's military mission, EUNAVFOR MED, this suggests a growing militarization of the EU's borders.

So far, the Union's efforts to manage irregular migrations have resulted in changes in the migratory routes, which have become increasingly perilous. The management of these flows should, in turn, enable the protection of migrants' human rights. Nonetheless, many of the measures taken with regard to border management raise legal issues regarding this safeguarding of migrants' human rights.

The EU needs to move beyond its current emergency/crisis mode to allow it assess the current migratory crisis, and adopt a medium to long-term approach to managing migratory flows in the Mediterranean. This new approach should not only focus on irregular flows, but also address its root causes, and make legal migratory channels more accessible.

Although irregular migrations in the Mediterranean will remain in the future, their dynamics, intensity and geography will change given the range of endogenous and exogenous factors impacting them. Nevertheless, the EU should play an important role in addressing these causes, mitigating their impacts, and creating a better management system for migrant flows. Nor can the international community remain inactive in the face of Syria's ongoing humanitarian tragedy that continues to strain its neighbors' capacities and add to migrant flows towards the EU.

In short, the EU needs to adopt centralized mechanisms of solidarity and burden-sharing, moving beyond national political and economic interests to address the real causes of the current migratory crisis.

Competing Interests

The author declares that they have no competing interests.

Notes

- ¹ FRONTEX is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.
- ² The principle of non-refoulement is central to international refugee and asylum law, and is based on the impediment of the return of an individual to a territory where their life or freedom would be in distress (UNHCR 1997).

Editor's Note

As part of our ongoing commitment to inform international security and development policy through innovative, high quality research, *Stability* will be regularly featuring commentary articles, such as this piece on the current migration crisis in Europe. Written by distinguished experts, commentaries are short peer-reviewed articles that tackle pressing issues of security and development.

References

- Carrera, S** 2007 The EU Border Management Strategy. FRONTEX and the Challenges of Irregular Immigration in the Canary Islands. *CEPS Working Documents*, 261, (March).
- De Castro, A and Ferreira, S S** 2015 *EU's Border Management in the Mediterranean: EUNAVFOR MED* (in press).
- Ferreira, S S** 2015 The Mediterranean Dilemma: Cooperation in Border Management? *Revista de Estudios de Seguridad* 6 (December), pp. 141-156.
- Global Initiative Against Transnational Organized Crime** 2014 *'Smuggled Futures: The dangerous path of the migrant from Africa to Europe. A Research Report'*. Geneva: Global Initiative against Transnational Organized Crime.
- UNHCR** 1997 *UNHCR Note on the Principle of Non-Refoulement* (November). Available at <http://www.refworld.org/docid/438c6d972.html> [Last accessed
- UNHCR** 2015 'Syria Regional Refugee Response' (August 16). Available at <http://data.unhcr.org/syrianrefugees/regional.php> [Last accessed 17 August 2015].

How to cite this article: Ferreira, S 2016 Migratory Crisis in the Mediterranean: Managing Irregular Flows. *Stability: International Journal of Security & Development*, 5(1):4, pp. 1-6, DOI: <http://dx.doi.org/10.5334/sta.441>

Submitted: 05 November 2015 **Accepted:** 25 January 2016 **Published:** 12 May 2016

Copyright: © 2016 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.

]u[*Stability: International Journal of Security & Development* is a peer-reviewed open access journal published by Ubiquity Press.

OPEN ACCESS 