MIGRATION DENIED: EXTERNALIZATION OF BORDERS AND THE EUROPEAN REMOTE CONTROL

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Abstract: The present work intends to analyze the border remote control operations carried out by European countries and how such controls act in order to intercept ongoing migrations as well as to prevent the action of the refuge through the fabrication of sovereignty and jurisdiction beyond national territories. This article aims to raise a question about the procedures used to control migrations and the Modern State legitimacy when imposing restrictive border managing operations.

Key-words: Asylum; Externalization; Borders; Remote Control; Europe.

INTRODUCTION

As long as there's any record, people move between cities, states, countries, continents; there has also been, since colonialism and imperialism processes carried out by first European and then other Western countries, an institutionalization of borders, where the complexity of the frontier has been shifted to a material only perspective (MEZZADRA, 2013). However, on the post-Cold War era and in face of the effects of the globalization, more people than ever are on the move. Due to environmental collapses, civil wars, diseases or economy's catastrophes, migration has increased (MEZZADRA, 2013; ZAIOTTI, 2016) which led the Modern State to adopt excludent migratory policies and restrictive border management initiatives. (TORPEY, 2000)

To understand these policies and analyze the State's and nongovernmental actors roles in implementing and managing border remote control activities, this article is divided into sections, as follows: the Introduction, which aims to provide an overview on the narrative of the migratory crisis, and the International Law system that regulates human rights; the Discussion, in which I intend to clarify the concept of Externalization of Borders (1), demonstrate how such operations are carried out in the European Union, whilst investigating the modern State's and Non-State actors roles in this Border-induced displacement. Section (2) covers Digital surveillance of border management and acknowledgments of the legitimacy of these operations. Finally, the Conclusion seeks to compile the results of this research giving a final overview on the matter.

According to the International Migration Report in 2017, 258 million people were living outside their country of birth (UN, 2017). This number summarizes different kinds of migrants (refugees, asylum seekers or just expatriates in general), and this escalating movement of people pose a challenge to governments and policymakers in the contemporary world. It is obvious that

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mass migration tends to be an issue for government leaders, however, research shows that some governments "react to migration as a threatening phenomena" (OHCHR, 2015) which means that rather than try to deal with the actual social and economic impacts that comes from migration, governments and policymakers create a narrative of crisis, causing a commotion among citizens and using that same perspective to build, reinforce and intensify border control. (SOLIMANO, 2010; ZAIOTTI, 2016)

Yet, international intergovernmental organizations created human rights guidelines fundamented in International Law and endorsed by most Western countries (as well somewhat accepted in other Eastern countries) to protect migrants and refugees rights: The United Nations and its Universal Declaration of Human Rights, ratified by 150 countries; the Non-Refoulement principle, the International law *Jus cogens[2]* doctrine that prohibits return of an individual to a country in which he or she may be persecuted; the Cartagena Declaration on Refugees, all quasi-judicial bodies that preserve and assure the civil, economic and political liberties and rights of migrants/refugees (LAGERWALL, 2017).

Ever since the nineties, scholars (CORNELIUS; MARTIN; HOLLIFIELD, 1994) have been debating the paradox between the goals of the national migratory policies (such as laws, regulations, executive actions etc.) and the real results these policies obtained. In this sense, the incapacity of States and policymakers when it comes to control migration raise the question that perhaps the State isn't the only tool to deal with the problems that the International System faces at the present time. Nevertheless, this seemingly robust State apparatus that fortify control and surveillance is actually way more flexible, as it can't, despite all efforts improved by the modern World and upgraded by technology, stop people from crossing transnational borders. That doesn't mean that the modern State doesn't operate important restrictive measures towards migration, but it allows us to argue that we can now question the resilience of the State as the everlasting and most important political entity. (CORNELIUS, 2004; FREEMAN, 1998; GUIRAUDON, 2001; JOPPKE, 1999)

As a result of not being as resilient as it is portrayed, the modern State, especially Western ones, usually wealthier countries and preferred destinations of immigrants (UN, 2017; ZAIOTTI, 2016) have strengthen their borders and consolidated their remote control[3], whilst bending their jurisdictions and sovereignties to cooperate with other countries in order to stop migration. (GIBNEY, 2005) The term used to call this process is "externalization of borders", where countries "move borders out of one's territory and redeploy them elsewhere". Yet externalization does not need to invoke an actual expansion of territory: it mainly plays a role in jurisdiction, technology, regional cooperation and surveillance.

Managing migration is an arduous task in any circumstances, and in terms of emergency situations such as the Refugee crisis, it can be delicate, which is why most countries try to stop migration before migrants reach their final destination: this way, they're not that State's concern anymore. The practices of remote control, which will be discussed later on, have then emerged as an easy method to deny basic human rights. (ZAIOTTI, 2017) This article does not deny the obvious existence of a physical material border between territories, but rather tries to understand the other roles border plays when it comes to sovereignty, legitimacy and jurisdiction. In the contemporary world, border is no longer only a dividing line,

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2   Jus Cogens, or peremptory norm is a fundamental principle of International Law that is accepted by the international community of states as a norm from which no derogation is permitted; It stems from the idea already known in Roman law that certain legal rules cannot be contracted out, given the fundamental values they uphold (LAGERWALL, 2017)

3   Remote control can be defined as "restricting migrants' access to territorialised human and civil rights by manipulations of territoriality." (FITZGERALD, 2019) and jurisdictions. More generally, remote control is the attempt to stop incoming migrants before they reach their final destination, through surveillance and externalization of borders (ZAIOTTI, 2016)

it is, however, a mechanism that operates where the migrant is. The question this article aims to raise then, as it analyses the extraterritorial border management carried out by EU countries is, are these processes of extraterritorial border management (remote control) legitimate or interfering with the basic human rights assured by International Law?

EXTERNALIZATION OF BORDERS

The most urgent intention in this work is to simply analyze the operations carried out by the European Union and its organizations, more specifically the role of the State in these operations and their legitimacy. To do so, a historical background needs to be disclosed first. In the context of the 90s Spanish economic recovery, Spain starts to receive more migrants than it ever did, and after years of being an "in transit" country, granting flexible migratory legislation, it became a country of destination. Irregular boats accidents and other forms of illegal migration resulting from the increasing number of people moving to Spain then demonstrated the need for more specific legislation when it came to the migration process. On that occasion, many agreements with Latin America and Eastern Europe were signed, creating demands for visas and policies that we can nowadays call the principle of operations of migration control that have been in place since the 2000s. It is worth mentioning that at this moment, Spain has promoted associated migration control projects with Morocco, Mauritania and other eastern African countries that are sponsored by the European Commission. (CASAS CORTES; COBARRUBIAS; PICKLES, 2014)

A few years later, Spain has been increasingly playing a role on the EU border security measures (BIALASIEWICZ, 2011; VAUGHAN-WILLIAMS, 2011), where external border control efforts include military sea operations led by FRONTEX: the external borders agency led by the EU, carried out by the Spain Civil Guard. Frontex coordinates operation "HERA", designed to stop migration along the maritime route from West Africa to the Spanish Canary Islands. HERA lasted from July to October 2006, but after that it has been frequently readjusted and lengthened. The methodologies and processes of the operations carried out by FRONTEX are not clear and cause us to question the legitimacy of these border enforcement actions and possible human rights violations in these projects. As a result, The European Center for Constitutional and Human Rights (ECCHR) hosted a round table on "potential litigation against Frontex for human rights violations in 2016, and submitted access to documents requests on Operation Hera to Frontex". (JORRY, 2007; WRIEDT; REINHARDT, 2017)

When researching outside the academic/scholars works on this subject, there is little to no information on Frontex and similar operations, most of them being their official website with numbers, graphics and "risk analysis", which makes very clear that the externalization of border controls became more sophisticated and focused in smarter and more technological ways of controlling how people move between transnational borders. That being said, turning border control into smart remote control initiatives also keeps people from knowing these operations exists or what it actually consists of, retaining information and possible human rights violations and International Law abuses. (BROEDERS, 2007; AJANA, 2013; SALTER, 2004)

Likewise, Spain currently implements Seahorse operations, a set of border externalization policies and projects, which are also under the aegis of the Spanish Civil Guard, and backed by the EU with the premise of growing the border administrations process. However, Seahorse was designed to be a series of interventions financed by the European Commission (Europe Aid), where HERA operations, mentioned above, is included.

Seahorse operations consist of "patrol vessels, helicopters, and personnel from participant countries, including Italy, France, Iceland, Luxembourg and others on a rotating basis". (CASAS CORTES; COBARRUBIAS; PICKLES, 2014) Operations like these are the EU's organized strategy from the Global Approach to Migration and Mobility (GAMM), where a regional cooperation between different States and other non-governmental organizations coordinate to intensify border control and restrain migration and asylum. These migratory policies are shaped in order to catch, intercept and then restrain ongoing migrations. Considering the amount of people moving towards Europe, especially in 2015 during the European Refugees crisis -with people migrating from war affected areas- migration was acknowledged by the public in a frame where rather than simply the movement of refugees or other migrants to Europe, immigrants became unwanted and above all, criminalized. (GREUSSING; BOOMGARDEN, 2017).

Nevertheless, studies show that the border control policies, the narrative being put out by policymakers and the mass media platforms were crucial to the creation of this narrative of crisis (HUYSMANS, 2006; GREUSSING; BOOMGARDEN, 2017)

> Apart from administrative aspects of coping with the arrivals, established narratives of security threat and economization are most prominent. Humanitarianism frames and background information on the refugees' situation are provided to a lesser extent. [...] In sum, the results confirm a predominance of stereotyped interpretations of refugee and asylum issues, and thus persisting journalistic routines in both, tabloid and quality media, even in times of a major political and humanitarian crisis. (GREUSSING; BOOMGARDEN, 2017)

The quote above, from an extensive research on the matter, demonstrates how migrants are seen in the public eye. In this sense, it becomes quite simple to showcase the migrant as a threat to the social and political order of these countries. The cycle is clear: the matter gains chaotic features when a rhetoric of crisis is created, the civilians then embrace and standardize the toughening of border control practices (the narrative is that these methods of control would be temporary and abolished as soon as the crisis is overcoming), but by then the coercitive state of exception has become the norm. (SOLIMANO, 2010)

Semi-state actors, such as GAMM, FRONTEX, Seahorse Operations and many policies backed by EU illustrate the process of border externalization, where the border no longer is a dividing line between territories: it is defined accordingly to where the migrant is. The core idea here is to understand that these policies, projects and coordinated actions are not aimed to protect civilians or avoid economic crisis: they are a clear cut line made to keep people out. And more specifically, made to keep asylum seekers out. The existence and enforcement of these policies not only promotes a moral dilemma but rather an International Law one: if the International Community accepted *jus cogens* norms, and so the Non Refoulement principle, why are they still sending refugees[4] back to the place they just fled from? How the modern Westphalian State, at the same time it increases border control and impose restrictive measures, posing as a powerful device, also bend jurisdictions and becomes more flexible than ever, increasing the number actors used to "excluded unauthorized migrants or even to report them"? (LEERKES; BACHMEIER; LEACH, 2013).

Furthermore, asylum seekers do not stop trying to cross transnational borders in order to get a better life and flee from persecution, so these tough policies, rather than diminish migration, only make their next attempt more dangerous as they look for a non-border managed route/itinerary. In this sense, borders

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4   A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group (UNHCR)

as we know it, were transformed by European countries from strategic limits into technological divisions and defining of who deserves or not the juridical status of refugee/legal immigrant. Thus, the routes used by migrants are traced and the itineraries mapped, transforming them in objects of policies that become "adjustable and governable" (CASAS CORTES; COBARRUBIAS; PICKLES, 2014). Hence, the executive power of a State is no longer "exercised by its own officers and confined to the scope of its territorial borders" (GAMMELTOFT, THOMAS; 2011) but a folding instrument that acts whenever a State exercises effective control over other places and its agents exercise power over an individual. This control can be exercised when state sovereignty, jurisdiction and strength are promoted in other territories or international waters by extraterritorial agents.

> By moving control activities outside national territories, States are engaging in" buying jurisdiction "[...] in these instances, the responsibility of the acting State is reduced. (GAMMELTOFT; THOMAS, 2011)

The routes mapped are categorized in country of origin, in transit and destination, creating a network of places to track the migrant, controlled by institutional and non-institutional operations of remote control, building a structure of transnational borders externalization that affects sovereignties, jurisdictions and responsibilities. (GAMMELTOFT; THOMAS, 2011) Do all the countries and governments involved in this process of surveillance are aware they're in some way taking part in these operations? Who is holding these organs accountable for their actions?

DIGITAL SURVEILLANCE

The scope of the existing immigration policies comes from the realization that "alone", borders are unable to prevent irregular migrations, thus, border control is "moving away from the border and out of the state". (LAHAV; GUIRAUDON, 2000) and becoming remote-control (ZOLBERG, 2003), or moving "up, down and out" (GUIRAUDON, 2001). This way, migration control becomes almost outsourced, and both active surveillance and the exclusion of irregular migrants depends on the production of information prepared by the State. Furthermore, surveillance tools such as the "Schengen Information System" (SIS), Eurodac, and Visa Information System (VIS) are used for both border control and internal (national) migration control. These tools are paramount in border externalization organizations because control depends on information so that the State can implement policies (BROEDERS; DENNIS, 2007)

> Frontier is not "real" (in a legal sense) but "metaphorical". It is also not necessarily material, as in the case of a fence at a land border. It can be a bureaucratic "paper wall" such as the one built on visas, or the "virtual wall" created by data information systems tracking incoming travelers" (ZAIOTTI, 2017)

The article "The New Digital Borders of Europe: EU Databases and the Surveillance of Irregular Migrants" (BROEDERS; DENNIS, 2007), which serves as a bibliography for this article, presents an interesting idea about the surveillance carried out by Europe as a form of digital (and therefore, remote) border control: Even if some operations (such as SIS II and VIS) are not in full operation or have not yet been implemented, the central question that their creation raise is: Where are we heading with migration control, and how these mechanisms operate? The persistence of irregular migrations and the lack of public policies to deal with the process stimulated migratory control and its current structure of action, not only managing and dominating borders (whether physical or remote) but within the societies of "in transit" and "destination" countries.

According to TORPEY (2000), the focus on internal migration brings attention to two interrelated challenges for the State. The first would be territorial access (through the processes of state power over borders) and the State's ability to identify and distinguish citizens and non-citizens and regulate geopolitical mobility. In this sense, the author uses the theory of Panopticon by Michel Foucault: a centralized guard who can observe everyone and prisoners who can't see anything. Prisoners (here migrant subjects) will undergo a process of discipline in which they will lose their will, capacity or opportunity to exercise again the behaviors for which they are being punished. In the subject we are dealing with, however, unlike Foucault's theory, the Panopticon does not serve to control behaviors: digital frontiers are used not to monitor citizens, but to gain information and knowledge of actions of non-citizens, so that these individuals won't even enter their territory.

CONCLUSION

To summarize the information established in the Discussion, border as we know it, after the aggravating of the conflicts throughout the World and the complexity of human mobility, was shifted from a dividing line into technological strategic divisions. Not as a natural incident, but as the result of a structure built by State and Non-State actors to control migratory flow and the amount of people coming into one territory. This arrangement promoted border remote control initiatives: operations such as GAMM, Seahorse and FRONTEX integrate migration, international relations (in the sense of interstate communication) and policies that design processes of territorial expansion. These processes conceived the term "externalization", as they invoke the expansion of jurisdictions and administrations beyond their physical and real borders. In this sense, the discussion here takes place from the perspective of investigating the legality of these operations in order to understand the joint jurisdictions, legal procedures, International Law and the responsibility undertaken in these exploits, in addition to the possible issues that can be caused to migrants who are intercepted by these entities.

As mentioned, most border remote control initiatives, either institutional and State centered or the semi-State agencies, sponsored by the State, are not clear and known to the public, therefore are not controlled nor held accountable for possible human rights and International Law violations. Nevertheless, when these operations are financed by the State or by an organization of States, they are, with no shred of doubt, violating fundamental principles of International Law and crucial values the International community upholds. By implementing ways of controlling and preventing migrations and calling those who move between transnational barriers illegal, we understand the invention of the monopoly of the right to come and go by States, where the individual becomes hostage to the government's benevolence to allow their entry and stay in its territory - even when their life is in imminent risk and when international processes like the principle of Non-Refoulement are in their favor-. First of all, it becomes essential to understand the legitimacy of these operations: Who allows them to be carried out, and are these operations legal and supported by International Law? To whom do these agencies respond? When migratory control is exercised outside the State's territorial jurisdiction, who is responsible? And ultimately, are migrant subjects being treated within their legal rights to apply for and exercise refuge?

At various levels, the refusal towards immigration occurs because of domination (subject to arbitrary power and coercion in an unequal relationship) seen as legitimate because of the Rational-Legal status of authority conferred to the governments of most liberal democracies. At this point, the state seems to have an almost divine and unquestionable right to say who enters and who leaves, even when such decisions interfere

with International laws that protect these migrants. Thus, it is imperative to recall that treaties on human rights signed by the State, combined with the character of certain International Law documents cannot prevent asylum and deny basic human rights such as refuge, as European countries have been doing through extraterritorial control: these tools act as excuses to avoid fundamental human rights responsibilities. The quote below summarizes how the current model, created by international institutions and, inexorably, the modern State, actually fails to encompass the complicated, tangled issue, contemporary migration poses.

> The existing model for the protection of refugees has proved to be insufficient in the face of the current challenges imposed by the complexity of human mobility and the worsening of conflicts in various regions of the globe, which have caused an unprecedented mass displacement of human beings. Such a model, nationalist and anachronistic, comprises refuge as part of state policy and, therefore, subject to the interests of the state. Thus, instead of cooperation and protection, States respond unilaterally by establishing restrictive policies and violating the human rights of those who seek refuge. (MAHLKE; HELISANE, 2016)

The processes, policies, projects, initiatives (whatever you may want to call them) that manage border control extraterritorially, with non-state and State cooperation give us some insight, that the State, even when bending jurisdictions and by using other tools on its behalf, is still one of the most powerful political entities in the contemporary World, and that the existing mechanisms regulated by liberal diffuse organizations are not enough to cover the needs and fundamental human rights of refugees in today's world.

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