Beyond Borders?

1 JANUARY 2024

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The very moment I write this blog post, the agreement on reforming the Common European Asylum System (CEAS) is all over the news. This is an outstanding achievement for the EU internally. However, the compromise reveals little information on the cooperation with third countries and the outward reach of EU migration policies. And yet, there is a strong tendency towards externalisation of the EU's migration management. The concept covers various policies that hinder migrants from accessing the corresponding territory, usually to avoid internal processing, which may involve stricter legal obligations or higher costs. The EU is already very active in this field, for instance, by having established a very rigid border surveillance system

and the more or less open support of Libyan coast guards engaging in pushbacks.

Recently, European politicians have brought the external processing of protection claims into play. The most striking example is the bilateral agreement between Albania and Italy, signed by Edi Rama and Giorgia Meloni in October 2023. Although this deal does not involve the EU level, president of the Commission Ursula von der Leyen has noted that this model "deserves attention" – as an example of an initiative "outside the usual thought patterns, based on a fair distribution of responsibilities with third countries." The deal sets up two centres in northern Albania to process asylum seekers and refugees rescued by Italian vessels. Italy funds and operates the centres, which can hold up to 3,000 people at a time. After processing, Italy is responsible for relocating individuals, either to Italy or elsewhere.

Yet, could the EU and its member states utilise such deals to overstep humanitarian and legal borders? What are the challenges to the feasibility of extraterritorial processing?

First, relevant EU law on migration and asylum requires its application on EU territory. Third states need to cede sovereignty regarding administration and jurisdiction to the member state(s) involved. However, the corresponding regulation only applies if migrants have reached EU territory. Italy circumvents these provisions as the migration deal with Albania affects migrants on the high seas only. Overlapping the jurisdiction of different actors is likely to increase the legal uncertainty of migrants.

Second, without proper control by EU or member states' officials, it is complicated to ensure respect for legal provisions in international law, most significantly the fundamental guarantee of non-refoulment. It ensures that no state can send back migrants to conditions in which they face persecution or inhumane and degrading treatment. Especially, the provisions binding under the European Convention on Human Rights and its application by the European Court of Human Rights especially pose high standards on contracting states like Italy and all EU member states. In its preliminary assessment of the migration deal with Albania, the European Council on Refugees and Exiles puts the respect of human rights and further procedural rights into question. Notably, the ECtHR's jurisprudence has established that effective control over individuals by state authorities is enough to activate human rights obligations under international law. That is why member states cannot relieve themselves from their responsibilities by externalising their migration policy. In light of that, questions arise as to whether external processing can be more effective than internal processing.

Third, advocates of extraterritorial migration management often present the destruction of smuggling businesses and the prevention of life-threatening crossings in the Mediterranean as the primary motivation for this strategy. However, Italy's deal with Albania cannot sincerely account for solely heartful intentions as it does not contribute to facilitating legal

pathways for migration. The effect is rather to deter migrants – especially those without qualified protection claims – from starting their journey in the first place. Modified configurations could respond to both notions and thus help to abolish what experts call the European Asylum Lottery. With extraterritorial asylum processing, more people may be able to file their asylum claim without having to reach EU territory by taking the dangerous Mediterranean route. Nevertheless, this requires actors to overcome organisational and legal difficulties that, by this time, threaten orderly migration management within EU territory.

The previous analysis demonstrates how the feasibility of extraterritorial processing mainly depends on the respect of human rights obligations. We should neither demonise nor glorify extraterritorial processing of asylum claims as a means of migration management, but we need to question the intentions behind it constantly.

States cannot externalise migration management to cross borders upheld by international law and normative provisions. This realisation also needs to accompany any attempt at external processing.

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