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BORDERS, REFUGEES AND ASYLUM

WHERE ARE WE AT?

Topic of the Month
Europe Must Act
2024

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What is asylum and who is an asylum seeker or refugee?

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The concept of asylum has been around and debated for thousands of years, with early examples from Ancient Greece–as Aeschylus[1] portrays an indecisive king who toils with the protection of the Suppliant Maidens, fleeing from a forced marriage.

Despite this story maintaining its striking similarity with today, the concept of asylum has, of course, been through various iterations since then. Now, often nations rely on the 1951 UN Refugee Convention.

This convention was born out of the Second World War after millions of people were persecuted and displaced, and created within the context of the initial phases of the Cold War–a time when the majority of asylum seekers were men from Eastern Europe who had been publicly speaking out against the communist regime[2].

This context helps us to understand two things:

- Firstly,thequestionofwhoisarefugee, who will be granted asylum and whether they will be accepted isn't a new one.
- Secondly, the context within which our current definition of asylum was created– a world where social norms, laws, technology, transportation and communication were hugely different than they are today.

[1] Aeschylus, Suppliant Maidens, Trans. Herbert Weir Smyth PhD (Cambridge, Massachusets: Harvard University Press 1988 [1922])

2] Mascini, P; Van Bochove, M. (2009). Gender Stereotyping in the Dutch Asylum Procedure: "Independent" Men versus "Dependent" Women. International Migration Review, Vol. 43 (1), 112-133. DOI: 10.1111/j.1747-7379.2008.01149.x

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CONVENTION

Relating to the Status of Refugees

Preamble

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Screenshot taken from the UN 1951 Refugee Convention

This convention formed the basis of how we view asylum today and describes a refugee as a person who:

"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"

Since, 1951 there have also been various new conventions and policy documents from the UN and UNHCR that have expanded or elaborated on this definition. For example, being persecuted for your gender and sexuality was only officially recognised, defined and outlined in 1990 and 2012 respectively-prior to this, it would be classified as being a member of a particular social group and wasn't as clearly acknowledged.

So:

An asylum seeker is someone who is outside of their country of nationality, who is seeking protection. Whereas, a refugee is someone who is deemed to conform to the definition above and has therefore been granted refugee status.

There are also other protections, such as humanitarian protection, which are often offered to people who may not fit the definition above but require refuge. For example, those who are fleeing widespread violence.

Heterodox Experiences

The above conventions set out guidelines for who can be classed as a refugee. However, every person and their experience is different. This means that government bodies should assess individual people's cases, to determine whether they conform to the refugee convention and will be offered protection.

Carrying out this task largely depends on what is recognised as a "well-founded fear of being persecuted"[3]. This creates difficulties for those with a lesser-known background, experience or case as they often struggle to prove themselves as refugees.

For example, a Nigerian woman who was a victim of sex trafficking was deported whilst their asylum case was still under decision[4]. This is partly because, the intersecting experiences between trafficking, asylum and gender violence continue to be misunderstood[5]. It also serves to demonstrate how those who don't neatly match the profile of the "imagined refugee" struggle to gain recognition and status.

Stock image sourced from Unsplash

However, that doesn't mean a case needs to be particularly complex. As human experience very rarely falls neatly into a strict category, those who don't quite fit also often have difficulties.

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[3] UN (1951). Refugee Convention Relating to the Status of Refugees

[4] Plambech, S. (2017). Sex, Deportation and Rescue: Economies of Migration among Nigerian Sex Workers. Feminist Economics, Vol.23, 134-159, DOI: 10.1080/13545701.2016.1181272

[5] Rigo, E. (2017). Re-gendering the Border: Chronicles of Women's Resistance and Unexpected Alliances from the Mediterranean Border. ACME: An International Journal for Critical Geographies.

For example, there are many reports of Colombians struggling to gain refugee status, especially those who aren't political activists and have suffered from non-discriminatory violence[6]. One woman who fled Colombia, after receiving multiple death threats, stated her asylum claim was denied because:

"they said they believed our story ...but that we were not covered by the Convention ...because really I could not accuse anyone because I did not know who I was talking about"[7]

On top of this, colonialism has helped to shape migration routes, asylum and immigration policies[8], as well as contributed to racism and discrimination within these systems. This is something that we see played out most clearly in the media representations of asylum seekers and refugees[9] and has impacts on who is framed as a refugee vs. who is framed as an "economic" or "illegal" migrant.

What these examples demonstrate is that whether you are or aren't a refugee isn't as black and white as the previous section indicates. For a person to gain status, it relies heavily on both an understanding of a person's situation and how the refugee convention is applied. Returning to our previous discussion about when the refugee convention was first written and defined, it becomes easy to see how many people are likely to fall short of conforming to this definition.

So, when answering the question of "who is a refugee?", we should strive to also consider the issues raised by these heterodox stories, the grey areas that they demonstrate and how finding yourself as a heterodox story affects a person's experience.

More than this we should also scrutinize how people are classified as refugees or asylum seekers in our wider media and political sphere. Reflect on the inadequacy to incorporate other forms of forced migration, such as:

- Climate-induced displacement, especially when it comes to women's vulnerability,
- People are displaced by extreme poverty, which threatens their right to life.
- Complicated routes. Often people move over a long period of time, crossing through and even temporarily settling in numerous countries without necessarily having Europe as their final destination in mind[10].

[6] A Bermudez, The Experiences of Asylum Seekers and Refugees, (International Migration, Transnational Politics and Conflict, 99-117, 2016)
[7] Ibid, p106
[8] Sirriyeh, Ala, 'Emotion, Colonialism and Immigration Policy', The Politics of Compassion: Immigration and Asylum Policy (Bristol, 2018; online edn, Policy Press Scholarship Online, 24 Jan. 2019), https://doi.org/10.1332/policypress/9781529200423.003.0003
[9] Gutiérrez Rodríguez, E. (2018). The Coloniality of Migration and the "Refugee Crisis": On the Asylum-Migration Nexus, the Transatlantic White European Settler Colonialism-Migration and Racial Capitalism. Refuge, 34 (1). https://doi.org/10.7202/1050851ar
[10] Maribel Casa-Cortes, Sebastian Cobarrubias, It is Obvious from the Map! Disobeying the Production of Illegality beyond Borderlines, (Movements, Vol 4, 2018)

Stock image sourced from Unsplash

Europe, the EU and Agreements

Thus far, we've mainly discussed refugees and asylum seekers on a state level. This is largely because it is individual states that have acceded to the 1951 refugee convention and protocol, and who are therefore obliged to follow the principles. However, the construction of the EU and other agreements such as the Schengen Agreement or the Dublin III agreement (soon to be replaced with AMMR), has also created a multi-layered governance system with multiple moving parts.

Ideas of European cooperation on asylum began in the early 1990s, as the Cold War came to a close, the amount of asylum seekers increased and asylum rose as a political issue. It was felt that there was a need for a more unified approach to asylum across Europe, especially when it came to "burden sharing" and having a common asylum procedure[11].

Many of these issues are still the focus of European debates today. For example, the events of the summer of 2015 [12] sparked multiple Europe-wide discussions about where the responsibility lay for those people arriving at European borders.

In response, there has been a combination of national and EU-level policies and initiatives. This began with a heavy focus on Italy, Greece and Spain which were framed as the "'soft underbelly...of the common European border towards migratory flows." [13]

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[11] Andrew Geddes, Leila Hadj-Abdou & Leiza Brumat, Migration and Mobility in the European Union, 2nd Edition, (London: Palgrave Macmillan, 2020)

[12] Yurdakul et. Al. 2018 Witnessing the Transition: Moments in the Long Summer of Migration. Berlin: BIM, DOI: 10.18452/18704

[13] Lorenzo Gabrielli, Multilevel inter-regional governance of mobility between Africa and Europe, Towards a deeper and broader Externalisation, (GRITim -UPF working paper series, 2016), p3.

Since then, there have also been a multitude of agreements with countries such as Morocco, Mauritania, Libya, Tunisia and (most famously) the 2016 EU-Turkey deal.

There have also been other initiatives, even further afield, as Europe and the EU try to prevent people from moving towards Europe by funding projects in Africa. For example:

- The Khartoum Process (2014) - A project focused on the Horn of Africa, with the intention of managing irregular migration, trafficking and smuggling. Although, it has been criticized for its collaboration with oppressive regimes (e.g., Sudan) and intransparent financing schemes.
- The Emergency Trust Fund In Africa - A (contested) approach that aims at tackling the "root causes"[14] of migration through various development projects.

This brief overview serves to demonstrate a few key ways of understanding people on the move today. Firstly, we need to view the treatment of asylum and refugees as both a national and supranational issue within Europe. Secondly, there is a long-standing European process of managing people moving towards Europe. Finally, there are multiple approaches used to achieve this, from development aid projects to international agreements.

For more detailed information about how European policy, laws and agreements have progressed take a look at this resource. For more detailed information about changes that have been made since 2015, please take a look at the following Timeline.

[14] This approach to preventing migration has been heavily contested since the 1990s - Sandra Lavenex & Rahel Kunz, The Migration-Development Nexus in EU External Relations (Journal of European Integration, 30:3, p439-457, 2008).

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Common questions and complexities:

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Do asylum seekers have the right to work?

Under EU reception conditions, "Asylum seekers with well-founded claims will be granted the right to work no later than six months after their application is registered." However, when it comes to the conditions of this right to work, it varies greatly depending on the country. For example in Germany, it's possible to obtain permission to work after 3 months but this can be dependent on a person's status, where they're living and may be restricted to certain jobs.

Where do the majority of Asylum seekers come from and how do they arrive?

From where?

"asylum seekers have good and legitimate reasons to leave, but this doesn't mean that they're indifferent to where they end up"[15]

What this means is that when it comes to connecting where asylum seekers come from to where they are welcomed-it's difficult to generalise. Factors such as recent events, proximity, family ties, colonial ties and language ties can all have an effect. Therefore, different European countries are likely to have different people applying for asylum.

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[15] Andrew Geddes, Leila Hadj-Abdou & Leiza Brumat, Migration and Mobility in the European Union, 2nd Edition, (London: Palgrave Macmillan, 2020) , p 113

It is also crucial to remember that people aren't always rational actors all the time. As I'm sure you'll agree when reflecting on your own life, plans are often made based on what seems like the right choice at the time and, more importantly, plans change.

How?

The method of arrival is also greatly dependent on the welcoming country. This is often due to geographical reasons, for example, Germany is unlikely to have many people arrive by sea. But it's also due to political reasons and choices, for example, if a land border is heavily fortified it drives more people to try and enter a country by sea.

People's method of arrival will also be hugely dependent on individual choices and the information and resources available at the time. Migration routes are commonly portrayed as linear trajectories as people make their way to their "final destination"[16]. However, this is not necessarily the case. Migration routes are individual-they can be carried out across a number of years and plans will often change.

For example, Turkey is often depicted to be a "transit country" that people pass through on their way to Europe. However, in reality, the concept of "transit migration" is blurry and political[17], as it neglects (amongst many other things) that those deemed to have transited through a country or region may have originally hoped to have stayed there or, conversely that people may end up staying in a country much longer than they intended.

So, whilst data often attempts to describe how people arrive to Europe as a whole and where they are from, it's important to acknowledge that these trends fail to acknowledge these complexities.

How many people are claiming asylum globally?

The UN states that 108.4 million people worldwide were forcibly displaced at the end of 2022. 52% of these people came from just three states, Syria, Ukraine and Afghanistan. On the other hand, the following top five countries welcome the largest amount of people in need of international protection:

- Turkey
- Islamic Republic of Iran
- Colombia
- Germany
- Pakistan

[16] Maribel Casa-Cortes, Sebastian Cobarrubias, It is Obvious from the Map! Disobeying the Production of Illegality beyond Borderlines, (Movements Journal, Vol 4, 1, 2018)

[17] Franck Düvell, Transit Migration: A Blurred and Politicised Concept, (Population, Space and Place 18, 415-427, 2012), DOI: 10.1002/psp.631

These figures can be useful and interesting when we consider asylum in Europe. But a few points to keep in mind:

- Statistics give a wide and digestible overview of a situation but they have no bearing on an individuals situation.
- Asylum and migration aren't static, these figures are always likely to change and fluctuate.
- These statistics show the importance of asylum and how many people have reasons to move. But, it can be useful to place them in context (e.g. the world population of 7.888 billion) to avoid "mobility bias"[18]. Although we need to look after people on the move, don't allow these figures to be weaponised to create fear and forget that the majority of people don't leave their home country.

Border systems

Border systems have become intrinsically linked to our migration systems and agendas. Here we aim to explain some issues related to these systems and demonstrate their impact on people on the move.

Stock image sourced from Pexels

Borders and Securitisation

"At the airport, we advance, with the miniature steps of geisha girls, towards the apparatus that sees, sees into, scans and filters us." - Frances Stonor Saunders

Although we may not always consider it, the practice of securitisation is something we're all likely familiar with. As Frances Stonor Saunders points out in her essay, "Where on Earth are you?", airport border practices are a typical form of securitisation for any of the lucky jet-setting few. It's the practice

[18] Kerilyn Schewel, Understanding Immobility: Moving Beyond the Mobility Bias in Migration Studies. (The International Migration Review, 54(2), 328-355, 2020).

of controlling borders, increasingly through the use of technology, in an attempt to prevent those deemed undesirable from entering. This can mean anything, from those suspected of being a terror threat to those who don't have the correct permission to enter.

For example, the first world-wide passport was established in 1920, giving states greater power to control and track who was entering the country. As such, it was quickly adopted by the USA in 1929 as they sought to "preserve the American hegemony".

Furthermore, countries have always sought to control their populations[19]. Previously, more people meant more taxes and resources, this meant that there was greater consideration for preventing (certain) types of people from leaving and encouraging them to have children. Recently, in Europe, there's been a greater trend towards the opposite, as many countries pour money into trying to keep (certain) people out.

However, although, as the example above illustrates, border control practices aren't a new thing, it was in the 1990s and early 2000s when migration began to be connected to issues of security[20] and terrorism[21].

This further intensified in Europe after the 2015-2016 'migration crisis'[22]. Since then we've seen many European borders (both external and internal) go through a process of securitisation and militarization - as borders have been closed, patrolled and surveyed.

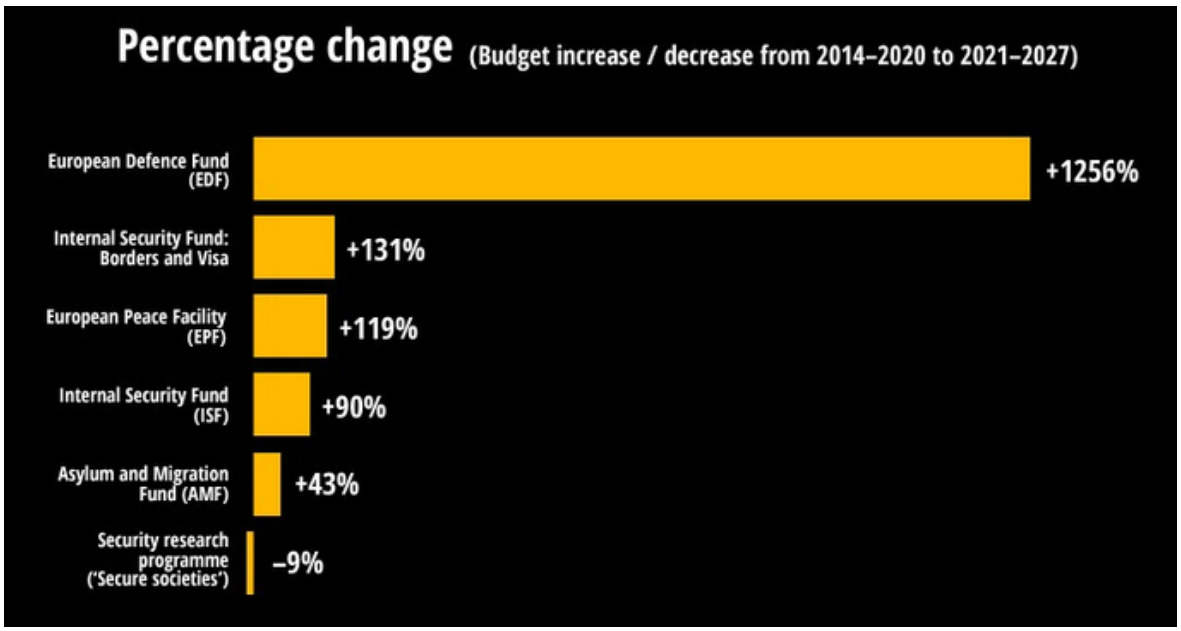

Image sourced from Statewatch

[19] Matthew Connelly, Fatal Misconception: The Struggle to Control World Population, (Harvard UP. Students Read Chapter 1, pp.18–45., 2008)
[20] Sandra Lavenex & Rahel Kunz, The Migration-Development, Nexus in EU External Relations (Journal of European Integration, 30:3, 439-457, 2008)
[21] See for example: Galantino MG (2022). The migration–terrorism nexus: An analysis of German and Italian press coverage of the 'refugee crisis', https://doi.org/10.1177/1477370819896213
[22] Sarah Léonard & Christian Kaunert: The securitisation of migration in the European Union: Frontex and its evolving security practices, (Journal of Ethnic and Migration Studies, 2020)

How Does This Affect Asylum?

Put simply, as borders have become closed and the people crossing them have been treated with more suspicion it makes it more difficult for people to arrive safely and claim asylum. Therefore, worryingly, securitisation, alongside externalisation and detention, has contributed to what has been described as "the slow death of asylum".

As the refugee convention states that someone has the right to claim asylum when they're outside of their country of nationality- it necessitates that people can cross the border to claim asylum on arrival, which is increasingly prevented as borders become shut down.

When it comes to justifying this issue, there is often a reference to trying to prevent the "fake asylum seeker". This is the notion that some people registering asylum claims aren't genuine. On top of this, migration controls are also typically aimed at preventing irregular people on the move (people entering without permission, smuggling and trafficking). Although this is often a winning narrative, it also often conflicts with the European Convention of Human Rights that protects the arrival of those in danger.

Some examples of securitisation in Europe:

Pushbacks and Pullbacks
A pushback is when someone crosses a border and they are removed before they're able to claim asylum or their case is assessed, this practice has been found across multiple borders, such as this example of a Greek sea crossing.

A pullback is when someone crossing a border is pulled back to the country they are trying to leave. This is most commonly used to describe the practices of the Libyan authorities as they return boats to Libya.

Both of these practices are equally dangerous as well as in breach of the non-refoulment principle.

Physical Barriers
This is where physical barriers are put in place to stop people from crossing a border or even approaching at a border. This is happening across multiple borders across Europe, but a famous example is the fenced cities of Ceuta and Melilla. These borders have even proved deadly as 37 people were killed by the Melilla border authorities, in June 2022. Whilst the Ceuta border has been described as largely impenetrable for those seeking international protection.

[23] Alison Mountz, The Death of Asylum The death of asylum: hidden geographies of the enforcement archipelago, (Minneapolis: University of Minnesota Press, 2020)
[24] Andrew Geddes, Leila Hadj-Abdou & Leiza Brumat, Migration and Mobility in the European Union, 2nd Edition, (London: Palgrave Macmillan, 2020) , p 121
[25] Ferrer-Gallardo, X., Gabrielli, L, The Fenced Off Cities of Ceuta and Melilla: Mediterranean Nodes of Migrant (Im)Mobility, In: Zapata-Barrero, R., Awad, I. (eds) Migrations in the Mediterranean (IMISCOE Research Series. Springer, Cham. 2024)
[26] Sánchez-Montijano, E. and Eitel, K. (2019) 'Borders and the Mobility of Migrants in Spain', (CEASEVAL RESEARCH ON THE COMMON EUROPEAN ASYLUM SYSTEM, 31, 2019). Available at: http://ceaseval.eu/publications/31_WP4_Spain.pdf

This practice isn't just for external borders, there are also examples of barriers being erected within the common travel area. For example, a part of the French/Spanish border has been closed, causing havoc, in an attempt to stop large amounts of people crossing into France. Slovakia also recently tightened its border controls with Hungary, in an attempt to prevent undocumented people from crossing their borders.

Lengthy border and asylum processes

Long waits for asylum appointments and lengthy and upsetting interviews are also considered part of the securitisation process. This is because these increased rules, regulations and suspicion have changed the asylum process, meaning that people are waiting longer for a decision and a huge amount of pending cases.

Often this isn't as innocuous as it sounds. Firstly, although it will vary from country to country, reception conditions can be extremely poor, such as those often noted in Greece. This is because waiting and backlogs, also bring issues such as "where do you house people while they wait?".

On top of this, waiting long periods for an asylum outcome has been linked to an increased likelihood of psychiatric issues[27], demonstrating the mental harm that waiting for a life-changing decision can have.

What are the consequences?

As with any large and multinational system, there are multiple consequences, which are difficult to cover fully. However, as a start, here are four consequences that are worth highlighting:

Financial costs

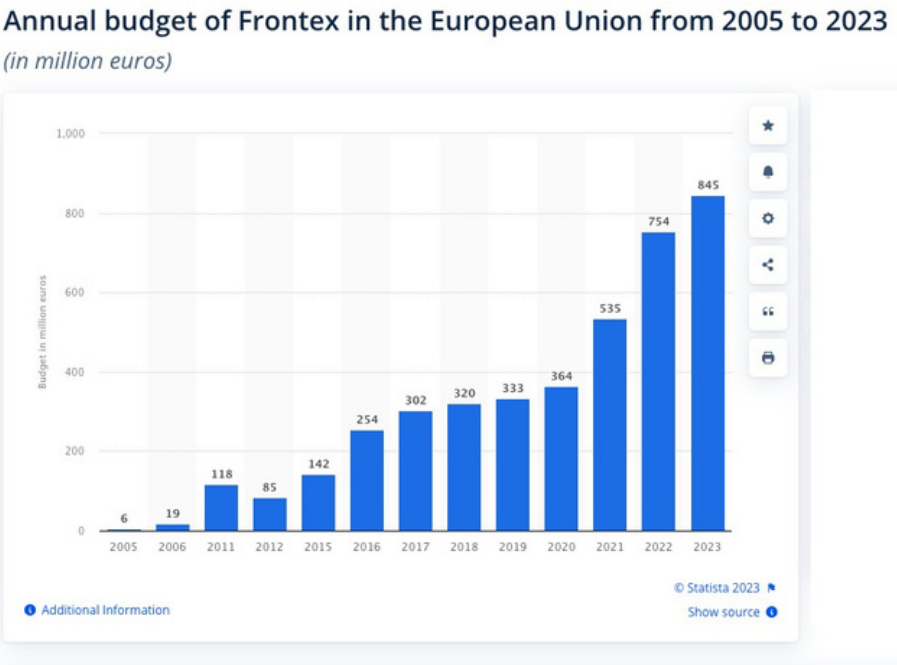

Image sourced from statista.com

[27] Camilla Hvidtfeldt, Jørgen Holm Petersen, Marie Norredam, Prolonged periods of waiting for an asylum decision and the risk of psychiatric diagnoses: a 22-year longitudinal cohort study from Denmark (International Journal of Epidemiology, Volume 49, Issue 2, April 2020)

There are various reports demonstrating how much money this is costing European citizens, such as Statewatch - At what cost report as well as other reports that demonstrate how it is a global phenomenon.

This is a fact that doesn't make the headlines as frequently, but at a time when the Eurozone has been described as sinking into a financial recession, agencies such as Frontex and other border and security controls are maintaining their huge budgets.

Externalisation of European borders

This process of securitisation has also entailed a large amount of international cooperation that continues to expand further and further away from European borders. Europe has increasingly become reliant on non-European countries to create a long chain of externalised and securitised borders.

This, on the one hand, has given certain countries power and leverage. For example, Morocco's power has meant that "by selectively 'opening' and 'closing' its borders, Rabat can maintain pressure on Spain and the EU while assuring a politics of recognition of Morocco as a key European partner."[28]

On top of this, it has also meant that increasingly non-government actors are also participating in this process of sending people back making sure they don't continue their journey:

"As I visited on the tail-end of the migration craze in 2010, the most visible sign of Rosso's role on the clandestine circuit was the Red Cross "operational base," a walled-in compound next to the river jetty, funded by the Spanish official development agency, Aecid. The role of the joint Spanish and Senegalese Red Cross mission was to care for exhausted deportees, who were given food and drink, a wash, and a rest. Their main purpose, however, was to send migrants on to Dakar or their Senegalese home region."[29]

Finally, these practices of externalisation have also begun to emerge from the shadows and openly become part of government rhetoric and plans. As we've recently seen the Danish and UK governments attempt to transport their asylum seekers to Rwanda. Demonstrating not only the extent to which asylum obligations are externalised but also the level to which it has become normalised.

[28] Ruben Andersson, Europe's failed 'fight' against irregular migration: ethnographic notes on a counterproductive industry (JOURNAL OF ETHNIC AND MIGRATION STUDIES, VOL. 42, NO. 7, 1055–1075, 2016)
[29] Ruben Andersson, Hunter and Prey: Patrolling Clandestine Migration in the Euro-African Borderlands (Antropological Quarterly, Vol 87 (1), 2014) p130

Dangerous crossing practices and shifting border focus

It has been argued before and still needs to be argued that securitisation practices have made these systems more dangerous. As easy and safe routes to claiming asylum become closed, people are forced into more dangerous routes and less legitimate hands.

This is because "human migration from open to clandestine and from legal to illicit is not a mere reflection of migrants' preferences in travel but rather the manifestation of the obstacles created by border enforcement."[30]

Broken down, what this means is that by creating obstacles for people to cross borders you don't stop people from moving. Instead, you end up with a shifting border focus as people think of new ways to reach their destination and you end up with increasingly unsafe ways to travel, as safe ways are blocked off.

Securitization has ultimately created a system where people are dying in their attempts to reach their destination. Through a combination of impenetrable safe routes and the creation of a culture which is hardened against those trying to reach Europe. This means that many of those who are trying to claim asylum are being denied that right.

[30] Sheldon X. Zhang, Gabriella E. Sanchez, And Luigi Achilli, Crimes of Solidarity in Mobility: Alternative Views on Migrant Smuggling, (The ANNALS of the American Academy of Political and Social Science, 676(1), 6-15, 2018).

Stock image source from pexels.com

Detention

Finally, as systems and narratives of securitisation have slowly become embedded we have also seen the rise of the detention of asylum seekers. Increasingly asylum seekers, those who have crossed borders without papers and visa-overstayeres are being criminalised and kept in detention centers[31].

To take the UK as an example, the British Red Cross recently reported that asylum seekers were being held in detention centres indefinitely. This is combined with more out-in-the-open practices, such as the UK government's Bibby Stockholm plans, which asylum seekers have described as a floating prison for asylum seekers.

Another, more extreme, example is the reporting on the Libyan prisons. Where people on the move are being confined and treated like criminals. Demonstrating another level of externalisation as the harsh conditions and human rights offences are allowed to happen outside European borders, despite their palpable link to European border policy.

Ultimately, here we see how securitisation also contributes to normalising the criminalisation of asylum seekers and people on the move more generally. As detaining people and housing people in prisons are considered a correct response to European country's asylum obligations.

[31] Mary Bosworth, Subjectivity and identity in detention: Punishment and society in a global age, (Theoretical Criminology 16(2) 123-140, 2012).

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A Point of Reflection about Asylum and Borders

Asylum and border systems are complicated. As alluded to previously in this document, in some ways we are all affected by these systems. Whether it's directly, as we struggle to cross a border or indirectly, as we see human rights be watered down and increasingly harsh treatment of people on the move.

To help us understand and investigate this further, it can also be a useful point of reflection to consider:

- What are the commonalities we see when we look at how refugees and asylum seekers are presented in the media and conversation?
- How do these representations differ from the information presented here?
- What are the effects of migration and asylum narratives and how do they create political support?

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*We're volunteers and asylum and migration is a complex topic. This means we try to include a variety of opinions and approaches to a topic. We do our best to research and use our expertise accurately however, we also believe it's vital to encourage healthy discussion and stop misinformation. Therefore we encourage any feedback or constructive criticism of our work.

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Europe Must Act (EMA) is a growing grassroots movement, bringing together volunteers and NGOs to campaign for the humane, dignified and legal reception of refugees in Europe.

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