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The costs and mortal dangers of unauthorized migrations as a limiting rationing device. Is there a better solution?

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The present state of affairs

In face of the present migratory pressures from the poor towards the richer countries, and of the present framework of international humanitarian law, the costs and dangers of unauthorized migrations appear to act as a rationing device restricting actual migrations to a small fraction of their very large potential.

A more human solution

An alternative more human path could be one in which migrants (especially those entitled to humanitarian protection under international law) would be screened in, or close to, the countries of departure, before being allowed to travel by regular means of transport towards the countries of immigration, thus transforming the unauthorized migrations, especially of the asylum seekers, in authorized migrations. The simplest way could be to allow would be immigrants to ask for a visa (in particular for international protection) in the consular offices abroad. But the consulates of the destination countries usually refuse to issue visas to declared asylum seekers. As the European Union is concerned, there was a well known paramount case in 2017, a recourse to the Court of Justice of the European Union regarding a Syrian family that in Lebanon was refused a visa by the Belgian consulate in Beirut. The visa request by the family was for a temporary stay, in order to be able to submit an asylum application in Belgium. The refusal was upheld to recourse first to the Court of Justice of the European Union and then to the European Court of Human Rights.¹ Indeed the apparently reasonable solution of allowing asylum seekers to receive a travel visa from their place of stay abroad faces two difficulties: 1. The sheer huge number of potential applicants. 2. The fact that because of the friends and relatives effect the creation of pathways of legal immigration, unless of such a great size that would be politically unsustainable in immigration countries, could potentially enhance, rather than reduce, the pathways of unauthorised immigration,.

A more human solution but with push backs (which are presently illegal in international law)

Abstractly speaking a solution to the issue 2. above could be to accompany the creation of authorised immigration pathways with a policy discouraging unauthorised immigration, in particular by refoulement or prompt repatriation. In theory, if all unauthorised immigrants could be immediately pushed back or undergo immediate repatriation, this would eliminate the incentives towards unauthorised immigration, while politically allowing potentially larger numbers of legally authorised immigrants, such as refugees.

However this solution would encounter two fundamental obstacles:

1. It would be illegal under international humanitarian law. Aliens arriving in the territory of a country have the right to be considered for asylum and must not be simply pushed back (non refoulement clause). In case the asylum application is considered to be unfounded by the competent administrative authority they should not be removed towards the country of origin or transit unless after due legal process. In practice, as well known, repatriations and expulsions are difficult and costly to implement. The consequence is that if somebody from a poor country succeeds in arriving into the territory of a rich country, where he may have a better life prospect, there is a good chance that he will stay there.

2. The number of asylum seekers that the country of immigration could be ready to voluntarily authorise to immigrate would probably be much lower than the number of unauthorised immigrants

¹ See Alberto Chilosi, *Migrants, Migrations and the Inequities of the World*, Pisa: Della Porta, 2018, pp. 206-208.

that in most countries are in practice allowed, once arrived, to stay. As the biblical and evangelical say goes, "love thy neighbour as thyself", the neighbour, not the far away. In order to have a chance to be accepted, the far away have to travel even long distances so to arrive to the territory of the immigration country in order to be considered as "neighbours", worth of attention and solidarity.

Moreover the practical feasibility of a solution of this kind would be strictly dependent on the geographical setup. It has been successfully adopted in Australia, where a policy of accepting relatively large numbers of legal migrants has been accompanied by the refoulement or the displacement outside of the main territory of Australia of unauthorised immigrants, but in other different geographical contexts it would be practically much more difficult to pursue.

Open Borders.

Theoretically speaking the most far fetched solution to the unauthorised immigrants issue would be simply to automatically authorise everybody, by fully opening borders. From an ethical point of view it seems very difficult to justify the obstacles that the better off countries put towards immigration from the poorer nations of the world, but the probable consequences of a true open borders solution for the native populations of the countries concerned could be a massive reduction in living standards and political unrest, making open borders a politically untenable choice (cf. Alberto Chilosì, *The Economics and Politics of Unrestricted Immigration*, *Political Quarterly*, 2002, pp. 431-435).

The bottom line

In the end the limitation to the undesired excessive migrations towards richer countries will probably continue to rely mostly on the huge costs and mortal dangers of the pathways of unauthorised immigration. However ethically abhorrent this appears to be, in practice it is the only effective limiting factor to unwelcome immigrations from poorer countries that is allowed by international law. Perhaps something is wrong with international law...