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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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Abstract

In face of the present migratory pressures from the poorer towards the richer countries 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. However ethically abhorrent this appears to be, it is the only effective limiting factor to mass immigrations that is allowed by international law. Perhaps something is wrong with international law.

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.¹

A more humane solution?

An alternative more humane 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 (such as 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.² Aside from legal niceties, the apparently reasonable solution of allowing asylum seekers to receive a travel visa at their place of stay abroad faces in practice 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 to legal immigration, unless of such a great size that would be politically unsustainable in the immigration countries, could potentially enhance, rather than reduce, the pathways of unauthorised immigration.

Abstractly speaking a solution to the issue 2. above could be to accompany the creation of authorised immigration pathways with a policy of discouraging unauthorised immigration, such as pushbacks or prompt repatriations. However, this would be illegal under international humanitarian law. According to the latter aliens arriving in the territory of a country (“being under the country’s jurisdiction”) have the right to be considered for asylum and must not simply be pushed back (non-refoulement clause). In case the asylum application is declared to be unfounded by the competent

¹For an appraisal of the migratory potential in case restrictions to international migrations were removed see Alberto Chilosi, *Migrants, Migrations and the Inequities of the World*, Pisa: Della Porta, 2018, pp. 14 f.

² “The European Convention on Human Rights does not apply to visa applications submitted to embassies and consulates”, European Court of Human Right, Press Release 125, 5.5.2020.

administrative authority they should not be removed to the country of origin or transit unless after due legal process. The consequence is that if somebody from a poor country succeeds in arriving at the territory of a rich country abiding by international law, there is a good chance that they will be able to stay there forever, thus dramatically bettering their life prospects.

Moreover, 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 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 must travel even long distances to arrive to the territory of the immigration country or close by, in order to be considered as "neighbours", worth of attention and solidarity, at least by an important section of public opinion.

Moreover, the practical feasibility of a solution of this kind would be 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 more difficult to pursue.

Open Borders.

Theoretically speaking the most far-fetched solution to the unauthorised immigrations 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 choice³.

The bottom line

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

³³ Cf. Alberto Chilosì, "The Economics and Politics of Unrestricted Immigration", *Political Quarterly*, 2002, pp. 431-435.