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Between human rights and border control

If neither Frontex engagement nor disengagement can make migration safer, Europe may need to look at new solutions beyond its borders

It was the most shocking disaster in the Mediterranean in years: on 13 June, more than 600 migrants lost their lives when the ship 'Adriana' capsized off the Peloponnese. For 13 hours, cries for help were issued from the vessel as it first ran out of drinking water. Yet, the doomed passengers sought salvation that, for most, never came. A *New York Times* investigation asserted that 'the Greek government treated the situation like a law enforcement operation, not a rescue', sending masked, armed men to watch the vessel drift – and claiming that it had sought to maintain course toward Italy. Greece's Coast Guard may have attempted to tow the Adriana (perhaps helping capsize it) and did save scores from drowning. Yet, whatever assistance it did render proved insufficient for the hundreds who perished.

For many, the Adriana's demise evidenced the common accusation that European authorities often act with indifference or hostility towards migrants endangered at sea. Governments sometimes justify failures to mount serious rescue operations as a means to deter exploitative smuggling – but some allegations, including those of intimidating vessels by creating large waves that can capsize them, or of drifting migrants away on flimsy rafts in open waters – indicate a potentially fatal disregard for or aversion to migrants themselves. Some scholars even see search and rescue operations as essentially a means by which Europe justifies interdicting migrants.

A potential exit by Frontex?

Yet, the scale of the Adriana catastrophe was so great that it attracted significant attention even in US media. It elicited uncommon criticism in Brussels. And in Warsaw, headquarters of EU border control agency Frontex, the organisation's Fundamental Rights Office was so aghast that it called for suspending assistance to Greece.

Pulling out would be a rare move for Frontex. Mandated to support EU member states' border control activities while respecting migrant rights, Frontex has in truth been much more focused on the former. An EU investigation suggested its own complicity in rights violations, including in pushbacks from European waters. Frontex activity centres on border surveillance, training border control agents, directly assisting in border control operations and coordinating member state resources to take part in operations beyond its and the border states' capabilities. Attempts to take migrant treatment seriously have been relatively recent; the organisation adopted a procedure for implementing Article 46, the mechanism by which it could suspend operations related to 'violations of fundamental rights or international protection obligations', only last year.

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A potential exit by Frontex opens the question of whether material consequences could alter states' behaviour towards migrants. There is no shortage of public reportage about shocking incidents on Europe's edges. Nor are there few legal theories by which states may be rendered responsible for migrant endangerment. Some have found favour, as when the European Court of Human Rights found 'pushbacks' illegal. Yet, rulings have not always gone migrants' way, nor have they deterred states from accusations of malice – or of turning a blind eye.

But Frontex pullouts could alter the perceived balance between border control and rights. Pushing back or failing to rescue migrants could then jeopardise assistance for border control, rather than seeming only to defend borders. The approach does come with risks. Frontex may be less able to monitor governments it was not assisting. Some states might claim that they can fill gaps in assistance, as Lithuania did last year. Alternatively, it would leave open the argument that, without Frontex, states could not mount rescues or patrol their borders as effectively – with consequences for the rest of the Schengen Area. Like-minded states could even provide additional border control assistance to states from which Frontex has left.

Other organisations do monitor the distress of migrants on Europe's borders. Alarm Phone – a group that tracks mayday calls – was one in touch with Frontex during the Adriana disaster. And the ability of the Greek Coast Guard to ask private ships for assistance – and the fact that it only sent one of its own ships to the Adriana – indicates Mediterranean states may not need Frontex to mount more effective

rescues, even as they rely on it more than Lithuania for broader border control efforts. Any perceived inability to control a country's borders might also have political consequences for its government. And resources of other member states are more difficult to coordinate without Frontex – one reason it was created. With at least some monitoring capacity and leverage, Frontex could find situations in which threatening pullout stood more chance of changing state behaviour than further endangering migrants.

Which way forward?

Yet, beyond hesitancy within Frontex's own institutional culture, EU politics may make such a move unlikely. Suspension is used by organisations like the Commonwealth, the club of mostly former British colonies whose members can lose representation in the group if they fail to uphold human rights. Such a model could prove difficult for the EU, which has valued full inclusion of member states more highly. Brussels has a hard-enough time blocking financial contributions to Poland and Hungary over deviations from the rule of law. A fight over Frontex could strain relations with Mediterranean states, already chafing against burdens placed on them in negotiations over the EU Migration Pact. Ending assistance could appear to be another failure to deliver on European solidarity, or as freeriding by states away from EU borders. Frontex, obligated to EU stakeholders, may be paralysed if many member states disagreed with it.

If neither Frontex engagement nor disengagement can make migration safer, Europe may need to look at new solutions beyond its borders. Efforts so far have worked in the wrong direction. Externalising European border controls to countries like Libya and Turkey may reduce irregular movement across the Mediterranean. But they can entrap migrants in hostile environments – or mean coercively deporting them there. Attempts to curtail the need for migration through development aid assume poverty as its cause and fail to address what happens to those who move for other reasons.

One approach could avoid coercion and xenophobic opposition: promoting already growing migration within the Global South.

Some believe that 'safe pathways' for migrants will eventually be rolled out thanks to Europe's low fertility and increasing need for workers from places where birth rates remain buoyant. Yet, interest among EU states in replicating Britain's Rwanda deportation scheme and the collapse of the Dutch government over proposals to cap asylum seekers demonstrates that European migration politics have not

arrived there yet.

One approach could avoid coercion and xenophobic opposition: promoting already growing migration within the Global South, which would find favour with European publics wary of migration today while tightening labour supply in the Global North – accelerating the need for more safe, legal migration routes in the future. Southern regional organisations already seek to fuel free movement among their members to boost economic growth. Currently, the EU works with some of these organisations to curtail movement toward Europe but could provide resources to promote mobility within them instead.

Better monitoring of migrant treatment within these territories would also be necessary. Perhaps donor states could premise assistance on migrant protection. This would be not unlike the threat of a Frontex pullout but with fewer intra-EU challenges. Such threats – like that of an exit by Frontex– might still be accused of subjecting states that interact most with migrants to a hierarchical relationship. They may nonetheless be an improvement over the hierarchy between those states and migrants who drown.



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