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"They Pretend Not to Hear" : Unpacking the European Union's Use of Libya as a

Transit Country for Refugees

by

Min Young Park

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Introduction

In February 2021, Libya will enter its tenth year of civil war. Riven by a split government, a robust illegal arms trade, thousands of militias, and a society fractured along the lines of the previous Libyan federation, the country exhibits several types of crises: governance, security, and humanitarian (Al Arabiya English, 2013) (Wehrey, 2020).

The European Union's (EU) use of Libya as a "refugee transit country" adds another layer of complexity to its humanitarian needs. In doing so, the EU trilaterally allows, causes, and enables violations of refugees' human rights by employing hyper-territorial practices. This paper begins by providing a brief overview of remote control and the subject of territoriality. Then, by utilizing Fitzgerald's (2019) theory of the architecture of repulsion, it describes and analyses the EU's migration management methods toward Libya and its effects on refugees' freedom of movement, rights, and dignity. Lastly, it beseeches the international community to examine the ideas of movement, its monopolization, and its effects on refugee rights.

Conceptual framework

David Fitzgerald's *architecture of repulsion* refers to a set of metaphors used to describe the "logic and practice" of *hyper-territorialization* over land (foreign and domestic), water, and air (2019, p. 4). Composed of two parts, hyper-territorialization involves the use of *externalization*, the phenomena of states extending "their migration control" beyond their territorial boundaries, and escalated border control along "a finely calibrated border line" (p. 4). By employing these tactics simultaneously, governments restrain migrants' access to territorial human and civil rights; these rights are conditional on their physical presence on/in a particular state's territory. The architecture of repulsion includes the use of *cages* to trap "the unwanted in their places of origin or remote foreign territories," *moats* to patrol international

waters, *aerial domes* to stop unwanted individuals from boarding flights, *land buffers* that "turn countries of transit into traps," *walls* to keep out and define "the sharp edge of the state's territory," and *files* that "document the identities and official assessments of individual travelers" (p. 9).

Fitzgerald argues that the hyper-territorialization exhibits the need for the public policy and academic communities to closely cross-examine the ever-shifting "relationships among space, rights, mobile people, and state control" (p. 5). In fact, hyper-territorialization defies several widely accepted tenants of the modern state, including where and how states collaborate to "monopolize the legitimate means of movement" (p. 8). The ramifications of these questions are great. With any type of territorialization comes borders, with border comes enforcement, with enforcement comes laws, and with laws come rights, or the lack thereof.

Literature Review

Remote control of migration is not new (Fitzgerald, 2019, p. 4). In describing the tightly managed system of issuing visas and screening passengers in the nineteenth and twentieth centuries at European ports, Astride Zolberg (1997) first articulated the term *remote border control* to describe the phenomena, remarking that the world had come to underappreciate the embarkation point and its impact on dictating global movement. In the case of Europe, Vedsted-Hansen (1994) described the process of *externalization* of asylum procedures of the Netherlands. Since then, the word has become an umbrella term for "policies to keep out asylum seekers and other types of mobile people" (Fitzgerald, 2019, p. 5).

Here, the question of borders comes to the forefront. Van Munster and Sterk (2006) claim that externalization signifies the "*deterritorialization* of control," connoting the decay of the

borders' importance (Fitzgerald, 2019, p. 6). However, Fitzgerald contends that it is not deterritorialization, but rather *extra-territorialization* as proven through legal documents and practice. His theory of *hyper-territorialization* argues that the importance of borders is not oxidizing. By contemplating the *raison d'être* of border fortifications and other "bordering practices" that occur with extra-territorialization, it is evident that borders are not irrelevant; they are paramount (p. 6). As observed by Fallet (2014), governments go to great lengths to "draw micro distinctions in space to demarcate exactly where their territories begin, and they increasingly mark those spaces with material fortifications" (Fitzgerald, 2019, p. 6).

Still, the regulations of border lines has not always been so "black and white" (Fitzgerald, 2019). In observing the regulation of migration beyond the territorial boundaries, Fitzgerald notes "how messy the exercise of sovereignty has become even in a world of nation-states" (p. 8). Applying his rich theory to the case of the European Union (EU) vis-à-vis Libya, a transit country in a full-scale conflict, reveals how the Global North has managed to implement a method amidst the madness. In exploring the themes of territoriality and access through the posed research question, this paper discusses its implications for rights-based humanitarianism and migration studies at large. Specifically, it argues against the use of Libya as transit country given what awaits those who are forcibly returned.

Case Study Analysis: Libya

For years, the EU has struggled to develop a clear, unified migration strategy among its member states, resulting in cacophonic responses. Its migration policy toward Libya is no different (El Zaidy, 2019). As an intergovernmental institution, the EU has pursued policies characterized by externalization, state-by-statepolitical deals, "outsource[d] border management," and reactive humanitarian assistance (p. 5). These strategies date as far back as the Qaddafi era.

While he was in power, the EU and Italy used Libya as a *land buffer* by striking "contentious deals with Libya, providing funding in return for a promise to keep unwanted migrants and refugees away from Europe" (MSF, 2019). Qaddafi even leveraged this to his advantage, once cautioning leaders that Libya would "turn into Africa" (a derogatory remark) unless it paid at least five billion euros per year to secure the coastline and keep them away from European shores (MSF, 2019).

Certain states within the EU, particularly Italy, have cut their own territorial deals with Libya (Zaidy, 2019). Formally launched in 2013, the Italian Coast Guard began "forcibly returning migrants intercepted at sea" due to a signed *Friendship Pact* between the two countries (Jumbert, 2018, p. 682). Administered through *Operation Mare Nostrum,* which ironically translating to "our sea" in English, Italy framed the mission as a search and rescue operation. In practice, however, it was neither friendly nor liberating in nature. *Mare Nostrum* side-lined migrants' movement and exploited it. By using *moats*, the coast guard intercepted boats that carried individuals without proper *files* and returned them back to Libya (Reliefweb, 2020). By using the Navy to escort refugees away from Europe and to Libya, Italy extended its sovereignty beyond its borders and moved territorial rights beyond migrants' reach. Although *Mare Nostrum* has ended, Italy continues similar operations through a signed *Memorandum of Understanding* (MoU), most recently renewed in February 2020 (Amnesty International, 2020).

However, Italy is not the only one who uses moats. The EU also supports the Libyan Coast Guard in combating illegal migration through comparable search and rescue operations across the Mediterranean "in the name of 'integrated border management'" (Zaidy, 2019, p.7). In 2017 and 2018, the EU dedicated 91.3 million Euros to the endeavor (p. 7). This causes and

enables human rights violations. Libya has not signed the 1951 Geneva Convention for Refugees and lacks an established asylum system to handle applications, creating a lack of accountability and enabling the maltreatment of those forcibly returned (Etefa and Pagonis, 2008) (Jumbert, 2018).

This mistreatment is well-documented. Squalid detainment camps, such as the one in Bani-Walid, function to *cage* refugees and further control their movement (Fitzgerald, 2019). First-hand accounts by detainees described it as such: "migrants were crammed in a room in the detention camp of Bani-Walid, they urinated and emptied their bowels in the same room, the women were sexually abused, the men were beaten, nobody could wash" (Puglia, 2018). Run by government actors such as Libya's Directorate for Combating Illegal Migrants (DCIM), refugees are smothered in small spaces with barely enough to eat. Reporting from February 2020 indicates that the UN-backed Governance of National Accord (GNA) tried providing food for individuals in these camps, but food was not delivered due to lack of payment and/or widespread violence (Creta, 2020).

Refugees also are at risk of being kidnapped by highly organized criminal groups. Often "sold from one criminal gang to another and required to pay ransoms multiple times before being set free or taken to coastal areas to wait," refugees are also subject to torture to exhort money from their families and friends (UNHCR, 2018) (The Guardian, 2019). Although Libya is party to the Convention Against Torture, it has not signed the Optional Protocol of the Convention Against Torture, nor has it responded to individually-launched complaints, or "accepted any of the inquiry procedure foreseen in relevant international treaties." (de Guttery, Capone, Sommario, 2018, p. 46). Money generated through these activities have served as a major source of financing for terrorism and armed conflict, thus powering Libya's escalating civil

war (UNHCR, 2018). Even children are not spared. The International Organization for Migration (IOM) reports that the most common risks to children are violence, sexual abuse, forced labor, and illegal organ transplants (de Guttery, Capone, Sommario, 2018, p. 45).

Larger questions of what we know about these refugees are hampered by the dissonant environment of Libya. A 2018 report by the UNSMIL and OHCHR states that across the country, "unidentified bodies of migrants and refugees bearing gunshot wounds, torture marks and burns are frequently uncovered in rubbish bins, dry river beds, farms and the desert" (UNSMIL, 2018, p. 6). It is impossible to know if these individuals' families have been notified or if they are even are accounted for in the statistics generated by the IOM, UNHCR, and other relief agencies.

Discussion of findings

Strategically speaking, the EU's actions are to "[remotely] control and deter" (UNHCR, 2018). It has deliberately used mechanisms that distance, dehumanize, and deprive refugees of their rights to asylum and non-refoulement – which would be conferred as soon as they were to touch European shores. [1] EU states are liable to provide for these rights as they are party to the 1951 Convention, the 1967 Protocol, and the Charter of Fundamental Human Rights. Exploiting the notion of territoriality and distance allows them to circumvent this obligation and others as defined in the Common European Asylum System (Papademetriou, 2016).

How may one make meaning of the EU's actions and its affects on refugees? Using a rights-based approach is critical in explaining the EU's precarious relationship with the law. By using

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[1] Although the EU offers a repatriation project to send previously stranded migrants' back to their country of origin and away from Europe, it is unclear if this return is dignified or primarily driven by refugees.

the lens of rights-based humanitarianism (RBH), it moves the discourse from charity, compassion, and other should-motives to a must-imperative: "defending, advocating and securing enjoyments" refugee rights grants. Yet, to say that the EU does not value human rights would be throwing the baby out with the bathwater. Observing the sheer fiscal, security, and policy efforts devoted to deterring migrants reveals that they very much understand the gravity of these rights - so much so that they are willing to go to extreme lengths to keep them out of refugees' grasp. (Harrell-Bond, 2002).

The implications of RBH go beyond the realm of thought and theory; they have tangible ramifications on refugees. The continued use of taxpayer dollars to send refugees back to indefinite detainment in inhumane conditions, without trial, in a country with weak law enforcement, is a human rights violation on multiple accounts.[2, 3, 4] If not from a legal point of view, observe how the deprivation of rights hides behind the deliberate nomenclature choices and framing of these practices, such as the "Friendship Pact," "Operation Our Sea," and "search and rescue" operations. Such observation offers a similar conclusion: an operation that forcibly returns refugees to a place with a high risk of being caged, trafficked, smuggled, sold, tortured, or abused is far from a "rescue." For refugees that transit through Libya, it is a matter of life, death, and most importantly, human dignity.

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[2] Libya: Renewal of migration deal confirms Italy's complicity in torture of migrants and refugees. (2020, January 30). Retrieved December 8, 2020, from https://www.amnesty.org/en/latest/news/2020/01/libya-renewal-of-migration-deal-confirms-italys-complicity-in-torture-of-migrants-and-refugees/

[3] Libya's cycle of detention, exploitation and abuse against migrants and refugees: MSF. (2019, December 23). Retrieved from https://www.msf.org/libya's-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees

[4] World Report 2019: Rights Trends in Libya. (2019, January 19). Retrieved December 10, 2020, from https://www.hrw.org/world-report/2019/country-chapters/libya

Concluding Remarks and Ways Forward

If our understanding of Libya was purely forged through the policy reports and media, "we could be forgiven" for having an incomplete understanding of what is truly happening (Refugee Hosts, 2017). Academic articles and policy reports are *sine qua non* in comprehending the use of hyper-externalization, but in doing so, we often (albeit unintentionally) forget about the *human* aspects of the *human phenomena* we are observing: migration. To reintroduce the *human* to the situation, we can read Tesfalidet Tesfom. Unfortunately, little is known about Tesfalidet apart from his status as an Eritrean migrant and the poems he wrote in Tigrinya (Puglia, 2018). In His Poem, "Time is My Master," he writes:

far from Peace

clutched by Satan,

human beings who don't know pity

or a scrap of sympathy

because they deny Peace

and have chosen Evil.

They consider themselves superior,

they pretend not to hear

they only like appearing at the eyes of the world.

When you get closer to ask for help

you obtained a void from them,

they can't feel the last sorrow

but to my people, to my brothers

one only thing I can say:

nothing is unreachable

whether one has a lot or nothing

everything can be resolved

with the trust in God.

The words "far," "closer," "unreachable," and "deny" signal questions about territoriality and access. In reflecting upon his entire poem, one could understand the ramifications of the EU's instrumentalization of the architecture of repulsion through new dimension: human.

Sadly, Tesfalidet did not survive; he died from malnutrition and advanced state tuberculosis (Puglia, 2018). Although he was never interviewed, his friends told Vita International that "he barely had a whisper of voice and in those brief moments he confessed that it was Libya that had killed him" (Puglia, 2018).

This paper implores the students, voters, academics, and policymakers to mercilessly interrogate the notions of movement, territoriality, and access of rights. When considering its relevance to refugees, it is essential to remember the level of vulnerability that spans throughout their journey: departure, in-transit, arrival, and even integration. This paper illuminates the case of those that never made it to their destination due to the myriad of intentionally-set obstacles, traps, and barriers managed by the international community.

Revisiting these themes may generate harder-hitting advocacy narratives that shatter preconceived notions of said "refugee crises" and provoke more meaningful, grounded, and sustainable actions through a rights-based approach. Academically, the author aligns with Fitzgerald in recommending that future studies focus on identifying the specific circumstances

that bridle states' use of remote control. It also advises that future studies measure the efficacy

of the "deterrent effect" (Fitzgerald, 2019, p. 18).

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