

Searching for accountability in EU migration-management practices

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The question of accountability seems to perpetually plague the European Union. Whether the concern of traditional Eurosceptics or those intent on pushing the EU down a more democratic track, accountability is a topic that seems to follow any discussion on the EU around like a bad smell. However, such discussions of accountability usually revolve around the domestic policy of the EU or how such policy impacts on individual member states and their citizens, the question of accountability in EU foreign policy is largely ignored by mainstream media outlets and tub-thumping Eurosceptics alike.

Let us side step for a second the argument that a lack of accountability in foreign policy is a general trend within international politics. The fact that up until very recently accountability in EU foreign policy has been largely ignored in both the annals of Brussels and the column inches of the European press is somewhat ironic when one considers many of the claims of the EU to soft power status are built around the promotion of norms such as accountability and transparency. Thus, the norms and values that the EU is so keen to be seen to promote in its immediate neighbourhood and beyond under the auspices of the European External Action Service (EEAS) and the European Commission are losing out to strategic interests abroad and at home, too.

That is until the last few months. The uprisings in North Africa, the subsequent increase in migrants crossing the Mediterranean and the cataclysmic predictions about an end to the Schengen acquis has put not only Euro-Mediterranean relations past and present under the spotlight, it has highlighted a hitherto under-investigated policy practice in the relations between the EU, its individual member states (IMS) and non-member partner states (NMPs): migration-management.

With the fall of Tunisia's President Ben Ali and Libya's Colonel al-Gaddafi the role of these two NMPs in the migration-management practices of the EU and its IMS has come under greater scrutiny. In addition wider everyday practices of migration-

management exercised by the EU and its IMS throughout the region have been dragged somewhat hesitantly out into the half-light.

Accountability in action then? Well, kind of, sort of, maybe. There is a fundamental problem with accountability in EU migration-management practices that comes down to ascertaining who in fact is ultimately responsible. If structural systems and everyday practices within the EU, IMS and NMPs are designed in such a way as to firstly make access to information protracted and often impossible, and secondly remove responsibility from individuals and institutions it makes the work of NGOs, the media and MEPs very difficult.

Securitising migration

During the past two decades in Europe and elsewhere migration has been constructed as a destabilising force that is seen to endanger domestic, regional and international stability. Over this time migration has been both discursively and socially constructed as a 'threat' and has been categorised along with terrorism and organised crime as something which the state and other institutional bodies must guard against.

The construction and classification of migrants as destabilising is made possible by their location 'outside' the territorial state (or regional) unit and their ability to challenge one of the primary functions of the state-unit, that of border control, which is itself understood as a core state activity. All states maintain the exclusive right to determine who and what can enter their territory. However, in recent years border policy has shifted from one of traditional defence and the taxation of trade to one of policing. Accompanying the increasing economic liberalisation of borders and the apparent demilitarisation of border controls is the increase in border law enforcement that itself has become highly militarised in character. As shown by the continued use of military vessels in securing the southern-border in the Mediterranean and the use of military personnel along the eastern-border, the building of heavily militarised fences in the Spanish exclaves of Melilla and Ceuta and now on the Greek-Turkish border. It is clear, therefore, that European militaries are now being used for 'crime-fighting' as opposed to traditional defensive and 'war-fighting' purposes.

In short, this securitisation of migration has enabled the policies and everyday practices of migration-management employed by the EU, IMS and NMPs to proceed in such a manner where security is placed before internationally agreed humanitarian obligations. Securitisation has also enabled migration-management to proceed without the level of transparency or accountability that the EU expects of those states in which it has been promoting democratic reform and good governance. Without classifying migration and migrants as a threat that needs to be secured against the management of migration would not fall under the rubric of security policy and responses would no doubt be very different. As scholars expounding on the process of securitisation have argued, once something is labelled and managed as a threat the rules of the game change as the response to ‘threats’ calls for different and importantly more urgent policy responses. Migration-management as a securitized issue is no exception.

Thus, when migrants threaten the territorial integrity of European space then they need to be kept out of that space at all costs. This, coupled with the idea that the EU is not only a regional power with strategic interests but a normative power with common values built around liberal democratic ideals, leads to the conclusion that the migrant threat must be managed outside of Europe for fear that carrying out the policies deemed necessary to police the threat should taint the liberal democratic heart of the European project. A similar logic lies behind policies of rendition and the use of authoritarian regimes in the questioning of terror suspects. The states/regions that practice what is called extraterritoriality or externalisation in migration-management, all of them – the USA, Canada, Australia and the EU and its IMS – consider themselves liberal democracies.

Matthew Gibney from the University of Oxford’s [Refugee Studies Centre](#) has argued that outsourcing migration-management allows liberal governments and institutions to eschew the constraints placed upon them by the very liberal democratic norms they are trying to circumvent. Thus, the need for the EU to maintain its liberal identity has meant that many of the everyday practices of migration-management, such as immigration prisons and various militarised responses are situated outside of Europe, outsourced in NMPs mostly in North African states with fewer humanitarian obligations and pretensions to a liberal identity with the knowledge and the funding of the EU and IMS and away from the prying eyes of the fifth estate.

North Africa's role in the EU's migration-management strategy is directly linked to policies of externalisation. This is a strategic issue that follows on from the securitisation of migration and the removal of internal borders from within the EU and the concomitant strengthening of the EU's external borders that sees security within as being *prima facie* linked to security in the EU's southern and more recently eastern neighbourhoods. The need for externalisation, therefore, has been a driver of increased EU foreign policy with its immediate neighbours in the Mediterranean and Eastern Europe. In addition the practice of externalisation makes effective accountability within existing EU legislative structures near to impossible.

Who's in charge?

The inside/outside nature of migration-management as both a domestic and foreign policy concern means that effective scrutiny and ultimately accountability gets lost in the gaps between the Commissioner for Justice and Home Affairs, currently Cecilia Malmström, the Commissioner for Enlargement and European Neighbourhood Policy, currently Štefan Füle and the High Representative of the EEAS, currently Catherine Ashton. When the Treaty of Lisbon created the EEAS there were a series of power-struggles with the Commission over which body would be responsible for certain areas of foreign policy. The EEAS is a separate body from the Commission and currently (as these issues are not yet fully resolved) responsible for the Common Foreign and Security Policy (CFSP) and everything that falls under its remit while the Commission remains responsible for Enlargement and European Neighbourhood Policy, aid – with its budget of around €6 billion – and development.

As a phenomena that is spatially disaggregated migration falls under all of these foreign policy areas – as well as Justice and Home Affairs in the domestic sphere – and none of them at the same time. This is due to everyday practices of migration-management that see the use of NMPs as external enforcers and sites of migrant control. So who is ultimately responsible for the policy decisions of the EU as they relate to migration-management? As migration-management is multi-faceted functioning at three levels: EU, IMS and NMPs, accountability has to effectively

function at these three levels also. Perhaps it is easier here to look at how migration-management is practiced and how it is scrutinised to determine accountability.

The work of Europarl

The role of the European Parliament is like that of any other parliament, to scrutinise and hold accountable the work of the executive branch. Like many parliaments around the world scrutiny of the executive branch is undertaken by a committee structure, however, as already discussed the heterogeneous nature of migration-management means that effectively scrutiny at the committee level can take place in two committees, Foreign Affairs and Civil Liberties, Justice and Home Affairs and the two Foreign Affairs sub-committees Human Rights and Security as well as in any number of temporary committees set up for the specific purpose of scrutinising particular policies.

Certain members of the Civil Liberties, Justice and Home Affairs committee have been highly active in asking questions of the Commission in relation to recent migrant deaths in the Mediterranean following the Tunisian and Libyan uprisings. Meanwhile the [Directorate-General for the External Policies of the Union](#), which oversees the running of all committee business within Europarl relating to foreign policy, produced a [report](#) in July on the ‘Effects of Migration Policies on Human Rights in the European Neighbourhood.’ The report is unsurprisingly critical of the policy implementation and everyday practice of migration-management witnessed in NMPs and calls on Europarl to press for a more comprehensive and conditional policy in relation to ensuring human rights are upheld. However, the extent to which this welcome report is able to have any effect in the functioning of the European Neighbourhood Policy is questionable. That Action Plans – one of the main policy instruments used to govern the EU’s relationship with NMPs – are drawn up without any consultation with Europarl at any stage is troublesome.

Recent controversies mask years of impunity

The recent controversies generated by an Amnesty International (AI) [report](#) on human rights abuses in Libya, a Human Rights Watch (HRW) [report](#) on the work of Frontex

in Greece and the Commission's [response](#) to the HRW report highlight the specific problems of accountability in migration-management both within the European Union and in NMPs where practices of externalisation take place. However, these recent controversies over Libya's treatment of migrants in Europe's outsourced migration-management nexus and the actions of Frontex mask a long history of impunity when it comes to holding such practices to account. That responsibility for foreign policy is split between the EEAS and the Commission and that Frontex as an institutional body is set up in such a way as to make effective accountability all but impossible has meant that accountability of migration-management within both foreign and domestic policy and practice has been a long time coming.

The AI report accuses the EU of 'paying lip-service over the years to the human rights of refugees, asylum-seekers and migrants... (while) continuing to pursue a "border control" policy at the expense of guaranteeing the right to seek asylum and migrants' rights.' The report highlights the role of Italy in seeking the assistance of Libya to help in its own migration-control policies culminating in the 'Friendship Pact' of 2008 signed by Colonel al-Gaddafi and Silvio Berlusconi.

The report also documents the October 2010 visit by the European Commission under the auspices of the ongoing negotiations of the bilateral 'Framework Agreement', which would legally formalise the relationship between Libya and the EU. However, the trip undertaken by Commissioners Malmström and Füle did not only include negotiations over the 'Framework Agreement'. As the AI report and the Commission's own [press release](#) at the time notes it also included the signing of an agreement on the "management of migration flows" and border controls.

Meanwhile, the HRW report was summarised thus:

Between November 2, 2010 and March 2, 2011, nearly 12,000 migrants entering Greece at its land border with Turkey were arrested and detained. The detention facilities where they were held did not meet minimal human rights standards. Though their treatment varied from place to place, the European Court of Human Rights (ECtHR) has held that migrant detention in Greece generally constitutes "inhuman and degrading treatment."

During this same period, the European Union's (EU) agency for the management of operational cooperation at external borders, Frontex, provided

Greece with both manpower and material support, made available by participating states, which facilitated the detention of those migrants in sub-human conditions in Greece's overcrowded migrant detention centers.

This report addresses this disturbing contradiction. Although the ECtHR (European Court of Human Rights) categorically ruled that the transfer of migrants to detention in Greece would expose them to prohibited abuse, an executive agency of the EU and border guards from EU member states knowingly facilitate such transfers.

Frontex's [response](#) to the HRW report was issued on the same day and it stresses their commitment to the "Fundamental Rights" that it is legally obliged to uphold as an agency of the EU. Fundamental Rights that HRW believes Frontex has failed to uphold:

Human Rights Watch believes that Frontex has fallen short of its obligations to respect the absolute prohibition on exposing individuals to inhuman and degrading treatment as a result of its cooperation with Greek authorities in detaining migrants in Greek detention facilities where the conditions violate European and international human rights standards.

Frontex's response, however, stressed the fact that the agency is not responsible for "detention on the territory of the Member States, which remains their exclusive remit." It continued by saying that it had 'been expected to operate in an exceptional environment' and importantly 'where an evaluation mechanism of the national migration management process is missing.' So this is in effect Frontex itself admitting that there is no way of holding the IMS' migration-management mechanisms with which they are expected to work to account.

The Commission's response to the HRW report backs up Frontex's own response suggesting that as things stand Frontex is structurally unable to be held accountable. In a [press briefing](#) on September 21 Home Affairs Spokesman Michele Cercone responded to journalists questions regarding accountability by saying that Frontex cannot be held accountable for human rights abuses under [Operation RABIT](#) as Frontex's mandate and operational mission requires them to hand over intercepted migrants to the member state where the operation is taking place, in this instance Greece.

In essence what this means – and this was repeated many times throughout the press briefing – is that only the member states where the specific Frontex operation is taking place can be held accountable. So in the case of Operation RABIT's failings in this regard according to Cercone and by extension the European Commission as he is their spokesman, only Greece itself can be held responsible.

This effectively means that Frontex operates within a black-hole of accountability.

These recent controversies are the culmination of at least sixteen years of foreign policies that have set the tone for an externalised and heterogeneous approach to migration-management that ultimately makes accountability extremely difficult. Scholars of EU foreign policy usually recognise the creation of the ENP as the point where EU foreign policy took a noticeable shift towards strategic interests. However, in the field of migration the Barcelona Declaration that gave rise to the ENP allowed for migration to be considered under a rubric of security and enabled the policies of externalisation that make attempts at accountability so problematic.

Back to Barcelona

From the beginning of the Barcelona Process, the strategic interests of the EU and IMS took precedence over any practical application of European norms of human rights, especially in relation to migrants. In addition, the EU's promotion of transparency and good governance, values it sees as forming an important part of its identity are severely challenged by the practices of migration-management. For example with the overthrow of President Ben Ali in Tunisia after twenty four years of authoritarian rule came the concomitant overthrow of a ban on the monitoring of Tunisian prisons. This has meant that there have been no independent inspections of Tunisian detention facilities since Tunisia signed the Barcelona Declaration and became a site for the practices of externalisation.

To highlight this point even further not only have these detention facilities not been independently monitored but there is not even accurate data on how many migrant detention facilities exist. Various sources have reported as many as thirteen. So while inspections of detention facilities have not been possible and no one knows how many

there actually are, the bilateral relations that were encouraged under the Barcelona Declaration for the fight against illegal immigration have been in full swing. In 1998 Italy signed an agreement with Tunisia on the readmission of Tunisian and third-country nationals that included what was then 500 million liras for the building of detention facilities. Detention facilities that could not be inspected and detention facilities that may or may not even exist.

Meanwhile a 2010 [report](#) by the Euro-Mediterranean Human Rights Network on EU and Moroccan immigration practices concluded that EU cooperation with Morocco on migration-management ‘ran the risk of contributing to the implementation of migration policies that are contrary to the basic rights of migrants and refugees.’ This report followed several agreements between the EU and Morocco over issues of migration and Morocco has received approximately €200 million for use in security related areas as laid down by the ENP in 2004, €40 million of which was for the specific purpose of strengthening border controls. However, no official review of Morocco’s migration-management regime has been undertaken calling into question the accountability of such a regime that is pursued in the interests of the EU and directly funded by it.