Global Responsibility Sharing and the Production of Superfluity in the Context of Refugee Protection

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1 Introduction

The agreement between the European Union and the Republic of Turkey from 18 March 2016 regarding the exchange of refugees has been criticized in political as well as legal terms from the very beginning.\(^1\) It might go down in history as a questionable political decision with destructive consequences. Yet most likely, it will not go down as a singular event, but as part of a larger tendency we are facing with regard to forced migration and the distribution of freedom of movement. In this chapter, I will discuss this constellation and tendency drawing on the notion of law’s “production of superfluity”, which Susan Marks has proposed as conceptual lens for connecting phenomena in various areas of social life. Marks suggests that in addition to asking how law can contribute to safeguard the rights of persons, we must also assess how “law and legal institution may be helping to justify, normalize, naturalize and hence enable forms of misery against which protection is needed”.\(^2\)

In the context of refugee protection, this lens appears valuable as it might help to explain how policy choices not only impact on the immediate situation of persons rejected or admitted, but yield wider effects and shape the global situation. The context of the EU-Turkey agreement can be illustrative for such possible wider effects: Shortly after the agreement’s adoption, Kenya, which for decades already belongs to the largest refugee receiving states, declared that it would close the Dadaab refugee

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camps, which had hosted at times more than 400,000 Somali refugees. A direct reference to the agreement with Turkey was not made, and the interrelation is only speculative. Yet the EU’s willingness to pay for not receiving a substantive number of refugees and for not being directly confronted with a gross dilemma regarding its fundamental values might have worked as a message to a broader audience. In light of the agreement, assuming the task of hosting refugees without a similar return service would suddenly seem much less evident.

These occurrences and possible interrelations provide but one recent example of how legal measures shape the conditions of refugee protection on a global scale. They are situated in a growing discourse about the inadequacy of responsibility sharing in refugee protection today: Of more than 65 million displaced persons world-wide, 86 percent are hosted in states of the Global South. It has long been pointed out, how the successive development of non-entrée regimes by states of the Global North contributed to a downward spiral in the conditions of access and the quality of protection. This regards foremost the numerous protracted refugee situations, in which persons cannot return to their states of origins for decades but at the same time are denied local integration and access to numerous basic rights at their place of residence.

In the following, I will first examine the interrelation between successive border securization regimes and the question of responsibility sharing in more detail (2). The development over the last decades attributed a growing role to the UN High Commissioner for Refugees (UNHCR) and further humanitarian organizations in material assistance,


