

Controles migratorios y derechos humanos, by A. Sánchez Legido (Valencia: Tirant lo Blanch, 2020), 232 pp.

The book under review is an impressively organized work that seeks to enable a greater understanding about the tension between migratory controls by States and the protection of human rights. The book focuses on current policies, laws and regulations aiming to prevent the entry of migrants into the territory of States. As professor Sánchez Legido notes in the introduction, whilst the European migratory system has demonstrated a trend towards a set of mechanisms based on the rationale of protection according to human rights, there is room for concern that European States are lowering minimum standards, rather than ensuring high levels of protection. Within this framework, the author focuses particularly on the relocation of migration controls. It skillfully captures the challenges faced by migration and asylum policies and invokes in the reader the urgency required to address them. Not only is the study both timely and important, but also of great use to academics and to practitioners alike.

The metaphor of Fortress Europe is evoked by the author to explain the migration-security nexus in the current European scenario. Along this line, the author, whose background in researching migration and asylum policies and its legal implications is highly recognized and firmly consolidated, analyses the trends and policies which have made border control and the fight against illegal immigration the core element of European action on migratory issues. Sánchez Legido classifies the emphasis on migration control as bi-directional: alongside a *reactive dimension*, aimed at promoting the departure of irregular immigrants – represented in the return and readmission policy – there is a *preventive dimension*, aimed at avoiding not only the arrival, but also the approach of migrants to European territory.

The preventive dimension is the one developed in the book, which looks broadly at the measures adopted by States, mainly, European Union Member States. They are named as «interception measures» in the broad sense. This is understood to mean all legal, administrative and executive actions aimed at blocking or interrupting transit to European countries. The key question the author addresses is the following: to what extent the States powers to limit the entrance of nationals from third world countries are limited by human rights standards. Under international human rights law, the State holds obligations towards those within its territory. More controversial is the extent of its obligations to persons abroad whose human rights may be impacted by its actions. The author argues that governments should take a more comprehensive approach to the protection of people forcibly displaced in order to safeguard human dignity. It contends a proposal to reconceive forced migration as a human rights and humanitarian challenge, a solution

which prioritizes protecting human dignity and ensuring comprehensive rights, a global protection framework, rather than focusing on borders.

The book offers a detailed description of the two extremes in which migration legislation transits: on the one hand, there is no general right to enter and stay in the territory of a State – except for nationals –, and on the other hand, migration control powers must be exercised in good faith and in a manner consistent with the State's international obligations. The problem lies in the fact that under the 1951 Refugee Convention refugee status is limited to those crossing an international border in fear of persecution on account of their race, religion, nationality, political opinion, or membership to a particular social group. It does not cover those who flee their homes and satisfy the refugee definition but have not crossed an international border.

The publication of this work in 2020 coincides with the year in which the European Commission launched the European Pact on Migration and Asylum, which prioritizes border security over access to asylum. Precisely, two of the pillars of the new European Pact are *return* – which Sánchez Legido anticipates in his book as «the pillar of promoting departure» –, and *strengthening partnerships with third states* – which the author relates to the strengthening of incentives to obtain the collaboration of countries of origin and transit in migration control –.

After the introduction, which serves to frame the phenomenon of European relocation of migration controls, the second chapter is dedicated to disentangle the main measures of externalization and outsourcing, beginning with the visa systems and the control by transport companies, and continuing with cooperation between countries of origin and transit, measures of maritime interception, building of walls, fences and ditches, and the spin-off and relocation of territories. Eloquently, within this section the author refers to «the European fervour for fences and walls» in which he explains the different historical moments in which walls and fences have been built in Greece, Turkey, Serbia and Croatia.

The third chapter deals with the *dialectic between inclusion and exclusion* inherent to offshoring strategies. The author deepens the differences between «arriving» and «not arriving» to the destination countries and connects these differences with the human development index. The gap that separates the North from the South is not only a constant and current phenomenon, but it will become deeper because of the pandemic, together with very substantial political violence and a high level of political instability accompanied by persecution of opposition groups which does not decrease in Syria, Afghanistan and Venezuela, among other countries. In fact, the pandemic risks undoing the gains made against poverty in the past two decades, and most affected will be developing countries, where more than 85% of these refugees are hosted. Therefore, the conditions that spur departures will continue. One of the most relevant statements made by Sánchez Legido is that «there is no legal text that generally and expressly aims to regulate what States can and cannot do to prevent unauthorized access to their territory». Based on this lax premise, which is a perfect diagnosis, he resorts to the Draft Articles on the expulsion of foreigners

approved by the International Law Commission in 2004 to explore the trend towards such regulation. The Draft Articles restrict their scope to «the expulsion by a State of aliens present in its territory». In this sense, it does not answer the facts according to which States tried to avoid the entry. Behind the externalization measures there is a legitimate interest from the State to control the entrance to its territory, the necessity to counterbalance the difficulties in implementing return operations, and the desire to reduce the economic and administrative costs of irregular migration. However, these kinds of measures are exposed to intense challenges from the point of view of the legal requirements. In the process to restore the legal guarantees, the European Court of Human Rights offers interesting strands, particularly, through the judgments *Amuur v. France* (1996), *Al-Skeini and others v. United Kingdom* (2011), *Hirsi Jamaa v. Italy* (2012) and *N.D. and N.T. v. Spain* (2020), which are thoroughly explained in the book.

The fourth approach raises questions about the implementation of the European guarantee system to *other extraterritorial measures of interception*. To begin with, the author looks for the relationship between the notions of jurisdiction and attribution as stated according to the international responsibility doctrine; then he deals with the State's responsibility as a consequence of the performance of joint patrols with agents from third States, as well as the application of interception measures practiced by private actors such as NGOs, and finally, he wonders about the consequences of controlling borders by States of origin and transit and the eventual responsibility for incitement, assistance and cooperation. Finally, the author deals with the eventual responsibility for the respect of human rights of Frontex, considered one of the burning issues in the European migration field. More than a pending «rebuilding» doctrine, as the author names this chapter, all these activities will have to be *adjusted to new and creative measures* if Member States desire to maintain their reputation as full observers of the rule of law. Finally, the fifth chapter presents fifteen clearly exposed conclusions.

The three key words of this outstanding contribution are «offshoring», «extraterritoriality» and «externalization». The title could perhaps have alluded to the central object of the work, which is *relocation of migration control*. He goes beyond an analysis about migration control in the borders and human rights. In other words, the tendency for externalization is the central focus of the book, and this is not clear from the title (*Controles migratorios y derechos humanos*). An informed reader, however, will immediately assume that the rules on entry of third country nationals into the European Union member States give increasing relevance to the external dimension of the control, as professor Sánchez Legido remarkably explains in the book.

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