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Border Protection – Not a Violation of Human Rights Questions raised are not of a legal character but of a political one

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Focus

Israel's prime minister has ordered the construction of two massive fences along the long and porous southern border with Egypt, saying he wants to stem a growing flood of African asylum seekers and to prevent Islamic militants from entering the country.

The Washington Post,
11 January 2010

On 10 January 2010, the Israel Ministry of Foreign Affairs reported that Prime Minister Benjamin Netanyahu had approved the construction of a fence on the Israel-Egypt border. There will be two sections of the fence: one opposite the southern Gaza Strip city of Rafah in the southwest and another near the Red Sea. The relatively low-tech barrier will include radars to detect human movement, which will help to prevent infiltration into Israeli territory. One purpose is to prevent terrorists from crossing the border but on the other side is Israel – a popular refuge for Africans fleeing war-torn and impoverished countries. Israeli authorities say 100 to 200 Africans enter illegally through Egypt each week.

Similar refugee protection fences can be found around Melilla and Ceuta and the EU is financing a comparable border fence in Morocco. Particularly at the EU's external frontiers a creeping arming is taking place, a strengthening of the fences and surveillance equipment, and ever more tightly woven and perfidious control systems are being installed. There are reports of six metre high barbed wire fences, automated tear-gas plants and thermal imaging cameras.

The International Court of Justice stated in its advisory opinion about the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, that there is no doubt that a state may in principle fortify its boundary so as to prevent unlawful incursions into its territory. This right is based directly on the sovereignty of states which have every right to protect their territory and can decide freely which people are tolerated in its territory and under which circumstances.

On the other hand it is often proclaimed that the closing of borders and the rejection of people are a violation of the human rights of refugees and migrants.

Mostly it is assumed that it might be a moral, but not a legal, individual's human right to migrate across national borders. Some relevant international human rights conventions and national constitutions guarantee an individual the right to free movement within the respective territory. Article 12 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the 4th Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms state in the same wording that everyone "lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." This individual right to free movement is just valid inside the respective territories. Even if there is an international human right of migration from any state even within its own (Article 12 ICCPR) and this idea leads to the possibility of a human right of international mobility, this moral wish has no legal character. There is no corresponding right of entering a state to the right of leaving one.

Refugees and migrants have been recognised as groups with special protection needs. However, this special protection only starts when the individual has entered the country, and with the border protection states want to prevent these people from achieving their special rights. As it is internationally accepted that each government may exercise their national sovereignty to decide who to admit to their territory there is no violation of an individual's human right in these cases.

With regard to the special needs of refugees it is largely assumed that an individual's human right to seek asylum cannot be derived from either the relevant articles of the Universal Declaration of Human Rights (UDHR) or from other human rights conventions. The wording of Article 14 UDHR does not suggest the same unconditional firmness of other guaranteed human rights.

Accordingly, it is therefore no more their right to leave their country of origin and seek protection in another country from persecution, which in turn leads to no corresponding obligation of certain host states. Even the Geneva Convention on Refugees does not establish a right to asylum in the true sense, but its central Article 33 states that just for those refugees who have already reached the territory or the border of a State, the right of non-repatriation to areas where their lives or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.

Summing up there is no rule in international law that prohibits states from protecting their borders in the best manner. An obligation to let migrants and refugees into their territories can be founded on a moral basis and could only be decided by politicians and not by lawyers.

Other rules of international law and international conventions (e.g. Anti-Landmine Convention, etc.) may limit the use of means for the border protection but not the factual closing of the border line.

Verantwortung

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