Westlessness czyli zmierzch Zachodu 2.0?

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The *commercialization of responsibility* in European Union's migration policy

Komercjalizacja odpowiedzialności w polityce migracyjnej Unii Europejskiej

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Background. The extraterritorialisation of European Union's policy has been recognised for years as an effective tool for combating irregular migration. The so-called migration crisis has opened a critical discussion on the compliance of EU external activities with international law. The practice of extraterritorialisation redefines the values of the Western world.

Aim. We identify the EU's extraterritorial activities in the area of asylum policy and irregular migration control. We have critically analysed the agreements with Libya and Turkey. On a theoretical background, we have recognised a need to extend Gammeltoft-Hansen's concept of commercialising sovereignty. Therefore, we proposed a term of *commercialisation of responsibility*. Our proposal combines concepts of extraterritorialisation, harmful state practices and the associated consequences for human rights.

Methodology. In our research we applied a qualitative methodology of social and political sciences. While maintaining a critical approach, we reviewed the narrative literature. In addition, we carried out an in-depth analysis of normative acts.

Results. Extraterritorial practices have been an inherent part of EU migration policy for decades. This has been confirmed by the examples of agreements with Libya and Turkey. The deliberate political action and the *commercialisation of responsibilities* have shown that respecting human rights has become optional. In our view, the delegation of responsibility to third countries is not only a visible manifestation of Western hypocrisy, but also the collapse of the axiological foundations of the European Union.

Komercjalizacja odpowiedzialności w polityce migracyjnej Unii Europejskiej

Kontekst. Eksterytorializacja polityki Unii Europejskiej od lat uznawana jest za skuteczne narzędzie do zwalczania nielegalnej migracji. Kryzys migracyjny otworzył krytyczną dyskusję nad zgodnością działań zewnętrznych UE z prawem międzynarodowym. Praktyka eksterytorializacji redefiniuje wartości świata Zachodu.

Cel. Identyfikujemy działania eksterytorialne UE w zakresie polityki azylowej i kontroli nielegalnej migracji. Analizie krytycznej poddaliśmy porozumienia z Libią i Turcją. Na gruncie teoretycznym zauważyliśmy potrzebę rozszerzenia koncepcji komercjalizacji suwerenności Gammeltofta-Hansena. Zaproponowaliśmy termin *komercjalizacji odpowiedzialności.* Nasza propozycja stanowi połączenie pojęć z zakresu eksterytorializacji, szkodliwych praktyk państw i towarzyszących temu konsekwencji dla praw człowieka.

Metodologia. Posłużyliśmy się metodologią jakościową nauk społecznych i nauk o polityce. Utrzymując podejście krytyczne, dokonaliśmy przeglądu literatury narracyjnej. Ponadto przeprowadziliśmy pogłębioną analizę aktów normatywnych.

Wyniki. Praktyki eksterytorialne od dekad są nieodłącznym elementem polityki migracyjnej UE. Potwierdziły to przykłady porozumień z Libią i Turcją. Celowe działania polityczne i *komercjalizacja odpowiedzialności* ukazały, że respektowanie praw człowieka stało się opcjonalne. W naszym przekonaniu oddelegowywanie odpowiedzialności do państw trzecich jest nie tylko widocznym przejawem zachodniej hipokryzji, ale też upadkiem aksjologicznych fundamentów Unii Europejskiej.

Introduction

The migration crisis has highlighted significant differences between EU Member States in their approaches to migration. However, EU and national migration control strategies have a common element. It consists of extraterritorial actions delegating responsibility to third countries. The European Commission presents external actions as effective instruments for combating not only irregular migration, but also for the readmission of migrants to transit countries and places of origin. The transfer of responsibility is assessed as "fully respecting international law and fundamental human rights"[1].

In this article we deny this official optimism and the declarative complacency of EU institutions. We contribute to a critical discussion on the consequences of EU external action in migration control and asylum policy management[2]. Furthermore, we propose the concept of *commercialization of responsibility* which is understood as the EU's responsibility delegated to third countries for violations of asylum seekers and refugees' rights. The term we introduce – comprehensively captures the migration problems that accompany EU policy towards third countries and its consequences.

Moreover, the aim of this article was the identification of EU external activities in the field of asylum and control of irregular migration. According to Gammeltoft-Hansen's theory, we assumed that EU migration management strategies commercialize sovereignty[3]. In our opinion, they are examples

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1   *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*, European Commission, Brussel 2016.

2   L. Fekte, *Europe: Crimes of Solidarity,* "Race & Class" 2009, vol. 50, issue 4, p. 83–90; C. Levy, *Refugees, Europe, Camps/State of Exception: "Into The Zone", the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-seekers (Theories and Practice),* "Refugee Survey Quarterly" 2010, vol. 29, issue 1, p. 92–119; R. Andersson, *A Game of Risk: Boat Migration and the Business of Bordering Europe,* "Anthropology Today" 2012, vol. 28, issue 6, p. 7–11; J.C. Völkel, *Money for Nothing, the Cricks for Free* „CMS" 2014, vol. 2, p. 151–180; J. Mitzen, *Anxious Community: EU as (in)Security Community,* "European Security" 2018, vol. 27, issue 3, p. 393–413; A. Üstübici, A. İçduygu, *Border closures and the externalization of immigration controls in the Mediterranean: A comparative analysis of Morocco and Turkey,* "New Perspectives on Turkey" 2018, vol. 59, p. 7–31; T. Faist, *Contested externalisation: responses to global inequalities,* "Comparative Migration Studies" 2020, vol. 7, issue 45.

3   T. Gammeltoft-Hansen, *The refugee, the sovereign and the sea: EU interdiction policies in the Mediterranean,* Danish Institute for International Studies, Copenhagen 2008.

of avoiding European responsibility. The *commercialization of responsibility* makes the West increasingly less western in normative and political terms. Furthermore, the extraterritorial transfer of responsibility to third countries undermines the values on which the European Union is built.

We undertake the methodology of the political sciences. We apply a qualitative methodology based on a thorough literature review and analysis of legislative acts.

The article is based on three parts. In the first section we introduce a theoretical review. We consider the distinctiveness as well as the unifying side regarding the concepts of extraterritorialsation, extraterritorial jurisdiction, commercialization of sovereignty and proxy war in the context of refugees. In the further sections we analyze two agreements that commercialize responsibility: the EU with Turkey and Italy with Libya. We identify the key elements of both documents that led to asylum seekers' and refugees' rights violations. The analysis of these agreements is preceded by a brief presentation of the historical context. In line with much of the existing literature on the subject, we argue that the *commercialization of responsibility* has been already fragmented over the past decades. However, the migration crisis has given it a deeper and multidimensional context.

Extraterritorial migration control and the EU's external asylum policy have been the subject of increased research reflection since the mid-2000s[4]. The main concerns were forms of remote migration management and their compliance with international law[5].

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4   J. Rijpma, M. Cremona, *The extra-territorialisation of EU migration policies and the rule of law*, EUI LAW Working Paper 2007, vol. 1, p. 2–24; M. Den Heijer, *Europe and Extraterritorial Asylum,* Hart Publishing, Oxford and Portland, Oregon 2012; B. Frelick, I. M. Kysel, J. Podkul, *The impact of externalization of migration controls on the rights of asylum seekers and other migrants,* "Journal on Migration and Human Security" 2016, vol. 4, issue 4, p. 190–220; M. Casas-Cortes, S. Cobarrubias, J. Pickles, *Good neighbours make good fences: Seahorse operations, border externalization and extraterritoriality*, "European Urban and Regional Studies" 2016, vol. 23, issue 3, p. 231–251; D. S. FitzGerald, *Remote control of migration: theorising territoriality, shared coercion, and deterrence*, "Journal of Ethnic and Migration Studies" 2020, vol. 46, issue 1, p. 4–22.

5   T. De Boer, *Closing Legal Black Holes: The Role of Extraterritorial Jurisdiction in Refugee Rights Protection*, "Journal of Refugee Studies" 2013, vol. 28, issue 1, p. 118; M. Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principle, and Policy,* Oxford University Press, Oxford 2011; B. Ryan, V. Mitsilegas, *Extraterritorial Immigration Control: Legal Challenges*, Martinus Nijhoff Publishers,

The EU–Turkey agreement has been analysed in the context of violations of the non-refoulement principle and border control[6]. While Italy's agreement with Libya has been studied mainly in the context of the detention of migrants[7]. Our approach is coherent with research referring to the consequences of the EU *commercialisation of responsibility* in terms of human rights[8].

Extraterritorialisation of migration policy versus EU responsibility

The EU migration policy (with specific reference to asylum policy) is based on two main legal bases: The Treaty on the Functioning of the European Union (TFEU) (Articles 67(2), 78,80) and the EU Charter of Fundamental

Leiden 2010; G. Pascale, *Is Italy internationally responsible for the gross human rights violations against migrants in Libya?* "QIL" 2019, vol. 56, issue 2019, p. 35–58.

6   G. Goodwin-Gill, *The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement*, "International Journal of Refugee Law" 2011, vol. 23, p. 443; J. Hathaway, T. Gammeltoft-Hansen, *Non-Refoulement in a World of Cooperative Deterrence*, University of Michigan Law School, Law and Economics, Michigan 2014; O. Ulusoy, H. Battjes, *Situation of readmitted migrants and refugees from Greece to Turkey under the EU–Turkey statement*, "VU Migration Law Series" 2017, vol. 15, p. 1–42; A. Üstübici, *EU–Turkey cooperation on migration. Survey of Experts and Actors on the Euro-Mediterranean Region*, "Euromed Survey" 2017, vol.7, p. 66–72; B. İşleyen, *Turkey's governance of irregular migration at European Union borders: Emerging geographies of care and control*, "Environment and Planning D: Society and Space" 2018, vol. 36, issue 5, p. 849–866.

7   S. Hamood, *EU–Libya cooperation on migration: a raw deal for refugees and migrants?*, "Journal of Refugee Studies" 2008, vol. 21, issue 1, p. 19–42; S. Klepp, *Italy and its Libyan Cooperation Program: Pioneer of the European Union's Refugee Policy?*, Middle East Institute, Washington D. C. 2010, p. 77–94; M. Grange, M. Flynn, *Immigration Detention in Libya*, Global Detention Project, Geneva 2015, available on the internet [accessed: 20 V 2020]: <https://www.refworld.org/pdfid/5567387e4.pdf>; A. Malakooti, *The Political Economy of Migrant Detention in Libya: Understanding the players and the business models*, Global Initiative Against Transnational Organized Crime, Geneva 2019; A. Alkhateeb, *Libyan Detention Centers: Libya's Legal and Regulatory Framework on Migration*, UMEA Universtiy, Umeå 2019.

8   K. Da Costa, *The Extraterritorial Application of Selected Human Rights Treaties*, Martinus Nijhoff Publishers, Leiden 2013; A. Sylla, S. U. Schultz, *Commemorating the Deadly Other Side of Externalized Borders. "Migrant-Martyrs", Sacrifices and Politizations of (Irregular) Migration on the International Migrants Day in Mali*, "Comparative Migration Studies" 2020, vol. 8, issue 4; H. Hintjens, A. Bilgic, *The Eu's Proxy War on Refugees*, "State Crime Journal" 2019, vol. 8, issue 1, p. 80–103.

Rights (Article 18). An important role is assigned to The Common European Asylum System (CEAS), established in 1999. In 2020, the European Commission proposed its reform, which would focus on efficient asylum and return procedures, solidarity in responsibility sharing and enhanced partnerships with third countries[9].

The framework of the EU's external migration and asylum policy, together with EU's border management is largely defined by The Global Approach to Migration and Mobility (GAMM). It contains the priorities, principles and nature of cooperation with non-EU countries[10].

The policy of extraterritorialisation is often presented as a security imperative or a life-saving humanitarian procedure. The rhetoric that accompanies extraterritorialisation calls for solving the root causes of exile in the countries of origin. This is to be accompanied by the rule of law, respect for human rights and an improvement in the quality of life of local citizens[11]. In practice, the extraterritorialisation of migration control means actions preventing migrants and persons seeking international protection from entering into the territory of the countries' legal jurisdiction[12].

The extraterritorialisation of migration policy involves the single, bilateral and multilateral involvement of states, often also private entities[13]. It is implemented through incentives to stay in transit countries and places of origin as well as through deterrent policies. It is based on formal and informal migration policy instruments such as: international agreements,

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9   *Common European Asylum System,* European Commission, Brussel 2020, available on the internet [accessed: 29 VI 2020]: <https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en>.

10   M. Schmid-Drüner, *Asylum Policy, Fact Sheets on the European Union,* European Parliament 2020, available on the internet [accessed: 15 VII 2020]: <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy.pdf>.

11   B. Frelick, I. M. Kysel, J. Podkul, *The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants,* "Journal on Migration and Human Security" 2016, vol. 4, issue 4, p. 190–220.

12   F. Crépeau, *Report of the Special Rapporteur on the human rights of migrants. Regional study: management of the external borders of the European Union and its impact on the human rights of migrants,* UN Human Rights Council, Geneva 2013.

13   T. Gammeltoft-Hansen, *Acces to Asylum: International Refugee Law and the Globalisation of Migration Control,* Cambridge Studies in International and Comparative Law, Cambridge 2011, p. 13.

partnerships to combat irregular migration, visa regime, building detention and reception systems in third countries, logistical, political or financial support[14].

Extraterritorialisation policies transfer responsibility for migration control and governance to third countries and the private sector[15]. Referring to public concerns about migration and people on the move, extraterritorialisation policies "manipulate territoriality"[16].

This draws our attention to the inconsistency of these actions with the EU values. Pointing to the axiological foundations enshrined in the EU Treaties indirectly allows to understand the essence of the EU's responsibility towards refugees and asylum seekers.

There are several approaches to European values: substantive approach (philosophical, ethical and religious elements) and a legal-political approach based on the definitions given in legislative framework[17]. According to Goran and Gjurovski, we can define the EU interest as a *value interest,* which derives from the axiological foundations, visible in the relevant treaties[18].

One of the most prominent sources of written axiological foundations is the Treaty of Lisbon, with its protocols (Treaty on European Union, TEU and The Treaty on the Functioning of the European Union, TFEU) and the Charter of Fundamental Rights of the European Union[19]. In Article 2 of TEU the mentioned foundations are: *values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities*[20]. Confirmation of this can be

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14   B. Frelick, I. M. Kysel, J. Podkul, *The Impact of Externalization…*, p. 193.

15   T. De Boer, *Closing Legal Black…*, p. 119.

16   J. Rijpma, M. Cremona, *The extra-territorialisation of EU…*, p. 16.

17   F. Foret, O. Calligaro, *European values: Challenges and opportunities for EU governance,* Routledge, New York 2018.

18   I. Goran, M. Gjurovski, *The axiological foundations of the European Union foreign policy*, "Horizons" 2014, vol. 16, p. 161–168.

19   E. M. Gozdziak, I. Main, *European Norms and Values and the Refugee Crisis: Issues and Challenges*, [in:] *Europe and the Refugee Response: A Crisis of Values,* eds. E. M. Gozdziak, I. Main, B. Suter, Routledge, New York 2020, p. 1–11.

20   Consolidated Version of the Treaty on European Union, 9 May 2008, C115/13, available on the internet [accessed: 15 I 2021]: <https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:en:pdf>.

found in Charter of Fundamental Rights of the European Union (CFR). It consists of 7 parts, each of which refers to fundamental European values: human dignity, freedom, equality, solidarity, civil rights and justice[21].

We look at the axiological foundations of the EU in the context of foreign policy and extraterritorial activities. We agree with Woollard that the actions taken as a result of so called 'migration crisis' have significantly undermined EU values[22]. Among these: the deprivation of the human dignity of migrants in the reception systems of many European countries, as well as the countries where migrants are detained as a result of EU migration policies; the right to life, violated by blocking and preventing search and rescue missions at sea, securitization of society, or criminalising NGOs, as well as freedom from torture, violated by the detention and return of migrants to Libya[23].

These values were also threatened by the entrenchment and expansion of the EU's extraterritorial activities in asylum policy.

The quest for extraterritorialisation in the refugee issue involves two aspects: the legal debate on extraterritorial jurisdiction and the dynamics of commercialisation of sovereignty. Extraterritorial jurisdiction in international law means, among other things, exercising state jurisdiction within another state. This includes both legal actions (on the basis of multilateral and bilateral agreements), as well as normatively unconstituted activities[24]. The interpretative ambiguity of extraterritorial jurisdiction creates

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21   *Charter of Fundamental Rights of the European Union*, European Union, 26 October 2012, 2012/C 326/02, available on the internet [accessed: 11 I 2021]: <https://www.refworld.org/docid/3ae6b3b70.html>.

22   C. Woollard, *Has the Mediterranean Refugee Crisis Undermined European Values?*, European Council on Refugees and Exiles (ECRE) 2018, available on the internet [accessed: 01 II 2021]: <https://www.iemed.org/recursos-compartits/pdfs/Europe_Crisis_Wollard_2_Medyearbook2018.pdf>.

23   V. Moreno-Lax, *EU External Migration Policy and the Protection of Human Rights*, European Parliament 2020, available on the internet [accessed: II 2021]: <http://www.epgencms.europarl.europa.eu.cmsdata/upload 5c6d5a01040cEU_External_Migration_Policy_and_the_Protection_of_Human_Rights.pdf>; W. Klaus, M. Lévay, I. Rzeplińska, M. Scheinost, *Refugees and asylum seekers in Central European Countries: Reality, politics and the creation of fear in societies*, [in:] *Refugees and Migrants in Law and Policy,* Springer, Cham 2018, p. 457–495.

24   T. Gammeltoft-Hansen, *Acces to Asylum…*, p. 14.

activities in the so-called "legal black hole"[25]. Examples of these are push-back operations against migrants in the Mediterranean Sea, disregard for the non-refoulement principle, and the arbitrary establishment of 'safe third countries'. The way territorial responsibility is allocated makes room for deferral of the state's human rights obligations[26].

The distribution of responsibility has become part of the commercialisation of sovereignty tactics. Originally, this term was developed to analyse the emergence of tax havens. The commercialisation of sovereignty and trade in jurisdictions emerged as a result of international law's inability to bridge the gap between the sovereignty of a nation and the internationalisation of trade and capital[27]. As part of a migration management strategy, EU countries have begun to commercialise their sovereignty and delegate power outside their territory. The aim was to free themselves from certain restrictions and consequences under international law[28]. The burden of responsibility for asylum seekers has been shifted to countries outside the Union.

The EU's neighbouring and developing countries have become a 'migration platform' providing access to their territory and to jurisdiction shopping. The commercialisation of sovereignty is taking place both because of the expected economic benefits and under threat of sanctions[29]. Therefore, consequences of commercialisation of sovereignty are similar to those of the proxy war. An illegal proxy war on refugees is based on European Union funding to deter and prevent migrants from reaching the territory of Member States. The external projection of violence, with the cooperation of client states and the private sector, is a violation of the human rights that underpin the liberal-democratic community of the EU[30].

25   R. G. Wilde, *The extraterritorial application of international human rights law on civil and political rights,* Routledge, New York 2013.

26   T. Gammeltoft-Hansen, *Acces to Asylum...*, p. 14.

27   R. Palan, *Tax Havens and the Commercialization of State Sovereignty*, "International Organization" 1957, vol. 56, issue 1, p. 151–176.

28   M. Casas-Cortes, S. Cobarrubias, J. Pickles, *Good neighbours make good fences: Seahorce operations, border externality and extra-territoriality*, "European Urban and Regional Studies" 2016, vol. 23, issue 3, p. 231–251.

29   T. Gammeltoft-Hansen, *The refugee, the sovereign...*, p. 13.

30   H. Hintjens, A. Bilgic, *The Eu's Proxy War...*, p. 22.

The proposed concept of the *commercialisation of responsibility* in migration management extends the Gammlott-Hansen approach. The most significant place in this concept is taken by the consequences of the EU's extraterritorial actions. It broadens research perceptions by including issues such as inhumane conditions in detention centres, torture and sexual exploitation, the activities of intermediaries, the elimination of legal migration routes, and strengthening the policy of prohibitions and interception.

Responsibility in political theory usually takes a causal form, which may (not necessarily) have to do with moral responsibility. The causal points to an agent in producing certain consequences, based on common-sense causality[31]. The moral responsibility refers to wrongdoing or non-compliance, in regard to a prescriptive duty. According to Bradley refugee-ism involves both causal and moral responsibility[32].

According to Miller, the responsibility for a given situation can be divided by indicating causal and moral responsibility, and whether actors have benefited from the damage; or have any 'special obligations' towards each other due to e.g. nationality[33]. Based on this theory, we can ask the question: What connects the European Union to refugees in such a way that the EU is singled out as having a responsibility towards refugees? In this case these are: the EU's axiological foundations and the adopted legislative framework.

Globally the most significant source of the refugee's rights and thus the obligations of states is The 1951 Convention Relating to the Status of Refugees (The Geneva Convention). It includes, inter alia a cornerstone of refugee protection – the right to non-refoulement (including prohibition of expulsion)[34]. Relevant to the case may be also Article 14 of The Universal Declaration of Human Rights, which states that everyone has the right to seek and enjoy asylum from persecution in other countries. Moreover,

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31 H. L. A. Hart, T. Honoré, *Causation in the Law,* Oxford University Press, Oxford 1985, p. 27–82.

32 M. Bradley, *Refugee repatriation: justice, responsibility and redress*, Cambridge University Press, Cambridge 2013, p. 27–45.

33 D. Miller, *National Responsibility and Global Justice*, Oxford University Press, Oxford 2007, p. 100–107.

34 *Convention Relating to the Status of Refugees*, 28 July 1951, UN General Assembly, United Nations Treaty Series, vol. 189, p. 137, available on the internet [accessed: 20 VII 2020]: <https://www.refworld.org/docid/3be01b964.html>.

in the further paragraphs, we make use of the concept of state complicity, on the basis of *Articles on Responsibility of States for Internationally Wrongful Acts.*

The following examples of Libya and Turkey refer to the aforementioned axiological foundations, and the international legal framework – thus illustrating what we mean by *the commercialisation of responsibility.*

The EU–Turkey cooperation and the non-refoulment principle

At the turn of the 80s and 90s, migration management in Turkey was based on pragmatism and the liberal approach of the trading state. It particularly concerned the Balkan region, the former Soviet Union and the Middle East[35]. Turkey was regarded as a transit space for refugees during the Iranian revolution, the Iraqi wars and the Gulf crisis[36]. However, the security and border control policy towards the Kurdish population was shaped differently[37].

Negotiations with the European Union on migration management and border control started in 1999, when Turkey was officially recognised as a candidate country. In the following years, The Acession Partnership Doccument regulated the visa regime and the fight against human trafficking, the National Action Plan for the Adoption of the EU Acquis in the Field of Migration and Asylum and the National Humanitarian Programme were signed, and Turkey joined the Palermo Protocol[38].

In 2014, they implemented two cooperation programmes in the area of migration management: LFIP (*Law on Foreigners and International Protection*) and RTP (*Regulation on Temporary Protection*). The documents introduced categorisation into asylum seekers, legal and irregular migrants and defined the conditions of registration and residence of asylum seekers

35   G. Hecke, S. Hess, *Tracing the Effects…*, p. 40.

36   S. Karadağ, *Extraterritoriality of European borders to Turkey: An implementation perspective of counteractive strategies*, "Comparative Migration Studies" 2019, vol. 7, issue 12.

37   E. Isik, *The EU–Turkey Refugee Deal and the Kurdish Issue*, Al Jazeera. Opinions War & Conflict [online], 5 III 2016 [accessed: 19 V 2020]: <https://www.aljazeera.com/indepth/opinion/2016/03/eu-turkey-refugee-deal-kurdish-issue-160302113254551.html>.

38   S. Karadağ, *Extraterritoriality of European…*

in Turkey. Extending the practice of extraterritorialisation in relations with the EU, both programmes failed to be implemented in practice. Like previous documents, they were just temporary and ad hoc solutions[39].

During the migration crisis, Turkey has once again become a transit country for migrants. By 2017, Turkey received more than 3 million Syrian refugees on its territory[40]. The EU–Turkey agreement was concluded on 18 March 2016 on the initiative of Germany. The main goal was to terminate the chaotic, irregular migration flows to the European Union.

Commonly, it is not considered as an international agreement. It was concluded by an institution (the European Council) without treaty-making powers or competence in asylum policy. The Agreement is therefore in breach of Article 218 TFEU. Nevertheless, there are indications that a breach of procedure does not prevent the existence of a treaty[41]. Experts here cite the European Parliament, Commission vs. Council, case on Venezuela and fishing policy[42]. Furthermore, those in favour of recognising it as a treaty refer to the change in legal instruments made by the EU in order to put the agreement into practice[43].

The agreement assumed relieving the frontline Member States (especially Greece) of increasing migratory pressure and breaking up the smugglers' business model[44]. New irregular migrants trying to get from Turkey

39   A. Üstübici, *The impact of externalized migration governance on Turkey: technocratic migration governance and the production of differentiated legal status*, "Comparative Migration Studies" 2019, vol. 7, issue 46.

40   *Asylum quarterly report*, Eurostat, Luksemburg 2018, p. 4, available on the internet [accessed: 5 VI 2020]: <https://ec.europa.eu/eurostat/statisticsexplained/index.php/Asylum_quarterly_report#Main_trends_in_the_numbers_of_asylum_applic ants.pdf?>.

41   J. Poon, *EU–Turkey Deal: Violation of, or consistency with, international law?*, "European Papers" 2016, vol. 1, issue 3, p. 1195–1203.

42   Judgment of the Court (Grand Chamber), 26 November 2014, Joined Cases C-103/12 and C-165/12. European Parliament and European Commission vs. Council of the European Union, European Court of Human Rights, Strasbourg 2014, available on the internet [accessed: 30 I 2021]: <https://eur-lex.europa.eu/legal-content/EN/SUM/?uri=CELEX:62012CJ0103>.

43   G. Fernández Arribas, *The EU–Turkey Statement, the Treaty-Making Process and Competent Organs. Is the Statement an International Agreement?*, "European Papers" 2017, vol. 2, issue 1, p. 303–309.

44   *Factsheet on the EU–Turkey Statement,* European Council, Brussels 2016, available on the internet [accessed: 19 V 2020]: <https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_963>.

to Greece were supposed to be deported to Turkey. In exchange for the return of every Syrian refugee from the Greek islands, the EU would receive another Syrian from Turkey into its territory. Priority was given to migrants who had made no illegal attempt to enter the EU before.

Turkey has committed itself to intensifying controls on irregular migration flows from its territory and preventing the emergence of new irregular migration routes. In return, the EU was to liberalise the visa regime for Turkish citizens and allocate an additional EUR 6 billion to the initiatives of the Instrument for Refugees in Turkey[45].

The evaluation of the agreement and the *commercialisation of responsibility* is ambiguous. There has been funding for the education of 600 000 Syrian schoolchildren. EUR 3.2 billion has been allocated to the tasks of UN agencies, as well as the activities of NGOs and the Turkish authorities. A total of 1.7 million refugees were helped[46]. Two years after its conclusion, there has been a 97% drop in irregular migrants arriving on the Greek islands. It has also been pointed out that the criminal activities of human smugglers and traffickers have been reduced. The agreement was presented as a clear message to migrants: irregular migration is not worth the risk, since they are provided with safe and legal resettlement routes[47].

However, a critical approach to the EU–Turkey agreement is inevitable. A direct consequence of the agreement was the deepening of the humanitarian crisis in the reception and detention centres in Greece[48]. The living conditions and situation of migrants in Greece have deteriorated.

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45   U. Korkut, *Pragmatism, moral responsibility or policy change: The Syrian refugee crisis and selective humanitarianism in the Turkish refugee regime*, "Comparative Migration Studies" 2016, vol. 4, issue 2.

46   B. Mandıracı, *Sharing the Burden: Revisiting the EU–Turkey Migration Deal*, International Crisis Group, 13 III 2020, [accessed: 28 VII 2020]: <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/sharing-burden-revisiting-eu-turkey-migration-deal>.

47   *EU–Turkey statement. Two years on,* European Commission, Brussel 2018, available on the internet [accessed: 21 V 2020]: <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf>.

48   *Four years into EU–Turkey deal, suffering has reached unimaginable levels*, Oxfam International, Brussels 2020, available on the internet [accessed: 15 VII 2020]: <https://www.oxfam.org/en/press-releases/four-years-eu-turkey-deal-suffering-has-reached-unimaginable-levels>.

Administrative and systemic inefficiencies led to the prolonged detention of migrants in overcrowded camps until their final deportation to Turkey[49]. In addition, in the first quarter of 2020 alone, despite unfavorable weather conditions, 8.5 thousand asylum seekers arrived in Greece. The number of irregular migrants increased by 72% compared to 2019. The absorption capacity in Camp Moria in Lesvos exceeded almost seven times[50].

At the end of February 2020, Turkey lifted strict border controls with Greece. The opening of the borders was prompted by four reasons: the death of Turkish soldiers during the civil war in Syria, the inefficiency of the system for absorbing migrants, the increase in anti-immigrant sentiment in Turkish society and, above all, the EU's failure to fulfil its obligations under the agreement[51]. In response, Greece has suspended the possibility of applying for asylum and intensified its policy of deterring migrants[52]. The tightening of border restrictions has led to the death of three and the injury of over a hundred migrants. Thousands of people were stranded at the border crossing in Pazarkule-Kastan[53].

The *commercialisation of responsibility* has turned human rights and the situation of refugees into a political bargaining chip. Ursula von der Leyen, Charles Michel and David Sassoli have expressed their appreciation

49   E. Collet, *The Paradox of the EU–Turkey Refugee Deal*, Migration Policy Institute, Washington 2016, p. 4.

50   S. V. Oikonomou, E. Roemburg, *Lesbos Bulletin. Update on the EU 'hotspot' Moria*, Greek Council for Refugees, Oxfam 2020, available on the internet [accessed: 11 VII 2020]: <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2020-03/Lesbos%20Bulletin%20-%20Jan%20%26%20Feb%202020.pdf>.

51   N. Enria, S. Gerwens, *Greek-Turkish border crisis: Refugees are paying the price for the EU's failure to reform its asylum system 2020*, London School of Economics and Political Science, London 2020, available on the internet [accessed: 20 VII 2020]: <https://blogs.lse.ac.uk/europpblog/2020/03/25/greek-turkish-border-crisis-refugees-are-paying-the-price-for-the-eus-failure-to-reform-its-asylum-system/>.

52   N. R. Kafkoutsou, S. V. Oikonomou, *Dimmished, Derogated, Denied. How the right to asylum in Greece is undermined by the lack of EU responsibility sharing*, Oxfam and Greek Council for Refugees, Cowley, Oxford 2020, available on the internet [accessed: 12 V 2020]: <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621011/bp-diminished-derogated-denied greece-refugees-020720-en.pdf>.

53   A. Kaya, S. Rottmann, E. Gökalp Aras, Z. S. Mencütek, *Border Management and protection policies for Syrian refugees in Turkey*, Respond, Policy Brief, 1 VI 2020 [accessed: 15 I 2021], available on the internet: <https://respondmigration.com/policy-briefs/border-management-protection-policies-for-syrian-refugees-in-turkey>.

for the suspension of asylum applications. At the same time, the EU has criticised the Turkish Government's actions, which is using refugees to achieve its political objectives[54].

The EU–Turkey agreement has also raised international legal questions – particularly regarding the principle of non-refoulement[55]. The interpretation of the non-refoulment principle is contractually applied not only to refugees, but also to persons seeking international protection – whether they arrive on national territory or still remain on its borders[56].

Although the origin of the refoulement prohibition dates back to the 19th century, the current nature of this customary norm is contained in the 1951 Refugee Convention in Article 33: 'No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, member- ship of a particular social group or political opinion'[57].

The prohibition of expulsion or return indicates that such a person may be returned or readmitted to a 'safe third country'. The Copenhagen criteria define the status of a 'safe third country': it is a system of democracy, there is no risk of persecution, torture or human rights violations, and it is not affected or threatened by armed conflict. Until 2014, only Bulgaria recognised Turkey as a safe third country. Most EU countries did not even recognise Turkey as a safe place of origin[58].

EU, Italian and Libyan cooperation on irregular migration

As in the case of Turkey, EU cooperation with Libya is not a new political strategy. Since the beginning of the 21st century, several agreements on migration flows have been signed with the Gaddafi regime. Back

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54   M. Deleixhe, *La Grèce, bouclier de l'Europe?*, "Esprit" 2020, vol. 7–8, p. 30.

55   M. Den Heijer, *Europe and Extraterritorial…*, p. 2.

56   J. Hathaway, T. Gammeltoft-Hansen, *Non-Refoulement in a World…*

57   *Convention Relating to the Status of Refugees.*

58   *An open and secure Europe: making it happen*, European Commission, Brussels 2014, available on the internet [accessed: 5 VI 2020]: <https://ec.europa.eu/homeaffairs/sites/homeaffairs/files/elibrary/documents/basicdocuments/docs/an_open_and_secure_europe_-_making_it_happen_en.pdf>.

in 2000, Libya and Italy concluded an agreement on combating terrorism, organised crime, drug trafficking and irregular immigration[59]. In 2003, the UN sanctions imposed on Libya following the attack on Lockerbie were lifted[60].

After years of international isolation and the recognition of Libya as a pariah state, the European Union started to cooperate in the fight against irregular migration[61]. In 2004 they launched a pilot technical mission on migration, preceded by a fact-finding mission the year before. The Italian and Libyan police began to cooperate closely in Tripoli. Italy has carried out initial staff training and provided the Libyan side with surveillance and border control equipment. They distributed to Libya technical infrastructure worth EUR 3 million in the form of helicopters, boats, reconnaissance aircraft and Frontex 2007 command centres. A programme of charter flights was established to repatriate irregular migrants from Libya to their countries of origin. The returns covered less than 6 000 people. As part of this strategy, the countries have created additional detention camps in Kufra and Sebha. The agreement's partners carried out a series of mass deportations in breach of humanitarian standards and the principle of non-refoulement and the right to seek asylum[62].

As recently as January 2008, all illegal migrants were deported from Libya, including those seeking international protection. The Libyan Government also ordered decommissioning of informal camps on the periphery. The development of cooperation with Libya, based on the extraterritorialisation of the migration policy, has led, according to several researchers, to the creation of one of the most precarious

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59   A. Betts, *Towards a Mediterranean Solution? Implications for the Region of Origin*, Oxford University Press, Oxford 2006, p. 660.

60   The UN imposed economic sanctions on Libya, following the attack in the Scottish town of Lockerbie that brought down Pan Am flight 103, killing 270 people. The sanctions included a ban on military sales, air communications and oil equipment. They were lifted by UN Security Council Resolution N. 1506, in 2003. *UN News 2003: Security Council lifts sanctions against Libya imposed after Lockerbie bombing,* UN News 2003, available on the internet [accessed: 10 I 2020]: <https://news.un.org/en/story/2003/09/79172-security-council-lifts-sanctions-against-libya-imposed-after-lockerbie-bombing>.

61   S. Hamood, *EU–Libya cooperation on migration…*, p. 23.

62   S. Hamood, *EU–Libya cooperation on migration…*, p. 32–24.

reception and detention systems in the world. This is confirmed by field research, and migrants' testimonies[63].

The European Commission has criticised Libya's actions in protecting migrants' rights. It has made further cooperation conditional on the recognition by the Libyan Government of UNHCR's activities, compliance with the principle of non-refoulement and respect for human rights[64]. Despite the EC's reservations, an agreement strengthening Italian-Libyan cooperation at sea was signed in December 2007. Italian ships were given the right to patrol Libyan territorial waters. The first joint patrols were also established to carry out push-back operations against migrants[65].

Commercialising responsibility, the Berlusconi government concluded a friendship treaty with the Gaddafi regime (*Trattato di amicizia*) in 2008. Its main purpose was to compensate for Italy's colonial past[66]. Article 19 of the treaty deals with strengthening border controls and reducing irregular migration. It assumed the transfer of EUR 5 billion to Libya aimed at strengthening borders and managing migration[67].

Cooperation in the area of combating irregular migration violated the non-refoulement principle. In 2012, the European Court of Human

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63   Klepp, *Italy and its Libyan Cooperation Program: Pioneer of the European Union's Refugee Policy?*, Middle East Institute, Washington D. C. 2010, p. 77–94; H. Van Aelst, T*he Humanitarian Consequences of European Union Immigration Policy's Externalisation in Libya: The Case of Detention and its Impact on Migrants' Health*, "BSIS Journal of International Studies" 2011, vol. 8; G. Piscitelli, *Trading in suffering: detention, exploitation and abuse in Libya*, "Medici Senza Frontiere" [online], 23 XII 2019 [accessed: 10 I 2021], available on the internet: <https://www.msf.org/libya's-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>; S. Hamood, *EU–Libya cooperation on migration…*, p. 19–34.

64   M. Grange, M. Flynn, *Immigration Detention in Libya*.

65   *Trattato di Amicizia, partenariato e cooperazione tra la Republica Italiana e la Grande Ciamariria Araba Libica Popolare Socialist,* „La Republica" [online], 23 X 2008, [accessed: 12 VI 2020]: <https://www.repubblica.it/2008/05/sezioni/esteri/libia-italia/testo-accordo/testo-accordo.html>.

66   A. De Guttry, F. Capone, E. Sommario, *Dealing with migrants in the central Mediterranean route: A legal analysis of recent bilateral agreements between Italy and Libya*, „International Migration" 2018, vol. 56, issue 3, p. 44–60.

67   N. Ronzitti, *Il trattato Italia–Libia di amicizia, partenariato e cooperazione*, Istituto Affari Internazionali, Roma 2009, p. 3–12, available on the internet [accessed: 26 V 2020]: <http://www.iai.it/sites/default/files/pi_a_c_108.pdf>.

Rights of Strasbourg recognised Italy's violation of Articles 3, 4 and 11 of The Convention for the Protection of Human Rights and Fundamental Freedoms (Hirsi Jamaa and others v Italy)[68]. In the Court's opinion, Italy exposed complainants to the risk of inhuman and degrading treatment in Libyan reception centres (Article 3). Italy has also violated Article 4 by prohibiting collective refoulment of migrants and Article 13 by preventing complainants from bringing their claims to court before the decision to return to Libya[69].

The Memorandum between Italy and Libya was concluded in February 2017 in the aftermath of the migration crisis. This agreement was subsequently sanctioned by the leaders of EU Member States in the so-called Malta Declaration. The memorandum commercialised responsibility by funding and helping to run temporary reception and detention camps in Libya. Persons awaiting repatriation or voluntary return to their countries of origin were detained in the camps[70]. Despite the negative consequences of the extraterritorialisation of migration policy, EPTPC rulings and NGO appeals, the Memorandum of Understanding was extended in 2020. None of the parties have tabled amendments[71].

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68   The Convention for the Protection of Human Rights and Fundamental Freedoms, European Court of Human Rights, Council of Europe, Strasbourg 1950, available on the internet [accessed: 23 V 2020]: <https://www.echr.coe.int/Documents/ Convention_ENG.pdf>; Case of Hirsi Jamaa and Others vs. Italy, European Court of Human Rights, Grand Chamber, Strasbourg 2012, available on the internet [accessed: 12 IV 2020]: <https://hudoc.echr.coe.int/spa#{„itemid":[„001-109231"]}>.

69   G. Morgese, *Italia,Libia e Questione Migratoria. Sfide storiche, politiche della memoria ed integrazione europea mezzogiorno e area mediterranea,* Universita degli studi di Bari Aldo Moro, Bari 2020, available on the internet [accessed: 12 VI 2020]: <http://jmc.uniba.it/wp-content/uploads/2020/04/Feb2020_Morgese.pdf>.

70   *Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic,* Odysseus Network 2017, available on the internet [accessed: 10 IV 2020]: <https://eumigrationlawblog.eu/wpcontent/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf>.

71   A. Generale, *When migrants do not arrive in Europe: The Memorandum of Understanding,* EU-Logos Athena, 4 III 2020 [accessed: 14 V 2020], available on the internet: <https://www.eu-logos.org/2020/03/04/when-migrants-do-not-arrive-in-europe-the-memorandum-of-understanding/>.

In 2019, the EC referred to cooperation with Libya in combating irregular migration: "The EU does not practice push-backs and no migrants saved by European boats are ever returned to Libya. Our priority is to prevent people taking dangerous journeys in the first place and to provide protection and support to vulnerable people along migratory routes"[72].

Meanwhile, since the memorandum was signed, at least 40 000 migrants have been intercepted in the Mediterranean. They ended up in centres located in northern Libya. It is estimated that outside Libyan detention centres, there are up to 700 000 migrants[73].

The consequence of this migration strategy is the disastrous situation in Libyan detention centres. There has been (and continues to be) torture, arbitrary detention of people, rape, murder and constant insult to human dignity[74]. In July 2019, raids occurred on the Daman building complex and the detention centres for migrants in Tajoura. In the attack, 53 migrants were killed and over 80 wounded. The United Nations High Commissioner for Human Rights has recognised the attack as a war crime[75].

In May 2020, the UNSMIL mission published a report indicating gross violations of migrants' rights in Libya. It confirmed human trafficking in detention centres (including Abu Isa and Nasir in Zawijah), which involved staff and the Libyan coastguard. In the 88th point of the report, the High Commissioner called for the immediate release of arbitrary detainees and for the provision of safe shelter as well as the possibility

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72 *Facts matter: Dubunking myths about migration,* European Commission, Brussels 2019, available on the internet [accessed*:* 17 VI 2020]: <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20190306_managing-migration-factsheet-debunking-myths-about-migration_en.pdf>.

73 *L'inferno senza scampo. Le politiche dell'Unione Europea contribuiscono agli abusi sui migrant in Libia,* Human Rights Watch 2019, available on the internet [accessed: 19 VI 2020]: <https://www.hrw.org/sites/default/files/report_pdf/eu0119it_web2.pdf>.

74 *Evacuare urgentemente rifugiati e migranti dalla Libia,* Medici Senza Frontiere 2018, available on the internet [accessed: 05 V 2020]: <https://www.medicisenzafrontiere.it/news-e-storie/news/evacuare-urgentemente-rifugiati-e-migranti-dalla-libia/>.

75 *Libya:* UN *report urges accountability for deadly attack against migrant centre,* UN News 2020, 27 I 2020 [accessed: 10 VII 2020], available on the internet: <https://news.un.org/en/story/2020/01/1056052>.

of applying for asylum. According to the analysis carried out in the report, Libya cannot be considered a safe country[76].

In the case of Libya, the *commercialisation of responsibility* was based on the financial assistance provided by the EU and Italy and the extra-territorialisation of migration flow controls. The measures have increased border control capacity. Training was carried out and the Libyan coast-guard was retrofitted. The European Union provided EUR 266 million from the Emergency Trust Fund for Africa (*The EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa*, EUTFA) for programmes related to migration and border control and EUR 20 million in bilateral aid [77]. However, EUFTA is characterised by low transparency and limited surveillance[78]. The EU has also tried to improve the system for identifying and registering asylum seekers, but the measures taken have proved ineffective[79].

An extraterritorialisation policy in itself is not contrary to international law as long as it is conducted jointly with a secure third country. Nevertheless, the Italian position does not take into account the responsibility for infringements, as none of these actions took place under Italian jurisdiction[80]. Italy has even indicated that the memorandum strengthened respect for human rights[81].

The concept of 'complicity' does not exist in international law. However, it is contained in Article 16 of DARSIWA (*Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*) and has taken the form of a customary norm. State responsibility for complicity

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76 *United Nations Support Mission in Libya Report of the Secretary-General*, United Nations Security Council 2020, available on the internet [accessed: 12 VII 2020]: <https://unsmil.unmissions.org/sites/default/files/s_2020_360_e.pdf>.

77 *EU Support on migration in Libya EU Emergency Trust Fund for Africa*, European Comission 2020, available on the internet [accessed: 14 VII 2020]: <https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/july_2020_eutf_factsheet_libya_2.pdf>.

78 *EU: Time to review and remedy cooperation policies facilitating abuse of refugees' ad migrants in Libya. NGOs Statement,* Human Rights Watch, 28 IV 2020 [accessed: 17 VII 2020], available on the internet: <https://www.hrw.org/news/2020/04/28/eu-time-review-and-remedy-cooperation-policies-facilitating-abuse-refugees-and>.

79 A. Generale, *When migrants do…*

80 G. Pascale, *Is Italy internationally…*, p. 46.

81 *Memorandum of understanding…*

in the commission of an international wrongful act is a condition in which a state contributes to or accompanies another state in the commission of an international illegal act. It does so with the presumption of knowledge and awareness of the existence of law violations, or it commits an unlawful act itself. This act may, inter alia, take the form of 'significant facilitation'. This means that: "(...) a State voluntarily assists or aids another State in carrying out conduct which violates the international obligations, for example, by knowingly providing an essential facility or financing the activity in question"[82]. A breach occurs if both countries have the same international agreements.

In pursuing a policy of remote control, Italy is aware of the current situation in Libya and the existence of legal violations. The actions of the Libyan forces are largely based on funding delegated from Italy. Without technical support, control of the Italian borders would be ineffective. According to Giuseppe Pascale[83] Italy, while continuing this support, is responsible not only under Article 16 but also under Article 41 (2) of DARSIWA[84].

Assistance from Italy and the EU has not improved conditions in the detention centres and did not stop the notorious human rights violations[85]. Nils Melzer, UN Special Rapporteur on Torture, made the following reference to the situation in Libya and the agreement with the EU:

> *If European countries are paying Libya to deliberately prevent migrants from reaching the safety of European jurisdiction, we're talking about complicity in crimes against humanity because these people are knowingly being sent back to camps governed by rape, torture and murder*[86].

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82 *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries,* United Nations 2001, p. 66, available on the internet [accessed: 16 V 2020]: <https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf>.

83 G. Pascale, *Is Italy internationally...*

84 *Draft articles on Responsibility of States for Internationally Wrongful Acts...*

85 *EU: Time to review...,* p. 1–5.

86 K. Hodal, *Humanity is on path to self-destruction, warns UN special rapporteur,* „The Guardian" [online], 10 XII 2018 [accessed: 23 VI 2020]: <https://www.theguardian.com/global-development/2018/dec/10/humanity-is-on-path-to-self-destruction-warns-un-special-rapporteur-nils-melzer>.

Conclusion

Deterrence, the closure of borders and the restriction of human rights contrast with humanity and the rule of law, which are the axiological foundations of the European Union. They clearly demonstrate the disintegration of the values on which the EU is built. In this article we have proved that, on a normative basis, considered extraterritorial actions are based on various paradoxes. By invoking a categorical imperative in theory, the EU actually practices violent political realism[87].

In the article, we pointed out that anti-migration measures do not bear witness to a sudden EU crisis, as they have been rooted in its practices for decades. We have proved that the separation of Western extraterritorialisation of migration policy from human rights is not a new phenomenon. The developments in cooperation with Libya and Turkey presented in the article show that we are dealing with the outcome of a clash of historical circumstances, the interests of European countries and relations between completely different actors.

In our study, we proposed a new look at the concepts of extraterritorialisation, extraterritorial jurisdiction and the commercialisation of sovereignty. The introduction of the *‘commercialisation of responsibility’* additionally takes into account the delegation of Western responsibility (on the example of the EU) and the accompanying consequences for human rights. According to our analyses, the *commercialisation of responsibility* occurs when a side of an agreement ostensibly minimises its direct involvement, avoiding responsibility for the abuses of the cooperation.

The unwillingness to discharge the obligations arising from the axiological foundations and international law has led to their transfer outside the EU[88]. In the example of both the agreement with Turkey and the one with Libya, responsibility was commercialised through the EU's extraterritorial activities. In both cases, the delegation of duties (and blame) to third countries was managed through EU and Member State funding instruments.

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87   M. Deleixhe, *La Grèce, bouclier…*, p. 31.

88   M. Lemberg-Pedersen, *Manufacturing displacement. Externalization and postcoloniality in European migration control*, "Global Affairs" 2019, vol. 5, issue 3, p. 247–271.

The postponement and violation of the fundamental rights of migrants (the right to non-refoulement and to seek asylum) resulted in the deepening of humanitarian crises in the detention centres of Libya, Turkey or Greece, among others. Moreover, the expansion of the EU countries' activities outside their territory leads to arbitrary detentions and reduces the possibility to apply for asylum. If human rights and their protection are the axiological foundation of the EU, remote control over migration may indirectly limit access to these rights[89]. Analysed examples show that at the borders, access to the territory and the request for asylum are physically and legally prevented, so that no action leads to European jurisdiction. Thus, so that they do not require taking any responsibility for.

In the EU's multi-level external action, it is difficult to assess the effectiveness of a policy in a reliable way. According to Boven and Hart, evaluating political success and failure is a matter of perspective. It therefore seems that all actors involved in achieving the objectives should be engaged in evaluating them[90]. The EU institutions and Member States point to the success of extraterritorial policies, citing the reduced number of forced migrants arriving. If we consider that the real objective was to halt irregular migration, the available data support the effectiveness of such measures. A complex network of political, economic and propaganda activities is organised so that migrants never reach Fortress Europe. However, the evaluation of EU and Member State migration policies effectively ignores the humanitarian consequences of *commercialising responsibility.*

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89   D. S. FitzGerald, *Remote control of migration: theorising territoriality, shared coercion, and deterrence*, "Journal of Ethnic and Migration Studies" 2020, vol. 46, issue 1, p. 6.

90   M. Bovens, P. Hart, *Understanding Policy Fiascoes*, Transaction, New Brunswick 1996.

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