Master Thesis

Out of sight, out of mind: The externalisation of migration control

A comparative study on the impact of bilateral migration agreements on migrant rights

Name: Joscha van Tol

Student Number: s2305836

E-mail: joshvantol@hotmail.com

Master Programme: European Union Studies

Date: 10-8-2019

Supervisor: Mr. drs. G. G. Lodder

Abstract

Irregular migration to the European Union is not a new phenomenon. For decades, migrants have crossed the external borders of the Union illegally, hoping to find a better life. With the abolishment of internal border controls in the European Union, the necessity for increased protection of the external borders arose. This became especially clear when after the Arab Spring uprisings an unprecedented amount of people made their way to Europe, culminating in the 2015 European migration crisis. The response of the EU and its Member States entailed policies of deterrence and entry-prevention. Furthermore, agreements were made with third countries in order to stem the migration flows. These agreements effectively externalised migration control beyond the borders of Europe. In this comparative case study, the bilateral migration control agreements between Italy and Libya, and between Spain and Morocco are analysed, with the aim of assessing the impact of these agreements on the human rights of migrants residing in North Africa. The study suggests that through the bilateral agreements, externalisation of migration control is facilitated, which in turn has resulted in a crackdown on irregular migration, with severe consequences for the perception and treatment of irregular migrants in North Africa.

Key words: externalisation of migration control, irregular migration, bilateral agreements, Libya, Morocco, human rights, European migration crisis.

Word count: 14.867

Contents

List of abbreviations

CPT	Comparative Process Tracing
ECtHR	European Court of Human Rights
EU	European Union
FRA	European Union Agency for Fundamental Rights
Frontex	Frontières extérieures
GNA	Government of National Accord
GNC	General National Congress
HRW	Human Rights Watch
IOM	International Organisation for Migration
MoU	Memorandum of Understanding
MS	Member State
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NTC	National Transitional Council
SIVE	Sistema Integrado de Vigilancia del Exterior
ToF	Treaty of Friendship
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Introduction

One of the main accomplishments of the European Union (EU), has been the creation of an area without internal border controls, in which the free movement of persons, goods, capital, and services has been realised. The abolishment of internal border controls has called for increased protection of the external borders of the Union, in order to adequately regulate the movement of goods and people. Over the past decades, Europe has faced an influx of people staying in the EU illegally. Some of these people have entered the Union legally, with proper documents, but subsequently overstayed their visa and *disappeared*. Others have opted for illegally crossing the external borders using long-established migration routes through Morocco, Libya or Turkey.

The increasing number of migrants entering the EU irregularly, that is, not through official pathways and often lacking proper documents, has been reason for concern in European countries. Irregular migration has increasingly been perceived as a security problem, as in addition to illegally crossing the border, which is often associated with crime and terrorism, unwanted migrants could pose a threat to the welfare state and cultural identity of European countries.[1]

In order to curb irregular migration, the EU and its Member States (MS) have adopted restrictive migration policies. However, merely guarding the European borders does not prevent migrants from attempting to reach and cross them from places like North Africa and the Middle East. For migration control to be effective, it would make sense to involve so-called third countries, which are non-EU members, in stemming the migration flows. Through bilateral and multilateral agreements on migration control, the EU and its MS are essentially extending their borders and border control beyond the actual boundaries of Europe. This extra-territorialisation and externalisation of migration control entails the involvement of non-EU countries in managing irregular migration. To this end, agreements have been made on mobility, border control, and readmission of irregular migrants. Funds have been made available to third countries to help them to prevent irregular migrants from reaching European soil.[2]

Following the Arab Spring uprisings, an unprecedented amount of people tried to enter the EU, culminating in the 2015 European migration crisis. Images of overcrowded boats, filled with migrants trying to cross the Mediterranean Sea, have dominated the European media for months, highlighting the humanitarian disaster that was unfolding along Europe's borders. The EU was not prepared and tensions rose across the continent, with some people calling for more humanitarian aid while others were primarily concerned with stopping migrants from reaching Europe. Migration

---

[1] J. Huysmans, 'The European Union and the Securitisation of Migration', *Journal of Common Market Studies*, nr. 5 (2000) p. 753.
[2] Akkerman, Mark, 'Expanding the Fortress', Transnational Institute (2018) p. 17.

quickly became one of the most important issues in European politics. Populist politicians called for a migration stop and some countries reintroduced national border controls, putting the entire Schengen agreement under pressure.[3]

Europe's answer to the migration crisis came in the form of restricting and preventing migration further, through the striking of deals with neighbouring countries such as Turkey. Similar agreements were made bilaterally between southern European countries and their North African counterparts. However, these 'solutions' were heavily criticised by human rights organisations, as the focus of the agreements was mainly on halting irregular migration, often disregarding the protection of human rights. Furthermore, by cooperating with authoritarian regimes, it became clear that stopping irregular migration was prioritised over human rights considerations.

Reports on human rights violations of migrants residing in countries to which migration control has been externalised, give rise to the following question:

What is the impact of bilateral migration control agreements on the protection of human rights of irregular migrants in North Africa?

Bilateral agreements are expected to play a role in the externalisation of migration control, in which human rights considerations are neglected. It is the aim of this study, to establish how and in what way these agreements contribute to changes in the perception and treatment of irregular migrants who are 'stuck' in North Africa due to restrictive migration policies and externalisation of migration control.

The structure of this study is as follows: After a survey of the available literature on the subject, the research design, methodology and case selection will be discussed. The next chapters consist of in-depth case studies, followed by a third chapter in which a structured comparison is made between the cases, before reaching the conclusion.

---

[3] Michela Ceccorulli, 'Back to Schengen: the collective securitisation of the EU free-border area', *West European Politics*, nr. 2 (2019) p. 302.

In order to conduct fruitful research, it is of great importance to survey the available academic literature, not only to find one's bearings on a particular topic, but also to utilise the concept of *standing on the shoulders of giants* to the fullest. The focus of this work is on the impact of bilateral externalisation of migration agreements on the rights of irregular migrants residing in North Africa. For the purpose of clarity, this review has been divided into three distinct categories, videlicet externalisation of migration control, bilateral agreements on irregular migration, and rights of irregular migrants in North Africa.

Externalisation of migration control

Over the past decades, irregular migration has increasingly been linked with threats to security. The unauthorised crossing of borders is often associated with illicit practices pertaining to drug trafficking, smuggling, international organised crime and terrorism. Not only irregular migration, but migration in general has received an increasingly negative connotation, as an influx of migrants could potentially put a strain on social security, public health, job security and cultural identity.[4] The general trend in academic literature is that migration has been *securitised*.[5] The concept of securitisation has originally been developed by the so-called Copenhagen School of security studies. Ole Waever, the main author and proponent of the concept, defines securitisation as a speech act by certain actors, the securitising agents, to label a perceived threat as an urgent and existential threat, which needs to be dealt with using extraordinary means.[6] Through such speech acts, migration is presented as an existential threat and has been pushed into the realm of security.

The concept of securitisation is not undisputed and authors such as Didier Bigo and Sarah Léonard argue that speech acts are of little importance and they rather focus their research on securitisation through practices.[7] That is, securitisation is achieved through all kinds of securitising actions in a complex interplay between many actors, among them bureaucrats, politicians and private security professionals. Furthermore, Léonard argues that the militarisation of borders,

---

[4] J. Huysmans (2000) p. 753.
[5] Ibid.
[6] O. Waever, 'The EU as a Security Actor: Reflections from a Pessimistic Constructivist on Post-Sovereign Security Orders', in: M. C. Williams and M. Kelstrup eds., *International Relations Theory and the Politics of European Integration: Power, Security and Community*, London: Routledge 2000, p. 251.
[7] D. Bigo, and A. Tsoukala, 'Understanding (In)Security', in: D. Bigo & A. Tsoukala (eds), *Terror, Insecurity and Liberty. Illiberal practices of liberal regimes after 9/11*, Routledge (2008) p. 5.

Frontex patrols, and the increased use of surveillance systems are evidence of the securitisation of migration.[8]

The securitisation of migration in Europe is strongly linked with the Schengen agreement and the creation of the European Single Market. The European Union has created an area in which border controls are abolished and in which the free movement of persons, goods, capital, and services is established. As internal borders are abolished, the protection of the external border becomes paramount. The European Union and its Member States wish to remain in control in regards to who enters European territory. As the northern and western borders of the European Union require little attention, the focus of the EU and its members is mainly on the southern and eastern borders. As the southern border is mainly comprised of the Mediterranean Sea, it would be nonsensical to build fences in southern European countries in order to stem irregular migration flows. Instead, the EU and its members seek to employ the services of third countries in managing migration. The process of border externalisation and the externalisation of migration control has been the subject of many academic articles. Some authors, such as Andrijasevic, maintain that migration control is not in fact externalised, as the duties of European authorities in the field of migration control are not literally outsourced to third country authorities.[9] Andrijasevic claims that European states merely try to prevent irregular migrants from gaining access to European territory. While there is truth to these statements, most other authors have accepted that migration control *is* in fact externalised. I for one, disagree with Andrijasevic, as her focus seems to be too narrow. She has little regard for the fact that policies of European states, such as providing rewards for complying with strict EU migration standards, in fact result in the effective stemming of migration flows. Therefore, third countries are involved in the policies of Europe to control migration beyond its own borders.

Border externalisation has been a central theme in the work of Luiza Bialasiewicz, who examines the various schemes, methods, actors and neighbouring countries of Europe that are involved.[10] She describes externalisation far beyond the actual borders of the EU and how and why this might be troublesome, especially when it comes to Libya. With a similar view, but more focused on maritime operations, Maribel Casas-Cortes et al. describe EU externalisation practices by making use of a case study of the *Seahorse* operations, led by the Spanish *Guardia Civil*, with the aim to halt irregular

---

[8] Sarah Léonard, 'EU border security and migration into the European Union: FRONTEX and securitisation through practices', *European Security*, nr. 2 (2010) p. 237.
[9] Rutvica Andrijasevic, 'Deported: The Right to Asylum at EU's External Border of Italy and Libya', *International Migration*, nr. 1 (2010).
[10] L. Bialasiewicz, 'Off-shoring and out-sourcing the borders of Europe: Libya and EU border work in the Mediterranean', *Geopolitics*, nr. 4 (2012).

migration.[11] Certainly, maritime missions and naval patrols complement externalisation strategies, but most authors would rather investigate the scope of the externalisation of migration control by studying its manifestation in non-EU members, so-called third countries. Frances Webber analyses the manifestation of externalisation in countries such as Afghanistan, Niger and Turkey, highlighting the fact that Europe involves itself with authoritarian and repressive regimes in order to stem migration flows.[12] Similar observations are made in a report by researchers from the Clingendael Institute, in which the authors analyse the (negative) impact of EU migration policies in the sub-Saharan countries of Niger, Chad and Sudan.[13]

In their analysis, Violeta Moreno-Lax and Martin Lemberg-Pedersen emphasise the role of distance-creation in externalisation policies, which raises questions of democratic legitimacy and entails the trading in of rights for border controls.[14] The authors stress that through legal distance creation a diffusion of responsibility is created through which Europe seeks to absolve itself from blame. Ultimately, the combined processes of extra-territorialisation and externalisation results in *border-induced displacement* according to the authors. This concept functions as a second-type displacement, different from the original reasons for the displacement of migrants, and leads to *engineered regionalism*, in which displacements are reproduced within certain areas due to extra-territorialisation and externalisation efforts.[15]

Overall, it seems that many academics have an interest in the externalisation of borders and migration control. A fair amount of literature is available, yet the subject matter is ever evolving.

Bilateral Agreements

As policies involving the externalisation of migration control started to emerge, so too did the first studies into the specific migration policies of third countries to which this control was externalised. Katharina Natter describes the emergence of the Moroccan migration policy and traces its steps in the period of 2000-2007. However, she argues that the Moroccan migration policy can only be partly attributed to complying with EU norms and standards and points out that Morocco rather adopted a

---

[11] Maribel Casas-Cortes, Sebastian Cobarrubias and John Pickles, ''Good neighbours make good fences': Seahorse operations, border externalization and extra-territoriality', *European Urban and Regional Studies*, nr. 3 (2016).
[12] Frances Webber, 'Europe's Unknown War', *Race & Class*, nr. 1 (2017).
[13] Jérôme Tubiana, Clotilde Warin and Gaffar Mohammud Saeneen, 'Multilateral Damage The impact of EU migration policies on central Saharan routes', *CRU Report Clingendael* (2018).
[14] Violeta Moreno-Lax and Martin Lemberg-Pedersen, 'Border-induced displacement: The ethical and legal implications of distance-creation through externalization', *QIL*, nr. 1 (2019).
[15] Ibid.

firm stance on irregular migration in order to re-establish itself as a pivotal player in the region, regarding migration control.[16] Most other authors point in the direction of bilateral, and multilateral agreements made between European states and third country neighbours regarding migration management, as the most important factors in externalising migration control.

Natalino Ronzitti analyses the bilateral treaty known as the Treaty of Friendship in his work.[17] This is one of the major treaties between Italy and Libya regarding, among other things, irregular migration, and as such it also takes centre stage in the work of Emanuela Paoletti, who analyses the power relations between the two countries in her work.[18] Paoletti describes the various previous events and agreements regarding migration between the two countries, and points out that externalising migration control to Libya has effectuated certain human rights violations. However, both works predate the fall of the Gaddafi regime and the European migration crisis. Therefore, more recent works are required to complete the picture on bilateral externalisation policies.

Andrea de Guttry et al. provide a legal analysis of recent bilateral agreements between Italy and Libya in their work.[19] Here, the fall of Gaddafi and the subsequent chaos in Libya is included. An analysis of the recent Memorandum of Understanding is provided, which was concluded in 2017, and the authors highlight the troubling situation Libya is currently in. Furthermore, the Italian efforts to curb irregular migration are outlined and the dire position of migrants residing in Libya are also taken into account. The most recent and complete work is that of Susana Ferreira, who wrote a book on human security and migration in Europe's southern borders.[20] In this book she describes the challenges and narratives of irregular migration with a special focus on both the human- and security dimensions. In her chapters on a southern migration model, she takes into account the bilateral arrangements between Spain and Morocco and between Italy and Libya. Her final chapter includes brief discussions of the Spanish exclaves and the Italian island of Lampedusa, places where migration control is especially relevant.

Overall, the academic literature on bilateral agreements with Libya and Morocco is less abundant than literature on, for example, the EU-Turkey statement on irregular migration. This lack of

---

[16] Katharina Natter, 'The Formation of Morocco's Policy Towards Irregular Migration (2000–2007): Political Rationale and Policy Processes', *International Migration*, nr. 5 (2014).

[17] Natalino Ronzitti, 'The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New Prospects for Cooperation in the Mediterranean?' *Bulletin of Italian Politics*, nr. 1 (2009).

[18] Emanuela Paoletti, 'Power Relations and International Migration: The Case of Italy and Libya', *Political Studies*, nr. 2 (2011).

[19] Andrea Guttry, Francesca Capone and Emanuele Sommario, 'Dealing with Migrants in the Central Mediterranean Route: A Legal Analysis of Recent Bilateral Agreements between Italy and Libya', *International Migration*, nr. 3 (2018).

[20] Susana Ferreira, *Human Security and Migration in Europe's Southern Borders* Cham, Switzerland: Palgrave Macmillan 2019.

abundance indicates that there are still gaps in the literature to be filled and the listed sources provide a useful basis for further research into the subject.

Literature on the rights of migrants and especially on human rights, mainly consists of official reports from international organisations dealing with- or specialised in- migration, and of publications made by human rights organisations such as Human Rights Watch. The United Nations has published several reports on human rights violations, including a report from 2018 on the situation of migrants in Libya.[21] In this report, the UN describe the gross human rights violations that are committed on a daily basis in Libya, such as arbitrary detention, forced labour, physical abuse, rape, torture and the murder of irregular migrants. This report is meant to raise awareness and makes recommendations, hoping to work towards a possible solution. A report by Human Rights Watch, titled 'No Escape from Hell', illustrates how EU policies contribute to the abuse of migrants in Libya.[22] Here, the EU-Libya cooperation is analysed and the horrific conditions in the EU-funded detention centres are exposed. Furthermore, the EU and Italy are implicated in the atrocities, and again, recommendations are made to put a stop to the violations. In another publication, funded by The Transnational Institute, the consequences of European border externalisation are outlined. The author strongly criticises European policies and illustrates his points on the basis of seven case studies, consisting of third countries with which Europe has made agreements on migration.[23]

The authors of articles on the rights of irregular migrants in academic journals are often human rights professionals themselves and as such, their views and contributions do not differ much from international human rights organisations. For instance, Bill Frelick et al., have published an article on how externalisation practices affect the rights of migrants and asylum seekers.[24] This article highlights externalisation of migration control and its consequences by conducting three regional case studies, one of them being the European Union. In general, the article criticises the practice of externalising migration control and makes individual recommendations to the countries analysed in the case studies.

Overall, the trend in the literature on the rights of migrants and human rights violations is that European policies that restrict and externalise migration, contribute to the dire situation of migrants

---

[21] United Nations, 'Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya', *Office of the High Commissioner for Human Rights*, 20 December 2018.
[22] Human Rights Watch, 'No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya' (2019).
[23] Mark Akkerman (2018).
[24] Bill Frelick, Ian M. Kysel and Jennifer Podkul, 'The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants', *Journal on Migration and Human Security*, nr. 4 (2016).

residing in third countries. A multitude of human rights organisations seek to raise awareness and call for action to be taken in order to improve the position and situation of irregular migrants.

In conclusion, the literature available on the subject of externalisation of migration control is rather varied and diverse, ranging from theoretical debates revolving around securitisation, case studies on maritime operations, and country-specific analyses of migration agreements, to official reports of international organisations and publications of human rights advocates. Still, the overarching trends in the literature are similar and are pointing in the same direction. Therefore, the study at hand shall have its roots in fertile ground, and the unique approach and the choices for case selection should form a contribution to the academic literature on the subject matter.

Research Design and methodology

The focus of this research is on the externalisation of migration control of European Union Member States to so-called third countries, and its consequences for the human rights of irregular migrants residing in said countries. As the externalisation of migration control is practiced by the European Union as a whole as well as by most of its individual Member States in the form of multi- and bilateral treaties, agreements and practices, the scope of this research must be narrowed down as it will prove to be nearly impossible to analyse the policies and practices of each individual EU Member State. This research will therefore opt for the in-depth examination of a small number of cases rather than lose itself in the studying of all cases. A case study has the advantage of offering the opportunity to a researcher of truly understanding the details and the specifics of a case. The results of such a case study will provide expert-level insights in the researched instances of a phenomenon or entity. A research design based on a single case study is very well suited to quench one's thirst for knowledge on a single, particular subject. The downside of a single case study, is the lack of generalisability of the results. The researched case might be unique, an anomaly or simply just another case of many.

In order to be able to generalise findings in a broader sense, it is paramount to be able to compare results between cases. As stated by the late Guy Swanson: "Thinking without comparison is unthinkable. And, in the absence of comparison, so is all scientific thought and scientific research".[25] Comparative case studies have similarities with regular case studies in regard to rich descriptions and explanatory narratives. Two countries shall be selected which are similar enough in regard to the observable phenomena of EU Member State externalisation practices and the violation of migrants' human rights. Notable differences must be present as well, since this will strengthen the validity of the generalisation from the results to other countries in the region and possibly even further away. Since no country is the same in terms of history, government, population, economy and so forth, a comparison between two countries provides better results for generalisation as the results rule out the possibility that one country is a very special and unique case of which no conclusions can be drawn. Overall, the comparative case study is aimed at using iterative analysis of multiple cases in order to compare them and identify themes and patterns.

---

[25] Guy Swanson, 'Frameworks for Comparative Research: Structural Anthropology and the Theory of Action,' in: Ivan Vallier ed., *Comparative Methods in Sociology: Essays on Trends and Applications*, Berkeley: University of California Press 1971. P. 145.

The approach that will be used is the rather new method of Comparative Process Tracing (CPT), described in 2017 by Bo Bengtsson and Hannu Ruonavaara in their article 'Comparative Process Tracing: Making Historical Comparison Structured and Focused'.[26] The authors characterise CPT as a valuable new approach to process tracing which can be applied to multiple cases instead of just one. Furthermore, the approach can be utilised for inductive as well as deductive studies. Their article describes in great detail, all the aspects and considerations for this newly invented approach.

At the very core, process tracing is quite literally, the tracing of a process by looking at how certain outcomes "[...] are produced by events that result from actors' actions and interactions and various contextual factors".[27] In process tracing, a chain of events is identified, one step leading to another, ultimately culminating in an outcome that is wholly or in part, caused by these mechanisms. Or rather, an outcome is evident and the steps explaining such an outcome are traced through time, to identify possible connections between events. Such a broad definition, when applied to this research, would mean that certain events such as bilateral agreements, which are 'the result from actors' actions and interactions', combined with contextual factors such as the 2015 European migration crisis, the ongoing securitisation and restrictive migration policies of the EU and its Member States, and the specific situation in third countries, would produce the outcome of altered (deteriorating) conditions for irregular migrants residing in North Africa, as there are consequences for- and violations of their human rights.

To take simple process tracing a step further in order to be able to compare cases, the authors of CPT summarise their version in the following way: "In sum, what we call CPT is a theoretically informed comparative approach that takes social and political processes seriously, combining elements of theory, chronology, and comparison to make general inferences possible".

Comparative Process Tracing has a broad basis, as the authors explain: "We claim that our approach to CPT, based on path dependence, critical junctures and political focal points, social mechanisms, periodization, and counterfactual analysis is fruitful for the comparative analysis of all types of processes related to political actors, for example, democratization, modernization, globalization, conflict and war, peace building, and revolutions".[28]

Therefore, it is safe to say that externalisation would qualify as fruitful for comparative analysis as it is a process related to political actors, since political actions and agreements are involved in the process of externalising migration control. However, the various elements and terms mentioned

---

[26] Bo Bengtsson and Hannu Ruonavaara, 'Comparative Process Tracing: Making Historical Comparison Structured and Focused', *Philosophy of the Social Sciences*, nr. 1 (2017) pp. 44-66.

[27] Ibid. p. 46.

[28] Ibid. p. 47.

above in CPT's definitions, require further explanation.

Path dependency is basically the process where an event or occurrence ultimately leads to, or at least affects, certain events that occur later in time. Path dependency means that there is a clear structure in the sequence of events and because of this, they can be aligned on the same historical trajectory.[29] The process of path dependency is essentially historical according to Bengtsson and Ruonavaara, and therefore "it can only be analysed historically, that is, by paying special attention to the temporally ordered sequence of events that lead to the outcome. Analysis in terms of path dependence must, therefore, be strong on historical description."[30] Consequently, this research opts for extensive historical description in order to analyse the elements and mechanisms which can be classified as path dependent.

In line with path dependency is the idea of critical junctures. "Critical junctures are transitional situations in which actors have the possibility to make choices that would open up a new path. Taking a new path is seen as creating a legacy, a new path dependence […]".[31] These junctures can be contrasted with political focal points, which are events that cannot be classified as critical junctures but rather, might indicate a confirmation or consolidation of the path dependent direction taken before. Through path dependency, mechanisms can be identified, which are causally productive patterns.[32] Bengtsson and Ruonavaara identify three important types of mechanisms in path dependency: efficiency, legitimacy and power mechanisms. In this research, mainly the first two types are relevant, as efficiency mechanisms entail the "actors' perceptions of economic and other benefits and costs attached to different choices of outcomes."[33] The legitimacy mechanism entails the perception of institutions as legitimate, that is, generally recognised as rightful or lawful authority, and therefore having advantages over alternative institutions.[34]

The elements of context and periodization are also important in CPT. "Periodization entails making a temporal comparison on the basis of similarities and differences considered essential."[35] This way, periodization facilitates historical analysis in the sense that it provides opportunities to understand processes and to discover causality between certain events.

In sum, Comparative Process Tracing will be used in this study to analyse the process of externalising migration control from Italy to Libya and from Spain to Morocco respectively, by tracing events, in order to identify mechanisms and patterns affecting the situation of irregular migrants in North Africa, which can be used for comparison.

---

[29] Bo Bengtsson and Hannu Ruonavaara (2017) p. 49.
[30] Ibid.
[31] Ibid. p. 52.
[32] Ibid. p. 53.
[33] Ibid. p. 55.
[34] Ibid.
[35] Ibid. p. 57.

In order to conduct a comparative case study, one would obviously need to select two or more cases to make comparison possible. Such cases need to involve the externalisation of migration control, and since migration control is mainly externalised by making deals with countries or governments, it would stand to reason to select two or more third countries, meaning non-EU member states, that have or had such agreements with EU Member States, in order to compare their differences and similarities. As there are many EU Member States with bilateral agreements regarding migration control with third countries, the choice for the selection of certain countries must be explained and motivated by arguments. Considering the nature of this research and especially its methodological components of CPT, requiring a very descriptive analysis, the choice for two – instead of three or more – countries has been made in order to limit the scope of the study and warrant its quality. In search of suitable candidates, the countries of North Africa would qualify, as well as Turkey, due to the fact that those countries have made deals with EU Member States regarding migration control in the past, and because most of these countries are struggling with providing decent provisions for the irregular migrants residing in their territories. As this study seeks to aim for bilateral agreements between EU Member States and third countries, rather than multilateral agreements which often involve the European Union itself, Turkey is excluded. Moreover, countless studies have already been carried out on the topic of the EU-Turkey deal of 2016 regarding the stem of migration flows and readmission to Turkey of irregular migrants.[36] Furthermore, Algeria is excluded, as despite its location (North Africa) and its bilateral agreements (with France), the country is relatively wealthy, was not involved in the Arab Spring and is not an important hub for irregular migration. Ultimately, the countries of Libya and Morocco were selected, or rather, the cases of externalisation of migration control between Libya and Italy; and Morocco and Spain. The selection of these cases is based on multiple reasons and considerations as there needs to be a balance in similarities and differences between the cases.

First of all, the similarities between the cases are significant. Both selected cases involve coastal countries in North Africa which have bilateral agreements regarding migration control with their direct EU neighbours, Italy and Spain respectively. Furthermore, both North African countries are, or have been in the past, major hubs in the flow of irregular migration. The West-African migration route entails the crossing of the Strait of Gibraltar, the journey by boat to the Canary Islands and the

---

[36] Gerda Heck and Sabine Hess, 'Tracing the Effects of the EU-Turkey Deal: The Momentum of the Multi-layered Turkish Border Regime', *Movements Journal*, nr. 3 (2017) p. 44.

storming of the gates of the Spanish exclaves of Ceuta and Melilla.[37] The Libyan, or central migration route involves the crossing of the Mediterranean Sea in an attempt to reach Malta or Italy. Both the western and the central migration route often involve human traffickers and people smugglers. Distinct differences between the cases are, among others, the level of political stability, as Morocco is considered to be relatively safe and peaceful, whereas Libya was caught in a full-scale civil war which resulted in the ousting and execution of Colonel Muammar Gaddafi in 2011 following the Arab Spring uprisings, only to be followed by years of strife, turmoil, terrorism and an ever looming renewal of civil war. Libya has a complex history when it comes to migration towards Europe. For many years, the Gaddafi regime has acted as a gatekeeper, preventing migrants from illegally entering Europe. The various deals with Italy regarding migration control will provide for interesting insights in the externalisation of migration control. The same can be said for the human rights situation in Libya, as a staggering amount of violations have been reported, among them violence, rape, detention and even slavery.[38] Unlike Libya, Morocco was not drawn into the chaos of the Arab Spring revolutions. Also, Morocco is a unique case since it is the only African country which has land borders with a European country, as the Spanish exclaves of Ceuta and Melilla are located along the North African coast. Therefore, the relations with Spain have an additional dimension when it comes to preventing irregular migrants from reaching EU territory.[39]

A structured comparison between Libya and Morocco, their bilateral agreements with the aforementioned EU countries and ultimately, the implications of the externalisation of migration control for the rights of irregular migrants, should provide for an interesting comparative case study.

---

[37] Isabella Alexander, 'Waiting to Burn: Spanish-Maghribi relations and the making of a new migrant class', *The Journal of North African studies*, nr. 2 (2019) p. 156.
[38] Nima Elbagir et al., 'People for Sale: Where lives are auctioned for $400', *CNN exclusive report*, https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html consulted on 28-05-2019.
[39] J. Carling, 'Migration control and migrant fatalities at the Spanish-African borders', *International Migration Review*, nr. 2 (2007) p. 328.

The State of Libya has a unique and complex history in regards to both its position in the international community, as well as to its role in stemming migratory flows towards Europe. Following the Italo-Turkish war in 1911-1912, Italy conquered the Ottoman provinces in Northern Africa, merging them together to form the colony of Italian Libya. Italy held on to its colony until officially relinquishing it in 1947, years after its defeat in World War II. When the subsequently established monarchy was overthrown in 1969, the new leader Muammar Gaddafi became Libya's *de facto* head of state, styling himself as *Brotherly Leader and Guide of the Revolution* in 1977, further consolidating his position.[40] Under the leadership of Gaddafi, Libya attained considerable wealth due to the exploitation of its vast oil fields. This wealth, paired with a relatively small population, made Libya one of the more prosperous countries of Africa.[41] However, Libya's riches were also used to buy weapons and finance a multitude of militias, guerrillas, and terrorist organisations around the world.[42] Furthermore, Libya was suspected of manufacturing chemical weapons. In the 1980s, tensions between Libya and the United States of America arose, especially after the Gulf of Sidra incident in 1981, when Libyan aircraft fired upon – and were subsequently shot down by – American fighter jets. Libya was sanctioned with an embargo and became an international outcast, especially after it was accused of bombing a Pan American flight, which crashed in Lockerbie, Scotland, resulting in the death of 270 people.[43] It was only after 2003, a year in which Libya accepted responsibility for the Lockerbie bombing and agreed to pay compensations, that the country's international pariah status gradually diminished.

A Special Relationship and the Treaty of Friendship

Italo-Libyan relations had been problematic under the regime of Gaddafi, especially since the so-called *day of revenge* in 1970, on which Libya expelled all Italians from its territory and confiscated all of their property. However, it was Italy which maintained diplomatic relations with Libya during the years in which the latter was considered a pariah by most of the world. Italy even played an important role in exporting Libyan oil while the American embargo was in place, which severely hampered the Libyan economy.

Italo-Libyan relations slowly developed during the 1990s when Italy became progressively

---

[40] Lindsey Hilsum, *Sandstorm: Libya in the time of revolution*, New York: Penguin Press 2012, p. 51.
[41] Ronald Bruce St. John, *Libya: From Colony to Revolution*, Oxford: Oneworld 2012, p. 78.
[42] Phil Haun, *Coercion, Survival, and War: Why Weak States Resist the United States*, Stanford: Stanford University Press 2015, p. 137.
[43] Steven Stottlemyre, 'Libya and the International System: Retracing the Aftermath of the Lockerbie Bombing', *Digest of Middle East Studies*, nr. 1 (2011) p. 54.

interested in fighting crime and illegal immigration stemming from overseas. Italy's joining of the Schengen area in November 1990, combined with the disintegration of both the Soviet Union and Yugoslavia, are key factors in Italy's growing interest in securing its borders and curbing illegal migration.[44] In the year 2000, the so-called *Memorandum of Intent* was concluded between Italy and Libya, an agreement with goals to stop organised crime, drug trafficking and irregular migration.[45] In the following years, additional agreements were made addressing irregular migration, among them a readmission agreement, a deal to set up detention centres in Libya, and schemes for deportations.[46] Italy has also financed various projects in Libya with the aim of addressing irregular migration. In order to prevent irregular migrants from reaching Italy, it would stand to reason to try and prevent them from reaching Libya in the first place. This would mean that the externalisation of migration control would produce a domino-effect, meaning that in turn, Libya would have to make sure that other countries assist in the prevention of irregular migration.

Italy has financed return flights of irregular migrants residing in Italy to Libya and subsequently, flights were arranged to return these migrants from Libya back to their home country.[47] Italy has also suggested in the past, on multiple occasions, to conduct joint patrolling operations with the Libyan coastguard on the Mediterranean Sea, especially near Libyan national waters, to prevent irregular migrants from trying to reach the Italian island of Lampedusa. A deal was made in late 2007 to indeed patrol the coasts together, and Italy vowed to provide six state of the art patrol boats to the Libyan coastguard to assist them in their duties.[48] Another Italian initiative revolved around the protection of Libya's southern borders. To this end, Italy made millions of euros available for technological border equipment and agreed to install radar systems to detect irregular migrants on the southern Libyan borders.[49]

The most notable Italo-Libyan accord followed in the year 2008, when Prime Minister Silvio Berlusconi reached an agreement with Muammar Gaddafi to pay five billion dollars in reparations, accounting for the occupation of the country during the time when it was an Italian colony.[50] These reparation payments were to be paid over the course of 25 years and consisted for a large part, of construction projects such as the building of infrastructure in Libya. Most of the construction projects greatly benefitted Italian companies who won the bids for the contracts. An example of such a project was the construction of an electronic barrier on Libya's southern border, which included a

---

[44] Paola Monzini, 'Sea-Border Crossings: The Organization of Irregular Migration to Italy', *Mediterranean Politics*, nr. 2 (2007) p. 164.
[45] Emanuela Paoletti (2011) p. 274.
[46] Rutvica Andrijasevic (2010) p. 154.
[47] Emanuela Paoletti (2011) p. 275.
[48] Ibid. p. 274.
[49] Ibid.
[50] Ibid.

remote command centre and drones to detect irregular migrants making their way to Libya.[51]

The aforementioned 2008 deal, otherwise known as the Treaty of Friendship, Partnership and Cooperation (ToF), included commitments of the Libyan authorities to actively pursue the prevention of irregular migration towards Italy. The five billion dollar in reparations notwithstanding, Berlusconi hailed the deal as a great success for Italy, emphasising that it would result in fewer migrants and more oil.[52] The crackdown on irregular migration by the Libyan authorities and the effective externalisation of migration control, led to widespread criticism of the bilateral agreement. The unclear nature of the treaty raised concerns about its democratic legitimacy and human rights organisations raised concerns over the fate of the migrants that were turned back.[53] Libya was effectively becoming a *gendarme* in the employ of European policies with regards to halting irregular migration. While the deals with Italy certainly diminished the central Mediterranean migratory flow towards Europe, the relations with Libya soon deteriorated. Muammar Gaddafi was very much aware of his position as gatekeeper for the European nations. Striving for more recognition of Libya's efforts and assuming more money was to be made from doing Europe's dirty work, Gaddafi demanded five billion euros a year. The colonel assumed his position was strong since he threatened Europe by otherwise unleashing a tsunami of migrants onto the European continent which would result in Europe turning black, referencing a huge influx of sub-Saharan migrants.[54] Although it is likely that Gaddafi would make due on such threats, he never got the opportunity to put his plan into action because only months later, Libya spiralled into civil war.

From Arab Spring Uprising to All-out Civil War

Following the uprisings in Tunisia a year prior, Libya too became the site of violent anti-government protests, starting in 2011. The Gaddafi regime had bought large quantities of arms and weaponry from European countries such as Italy, France, the United Kingdom and Germany in previous years, and did not shy away from using these weapons against its own citizens.[55] Due to the killing of civilians by the regime, the United Nations adopted a resolution to enforce a no-fly zone over Libya. The allied coalition followed through on its commitment to stop Gaddafi, and under the auspices of NATO, the regime was heavily bombarded. After a bloody civil war, the rebel forces prevailed due to the NATO assistance. The capital of Tripoli was captured and Muammar Gaddafi himself was killed in Sirte. After the war, several attempts were made to install a stable and legitimate government. The

---

[51] Luiza Bialasiewicz (2012) p. 859.
[52] Emanuela Paoletti, (2011) p. 274.
[53] Natalino Ronzitti (2009) p. 130.
[54] Ian Traynor, 'EU keen to strike deal with Muammar Gaddafi on immigration', *The Guardian*, https://www.theguardian.com/world/2010/sep/01/eu-muammar-gaddafi-immigration consulted 28-05-2019.
[55] Luiza Bialasiewicz (2012) p. 859.

National Transitional Council (NTC) ruled Libya until elections were held and the NTC transferred its powers to the General National Congress (GNC). The latter had a mandate to draft a national constitution. Failing to deliver before the deadline, the GNC called for new elections after which the newly formed House of Representatives came to power, with its base in eastern Libya. However, later that year, the GNC was reinstated in Tripoli, calling the House of Representatives illegitimate and vice versa. A new civil war ensued, which is still ongoing at the time of writing and has immersed Libya into chaos. While the House of Representatives maintains its position of power in the eastern part of Libya, often being called the Tobruk government, the newly styled Government of National Accord took up residence in Tripoli, with the backing of the United Nations. Libya remains divided, and with Field Marshal Khalifa Haftar leading the Tobruk government, large parts of the country have rallied to his side. Opposing the Islamist militias and their influence in the western part of Libya, Khalifa Haftar has recently marched in the direction of Tripoli, raising international concerns.[56]

Migration Crisis and the Memorandum of Understanding

While Libya was spiralling deeper into chaos, migrants from all over Africa, the Middle East and even further East, continued to arrive in the war-torn country, hoping to embark on the journey to Europe via the Libyan coast. These migrants included refugees from Eritrea and Syria, Asylum-seekers from Bangladesh, and many sub-Saharan economic migrants, mainly coming from Chad, Nigeria and Sudan.[57] In 2014, over 170.000 irregular migrants arrived in Italy, making use of the central Mediterranean route, with no sign of these numbers dwindling down.[58] The number of irregular migrants arriving in Europe, reached an unprecedented level in the summer of 2015 when over one million people crossed into Europe, using various routes.[59] A distinction can be made between the western African route towards Spain, the central Mediterranean route via Libya and the Balkan route via Turkey and Greece. Migrants made use of boats on all of these routes, but the central Mediterranean route became notoriously associated with the dangerous journey of migrants using small, overcrowded boats that were often in terrible condition. Unsettling reports of hundreds of migrants drowning before they could even lay their eyes on the European continent, prompted outrage from human rights organisations and European media. The alarming amount of migrant arrivals greatly concerned the EU and its Member States and a plethora of measures was taken in

---

[56] Wolfram Lacher, 'Libya's conflicts enter a dangerous new phase', *Stiftung Wissenschaft und Politik*, nr 8 (2019) p. 4.
[57] Martin Baldwin-Edwards and Derek Lutterbeck, 'Coping with the Libyan migration crisis', *Journal of Ethnic and Migration Studies*, nr. 2 (2018) p. 4.
[58] Ibid.
[59] Phillip Connor, 'Number of Refugees to Europe Surges to Record 1.3 Million in 2015', *Pew Research Center*, (2016).

order to stem the migratory flow. Among the measures were increased naval search and rescue missions, an extended mandate for FRONTEX to protect the external borders, and improved cooperation and coordination with third countries. The most notable achievement to date during the migrant crisis, was the so-called EU-Turkey statement, which made it possible to return irregular migrants back to Turkey. In exchange, Turkey initially received three billion euros, with prospects of up to three billion more.[60] The EU-Turkey statement was met with sharp criticism from human rights organisations who argued that Turkey was not deemed a *safe country* for migrants to be returned to. Regardless, the EU-Turkey cooperation scheme succeeded in dramatically reducing the migratory flows to Europe and can therefore be considered an accomplishment in externalising migration control.

Although the Libyan situation was profoundly different from the Turkish one, the EU-Turkey statement inspired Italy to approach the Tripoli government to conclude a similar pact. In 2017 the *Memorandum of Understanding* (MoU) was signed between the two countries, this time with EU approval. The MoU reiterated bilateral cooperation commitments made in the past, but was mainly geared towards effectively managing irregular migration. To this end, Italy agreed to assist the Libyan border guard, providing them with equipment, training and technology. The projects previously started along Libya's southern borders were to be finished and reinforced as well. Italy followed through on its commitments, with Marco Minniti, minister of the interior, convening a meeting with members of Libya's Tripoli government (GNA) and leaders of the most important Libyan clans and tribes operating in the south of the country. An agreement was made in which the clan leaders and the GNA committed themselves to cooperating in order to diminish the number of irregular migrants arriving in Libya, with Italy providing assistance, funds and training.[61]

The memorandum also included the building of temporary camps in Libya which are essentially detention centres.[62] The idea of building such camps was initially met with approval by the EU, but later on, serious concerns were raised. The camps themselves are not fully controlled by Libyan state authorities but rather by armed militias and clans. Reports were made, stating that the camps had been transformed into unlawful detention centres in which the human rights of irregular migrants were severely and frequently violated.[63] Furthermore, the Tobruk government, while controlling large parts of Libya, is not involved in the memorandum and has declared it invalid.[64] Concerns were raised that because of the GNA's limited control beyond Tripoli, the militias

---

[60] European Council, 'EU-Turkey statement 18 march 2016', https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ consulted 20-05-2019.
[61] Andrea Guttry et al. (2018) p.53.
[62] Ibid.
[63] Human Rights Watch, 'No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya', (2019).
[64] Andrea de Guttry et al. (2018) p. 55.

associated with them were allies in name only and are in actuality, actively involved in the smuggling-and human trafficking business.[65] Especially in the area of the city of Sebha, people trafficking has become an important source of income for many southern Libyan families.[66] Conversely, the MoU has also ushered in the new phenomenon of militias ceasing their smuggling activities and instead, are now trying to launder their reputation by participating in the efforts of halting irregular migration flows.[67] The militias are now divided between those who are in the human smuggling business and those who are in the anti-human smuggling business. As both businesses are profitable, but the latter having the advantage of official approval of the GNA and Italy, many militias opt for the outlawing and combating of human traffickers.[68] The co-option of Libyan militias in efforts to curb irregular migration, paired with the increased capabilities of the Libyan coastguard, has resulted in a dramatic decline in arrivals of irregular migrants in Malta and Italy.[69] Libya has even been replaced by Tunisia as the main country of departure for migrants using the central Mediterranean route.[70] This does not mean that there are no longer irregular migrants in Libya, nor that they will stop entering its territory. It only means that migrants are now trapped in Libya, often quite literally when being detained indefinitely, with nowhere to go. In sum, the Memorandum of Understanding seems to have achieved its goal of stemming migratory flows, but at what costs for migrants' human rights?

Human Rights Considerations: The Living Hell of irregular migrants in Libya

Virtually all of the Italo-Libyan agreements involving irregular migration, have been met with criticism and concern by a multitude of human rights organisations. Muammar Gaddafi would state in public that he was committed to protecting human rights, but in practice many violations were reported during his regime, among them the killing of an estimated 1270 prisoners in 1996.[71] Therefore, cooperating with such a regime may suggest that the Italian government condoned or simply ignored the atrocities committed by the Libyan regime. Italy is party to numerous treaties and conventions such as the 1951 Geneva Convention and the European Convention on Human Rights. Furthermore, human rights are considered to be universal, as proclaimed in in the Universal Declaration of Human

---

[65] Abdulrahman al-Arabi, 'Local Specificities of Migration in Libya: Challenges and Solutions', *Robert Schuman Centre*, nr. 4 (2018) p. 3.
[66] Ibid. p. 7.
[67] Mark Micallef and Tuesday Reitano, 'The anti-human smuggling business and Libya's political end game', *North Africa Report*, nr. 2 (2017) p. 11.
[68] Ibid.
[69] Frontex 'Migratory Routes', https://frontex.europa.eu/along-eu-borders/migratory-routes/central-mediterranean-route/ consulted 5-6-2019.
[70] Ibid.
[71] Human Rights Watch, 'Libya: June 1996 Killings at Abu Salim Prison', (2006) https://www.hrw.org/news/2006/06/27/libya-june-1996-killings-abu-salim-prison consulted 8-6-2019.

Rights and as such, every human being, including migrants, have them. The rights of migrants include, but are not limited to: the right to life, protection against arbitrary arrest and detention, protection against inhuman treatment and torture, protection against labour exploitation, and the freedom of movement.[72] Additionally, practices of (mass) expulsion are prohibited and persons may not be returned to a country where they could face persecution, violence, torture or murder.[73][74] By making deals with Libya, Italy may have been complicit in violating the rights of migrants or may be partly responsible due to culpable negligence or the feigning of ignorance.

The most persistent allegations towards Italy, revolve around the returning of irregular migrants back to Libya. In 2004, the Italian government returned hundreds of undocumented migrants to Libya by plane, from the small island of Lampedusa. These migrants had not been able to apply for asylum and were collectively expelled to a country that had no asylum system of its own.[75] Moreover, the Italian navy started intercepting migrant ships in the spring of 2009 and returned hundreds of people this way back to Libya.[76] These so-called push-backs were a violation of migrants' rights to free movement in addition to violating the principle of *non-refoulement*. The latter is an important principle in international law which was included in the 1951 Geneva Convention and initially stated that refugees are not to be returned to territories where their lives or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.[77]

In 2012 the European Court of Human Rights ruled in a landmark judgment, that Italy had violated the principle of *non-refoulement* in a case that came to be known as *Hirsi Jamaa*. In this case, a ship with migrants hailing from Somalia and Eritrea, was stopped by the Italian coastguard and subsequently returned to Libya. *Hirsi Jamaa* not only signified that a European country had violated international law, it also established that the principle of *non-refoulement* also applies to extraterritorial actions of a state, including those on the high sea.[78]

Despite the fact that Italy officially ceased its activities of illegally returning migrants back to Libya, its practices to date are still under the heightened scrutiny of human rights organisations. Shifting the focus from actively returning migrants towards policies of deterrence and prevention, it can still be argued that Italy makes it impossible for migrants to exercise their right of free movement. Furthermore, its bilateral cooperation with Libya, a country marred by an ongoing civil war, raises

---

[72] Universal Declaration of Human Rights, https://www.un.org/en/universal-declaration-human-rights/.
[73] United Nations Convention relating to the Status of Refugees, https://www.unhcr.org/3b66c2aa10.
[74] Council of Europe, *Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean*, 2019.
[75] Rutvica Andrijasevic, (2010) p. 149.
[76] Emanuela Paoletti (2011) p. 276.
[77] FRA, 'Scope of the principle of non-refoulement in contemporary border management: evolving areas of law', European Union Agency for Fundamental Rights, 2016.
[78] ECtHR - Hirsi Jamaa and Others v Italy, application nr. 27765/09.

questions as to whether Italy is more concerned with stemming migratory flows than with considerations for the protection of human rights.

The Memorandum of Understanding included, as previously mentioned, agreements of facilitating the construction of temporary camps for irregular migrants. The most horrific reports on the gross violation of human rights originate from these camps, which are, in actuality, detention centres.[79] These detention centres are generally inhuman and do not meet international standards for such facilities. Migrants are kept in makeshift camps, which vary from hangars, warehouses and apartment blocks, to former schools and farms. The locations are overcrowded, with little to no ventilation, limited or no access to drinking water and they do not provide enough food, nor the possibility for the detainees to contact the outside world.[80]

Migrants are brought to detention centres by militias, human traffickers, and sometimes also by regular civilians, for instance when they have a conflict about paying the migrant for his labour. The detention centres themselves are usually run by militias and human traffickers. It is common practice that the migrants in such detention centres are being held to ransom, with their captors demanding money from the migrant's families back home for their release. Migrants are moved around from one camp to another, facing hardships at every step of the way. In the centres themselves, migrants are subject to all kinds of violence, with frequent beatings taking the lead as the most widely reported offense. Many migrants are beaten by their captors, sometimes with metal pipes or ropes and on occasion, are even beaten to death. Furthermore, migrants have been exposed to torture practices and many other forms of physical harm.[81] Female detainees have been subjected to all kinds of sexual violence, with the Libyan jailors frequently raping them and on many occasion forcing them to prostitute themselves.[82]

Of the reported atrocities, the one garnering the most attention followed after CNN reported that sub-Saharan migrants were being sold to the highest bidder on Libyan slave markets.[83] It was previously reported that migrants were being forced to perform heavy labour for little to no pay, but the actual selling and trading of human beings was unprecedented news. The report was met with reactions of strong indignation over- and condemnation of- this modern-day slavery.

Following the reports on slavery, several thousand migrants were evacuated from Libya, returning to their country of origin. Plans to further combat human trafficking were made as well, but, considering the ongoing chaos in Libya and with the Tripoli government often lacking the

---

[79] Martin Baldwin-Edwards and Derek Lutterbeck (2018) p. 14.
[80] UN report. 'Desperate and Dangerous […]', (2018) p. 5.
[81] Ibid. p. 44.
[82] Ibid.
[83] Nima Elbagir et al. (2017).

capacity to act, these plans are expected to have little effect. Therefore, slavery is likely to persist in the country, establishing a new low in regards to the protection of human rights in the country.

The Role of Italy: Complicity in Libyan crimes?

Libya has certainly spiralled into chaos over the last decade. The Italo-Libyan bilateral agreements made with the aim of stemming irregular migratory flows, have had considerable effect, yet have also had adverse effects on the well-being of migrants residing in Libya. Italy has been reprimanded for its expulsion and *refoulement* activities in the past but concerns remain that the country might be involved in facilitating human rights violations in Libya. Whereas the Treaty of Friendship was thought of as achieving more oil and fewer migrants, the Memorandum of Understanding can be thought of as laying the foundations for unlawful detention centres. The various schemes in which Italy provides equipment and funds for deterring irregular migration in Libya, include elements of shifting responsibility for the protection of human rights to Libyan authorities and militias. Furthermore, the enlisting of local militias in anti-human trafficking efforts, has resulted in the emergence of slave markets because more profits can be made in selling sub-Saharan migrants, rather than smuggling them to Europe.

On the one hand, Italy should reconsider providing funds to Libyan factions, as providing such funds may worsen the position of irregular migrants in Libya. Furthermore, the United Nations International Law Commission has made clear that states can be held responsible for internationally wrongful acts, stating in article 16 of its 2001 report:[84]

> A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
> a. That State does so with knowledge of the circumstances of the internationally wrongful act; and
> b. The act would be internationally wrongful if committed by that State.

On the other hand, Italy has been the forerunner in maintaining a dialogue with Libya and has been party to a multitude of initiatives to aid and assist Libya in multiple ways in order for it to become a member of the international community again. It can be argued that Italy has a genuine interest in seeing Libya succeed in becoming a stable country again. If Libya can be deemed a *safe country* again, irregular migrants can be legally returned to its territory in a similar fashion to the EU-Turkey deal.

---

[84] International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, 2001, https://casebook.icrc.org/case-study/international-law-commission-articles-state-responsibility consulted 18-06-2019.

Besides, aiding Libya in constructing migrant centres does not prove that Italy supports the atrocities committed within their walls.

In sum, the Italo-Libyan bilateral agreements can be regarded as having both beneficial as well as negative effects. The hardening of the Libyan stance on irregular migrants in its territory can, for a large part, be attributed to the increased securitisation of Italian and European migration policies. The abundant human rights violations committed in Libya cannot solely be attributed to Italian efforts to stem migration flows. One should not forget that Libya is in the midst of a civil war with many armed factions vying for power. Therefore, it is almost impossible to guarantee the safety and well-being of migrants in Libya, and the stabilisation of the country should have the highest priority after which the fate of irregular migrants could be improved. In this chapter, it has become clear that externalisation of migration control treaties such as the *Treaty of Friendship* and the *Memorandum of Understanding*, as well as other Italian efforts, have had negative consequences for the rights of irregular migrants residing in Libya. The increased securitisation of Libya's borders, incentivised by Italian efforts to curb migration flows, has resulted in thousands of irregular migrants being 'stuck' in Libya, a country in the midst of civil war and with an abysmal record in regards to the protection of human rights.

Morocco: A key partner in European migration control

For centuries, people have crossed the narrow Strait of Gibraltar in order to reach the Iberian Peninsula from the land that is now known as Morocco and vice versa. The strait, separating the continents of Europe and Africa, is at its most narrow point only fourteen kilometres wide and therefore, can easily be traversed by any seaworthy vessel. Consequently, interactions between the peoples from Iberia and North Africa have been abundant throughout history. In the year 711, the Moorish commander Tariq ibn Ziyad crossed the strait, which was later named after him, with 7000 troops and defeated the Visigoths. The Moors quickly conquered most of the Iberian Peninsula and established a dynasty of their own which would last until 1492, when the last Moorish stronghold of Granada fell to the armies of Aragon and Castile.

Centuries later, the roles of conquest were reversed when both France and Spain established protectorates in Morocco. Spain had previously acquired the coastal cities of Ceuta and Melilla and wished to increase its sphere of influence along the North African coast by striking a deal over the territories with France in 1912, which also included territory in southern Morocco. When the protectorates were relinquished in 1956, the independent Kingdom of Morocco emerged. Spain initially held on to parts of its territory but had to give them up over the years, only retaining the two exclave cities along the coast and some minor islands. The territories are still disputed to this day, with Morocco regarding them as occupied by a foreign nation. In spite of these disputes and the occasional diplomatic spat, the Spanish-Moroccan relationship is considered to be a close one, with the nations cooperating in the fields of development, mobility, trade and migration. However, pressures have been put on both countries because of the increasing amount of irregular migrants making their way to Spain through Morocco. Therefore, cooperation between the two countries has become progressively geared towards migration management and control.

The importance of migration and migration control

Due to its proximity to North Africa, Spain is especially vulnerable to irregular migration. Various routes for reaching Spanish territory are used by migrants. The Strait of Gibraltar is the most straightforward pressure point, but migrants do not only arrive in the province of Cadiz, many also come ashore along other parts of the Andalusian coastline.[85] Furthermore, the Canary Islands also face the problem of numerous small boats reaching their shores, not only coming from Morocco, but also from Mauritania, Senegal and further south. The Spanish exclaves of Ceuta and Melilla deserve special mention, since it is here that the only land borders between Europe and Africa are located.

---

[85] Susana Ferreira, 2019, p. 146.

Therefore, the situation revolving around irregular migration is quite unique in these territories and requires a tailor-made approach.

With the aim of stemming irregular migration, Spain concluded a readmission agreement with Morocco in 1992 in which the first article read:

> *At the formal request of the border authorities of the requesting State, border authorities of the requested State shall readmit in its territory the third-country nationals who have illegally entered the territory of the requesting State from the requested State.*[86]

Although this agreement was signed by both parties, Morocco was reluctant to honour Spanish readmission requests and the agreement only became relevant again in the 21st century, after the European Union decreed that all cooperation agreements with third countries required readmission clauses.[87] Morocco has much to gain from good relations with the European Union and its individual Member States. Many Moroccans reside in countries such as France, Belgium and the Netherlands and send remittances back to their home country. Unsurprisingly, this is also true for Moroccans in Spain, but due to the geographical proximity between the two countries, a lot of seasonal workers cross the Strait of Gibraltar every year as well, contributing among other things, to the Spanish agricultural sector. Foreign migrants are of importance to the Spanish economy and the Spanish government has implemented yearly quotas for labour migration in an attempt to manage such migratory flows. Furthermore, on six occasions in the period between 1985 and 2005, the Spanish government has implemented extraordinary regularisations, which legalised over a million people residing in its territory.[88] Morocco has for a long time been a so-called country of origin, meaning that it is a migrant-sending country. This changed during the 1980s and 1990s, partly due to the Spanish accession to the European Union in 1986, with Morocco progressively transforming into a country of transit.[89] The influx of irregular migrants in Spain, as well as Morocco, has put pressure on both countries, and restrictive policies were implemented, especially in Spain.

With the arrival of many sub-Saharan migrants in Morocco, attempting to reach Spain, the Spanish authorities invested in a state of the art surveillance system called SIVE. This system successfully detects all sorts of anomalies along the Spanish land and sea borders, and focuses in particular on small migrant boats called *pateras.*[90] The effectiveness of the system is remarkable and has been hailed as a successful tool in the detection of irregular migrants and has inspired the EU to develop a

---

[86] Readmission agreement – translated version: https://therightsangle.wordpress.com/2013/12/19/the-1992-spanish-morocco-readmission-agreement-in-english/ consulted on 12-06-2019.
[87] Katharina Natter (2014) p.18.
[88] Susana Ferreira 2019, p. 157.
[89] Katharina Natter (2014) p.17.
[90] Daniel X.O. Fisher, 'Situating Border Control: Unpacking Spain's SIVE border surveillance assemblage', *Political Geography*, (2018) p. 68.

similar system called EUROSUR which is used by Frontex.

The cooperation between Spain and Morocco in managing irregular migration has progressively increased over the years. This cooperation led to increased coordination of migration policies, increased communication between migration officials, and the joint patrolling of borders.[91] In 2005, hundreds of sub-Saharan migrants jumped the fences of Ceuta and Melilla, resulting in a tougher stance of the Moroccan border guards who did not shy away from resorting to violence. Repressive attitudes towards sub-Saharan migrants trying to reach Ceuta and Melilla, resulted in the shifting of the migration route to the Canary Islands. This shift led to the *Cayucos boat crisis* in 2006, when over 31.000 migrants arrived on the Canary Islands.[92] In order to cope with the sudden influx of such a high number of migrants, Spain received help from other EU members and from the Frontex agency. Remarkably, the most effective contribution came from migrant sending countries such as Mauritania and Senegal, when they allowed Spain to patrol and monitor their coasts, and new agreements between the countries were signed.[93] These agreements allowed for the interception and return of irregular migrants, resulting in a swift reduction of boat arrivals on the Canary Islands.

The special case of Ceuta and Melilla: Outposts of Fortress Europe?

The only land borders between Europe and Africa are located in Morocco. The Spanish exclaves of Ceuta and Melilla are situated along the North African coast and share a land border with Morocco. Both exclaves have become the destination target of thousands of irregular, sub-Saharan migrants over the years. In general, land borders are more easily crossed than sea straits, especially for migrants who do not have enough money to pay for the crossing and in many cases, are not able to swim. Recognising the imminent threat of thousands of sub-Saharans seeking to enter Spanish territory, the authorities in Ceuta and Melilla resorted to building fences along the land borders with Morocco in an attempt to keep irregular migrants out. Even though Ceuta and Melilla were attractive destinations for migrants in the past, it was especially during the 21st century that media attention was garnered for the situation.

The borders of both exclaves are equipped with multiple layers of fences which are topped with barbed wire and razorblades. The fences span the entirety of the border with Morocco, except for a guarded, legal entry point for migrant workers and transports. The fences are patrolled by Spanish *Guardia Civil* border guards and equipped with cameras. In spite of all these efforts, sub-

---

[91] Maribel Casas-Cortes, et al. (2016) p. 235.
[92] Ibid. p. 241.
[93] José Maria Rodriguez, 'Spain's handling of the Cayuco boat crisis' (2017)
https://www.euractiv.com/section/justice-home-affairs/news/spains-handling-of-the-cayuco-boat-crisis/
consulted on 14-06-2019.

Saharan migrants have performed mass assaults on the exclaves, hoping to enter the territory and 'triggering' Spanish obligations of providing the opportunity to apply for asylum. These assaults consist of hundreds of migrants storming the fences at the same time, hoping to catch most of the *Guardia Civil* off guard. The migrants prepare their assault while residing in nearby forests where they live in make-shift tent camps. The assaults are often guided by so-called migrant mafias who charge money for coordination and organisation.[94] The migrants try to scale the fences, sometimes equipping their shoes with bolts and screws for better grip, while hurling rocks, feces and battery acid at the border police.[95] Many of those who make it to the other side are covered with cuts and bruises. The ones unable to climb down from the fences are brought down with ladders from the *Guardia Civil*. On several occasions, migrants have been immediately returned to Morocco, raising questions relating to the principle of *non-refoulement*. In 2018, similar immediate deportations were carried out, a day after 116 migrants had stormed the fences of Ceuta.[96] This time, the deportations were claimed to be legitimate, based on the 1992 readmission agreement between Spain and Morocco, and considering the fact that each migrant had received legal counsel.[97]

The Moroccan *gendarmes* cooperate with the Spanish authorities to prevent assaults on the Spanish exclaves. In 2012, such a *gendarme* died during an assault while migrants claimed that the Moroccans had used fatal violence against them as well.[98] Furthermore, frequent raids of the forest camps where migrants reside are carried out by the Moroccan *gendarmes* in which they smash or burn the tents and take away belongings such as cell phones.[99] The Moroccan authorities carry out subsequent deportations. The sub-Saharan migrants are transported in buses to the border with Algeria. There, they are left behind in the inhospitable, sweltering desert. From there, many try to make their way to the city of Oujda, a journey on which not everyone is able to survive, as many migrants die from exposure.[100] Those that survive, run the risk of falling victim to Moroccan gangs who operate in the area, looking for easy targets to beat, rape, and steal from.[101] Once in Oujda, migrants hope to make some money to begin their quest of reaching Spanish territory, all over again.

The externalisation of migration control

---

[94] Oscar Lopez-Fonseca, 'Migrant mafias charging €18 for a chance to jump the border fence', *El País*, https://elpais.com/elpais/2018/08/23/inenglish/1535011686_744110.html consulted 22-06-2019.
[95] Ibid.
[96] Amnesty International (2018) https://www.amnesty.org/en/latest/news/2018/09/morocco-relentless-crackdown-on-thousands-of-sub-saharan-migrants-and-refugees-is-unlawful/ consulted 22-06-2019.
[97] Ibid.
[98] Ruben Andersson, 'A game of risk: Boat migration and the business of bordering Europe', *Anthropology Today*, nr. 6 (2012) p.11.
[99] Amnesty International (2018)
[100] Isabella Alexander (2019) p. 163.
[101] Ibid.

Over the past decade, Morocco has adopted a restrictive approach in shaping its policies regarding migration and in doing so, it has largely emulated European approaches and discourses.[102] Morocco had changed from a migrant-sending country to a country of transit for many sub-Saharan migrants, hoping to enter Europe. Morocco increased its cooperation with Spain and the European Union in the form of a migration and mobility partnership in 2013, and made considerable efforts to secure its own national borders. The attitudes towards irregular migrants changed considerably. However, while the influx of irregular migrants was still increasing, King Mohammed VI of Morocco made the extraordinary decision of regularising almost 18.000 migrants in 2013, granting them legal status in the country for one year.[103] This decision cannot be easily explained, as it might have been a gesture towards the EU or to irregular migrants themselves, but it is also believed that Morocco sought to embrace a new role and had shifted its EU-focus to a more pro-Africa one. Despite the fact that sub-Saharan migrants face racism and discrimination in Morocco, the country also recognises the potential of migrant workers for the Moroccan economy. Especially due to cooperation with- and funding by- Spain and the European Union, Morocco has become a relatively wealthy place. Because the borders with Europe are increasingly difficult to cross due to Spanish and Moroccan efforts, many migrants opt for settling in Morocco instead. Morocco has become a country of destination instead of merely a hub of transit for irregular migrants.[104] Although many migrants still hold on to the dream of reaching Europe one day, they realise that such a dream is not likely to materialise as they have no legal documents, no qualifications and are generally not welcome in Europe.

Ever since the central Mediterranean migration route between Libya and Italy was all but closed down following the signing of the *Memorandum of Understanding* between the countries, the flow of irregular migration shifted to Morocco.[105] Due to the increased migratory pressure that was put on Morocco because of this, Spain has vowed to provide a helping hand and has called upon the European Union to make an effort in aiding Morocco as well. The EU has committed 148 million euro in migration related assistance in 2018, divided in several support programmes.[106] These funds were in addition to the millions already made available through the mobility partnership and the millions provided by Spain unilaterally. This means that quite literally, Spain and the EU are paying Morocco to manage irregular migration on their behalf, as it is in Spain's interest to stem irregular migration flows. The increased funding and cooperation entail other

---

[102] Mohamed Berriane, Hein de Haas and Katharina Natter, 'Introduction: revisiting Moroccan migrations', *The Journal of North African Studies*, nr. 4 (2015) p. 515.
[103] Ibid.
[104] Ibid.
[105] Frontex, https://frontex.europa.eu/media-centre/news-release/number-of-irregular-crossings-at-europe-s-borders-at-lowest-level-in-5-years-ZfkoRu consulted 22-06-2019.
[106] European Commission press release, 'Western Mediterranean Route: EU reinforces support to Morocco', Brussels, 14 December 2018, IP/18/6705.

elements as well, including trade, education and visa arrangements for Moroccan nationals. However, the main focus of Spain is on preventing irregular migrants from reaching its borders. In providing the Moroccans with funding and equipment, Spain has effectively involved them in its migration policy, which is focused on increased security and deterrence. This externalisation of migration control seems to have little regard for the rights of migrants in Morocco because the goal is simply to keep them out. This falls in line with other European policies and practices of striking deals with authoritarian regimes with poor track records for the protection of human rights, such as the Italo-Libyan deals and the EU-Turkey deal. Therefore, the question of Spanish complicity in outsourcing human rights violations is similar to the Italian one, posed in the previous chapter.

The cooperation of third countries in these externalisation practices does not only provide them with funding and legitimacy, they also offer an opportunity to exercise power over Europe. On several occasions, third countries have more or less threatened to relax their migration control, hoping to acquire more funding and commitment from European states.[107] Hence, the mutual interests need to be guaranteed for cooperation to be truly effective. In this regard, the Spanish-Moroccan cooperation has proven to be successful, as a new agreement has been made between the countries, making it possible for Spanish border guards to return migrants to Moroccan ports when intercepted near the African coast, instead of taking them to Spain.[108] Spanish-Moroccan efforts to stem the flow of irregular migration, have resulted in fewer arrivals. In 2018, nearly 60 thousand irregular migrants made use of the western Mediterranean route via Morocco, while halfway through 2019 their numbers have not yet exceeded 10 thousand.[109]

In sum, Spanish-Moroccan bilateral arrangements have effectively diminished the flow of irregular migration in the past, and are bound to do so again. While Spain has multiple interests regarding its southern neighbour, the bilateral agreements regarding migration are seemingly prioritised, calling Spain's commitment to the protection of human rights into question by associating with an authoritarian regime with little regard for such matters.

---

[107] Susana Ferreira 2019, p. 171.
[108] María Martín, 'Spain and Morocco reach deal to curb irregular migration flows', *El País*, https://elpais.com/elpais/2019/02/21/inenglish/1550736538_089908.html consulted 22-06-2019.
[109] IOM press release (2019) https://www.iom.int/news/mediterranean-migrant-arrivals-reach-26090-2019-deaths-reach-597 consulted 22-06-2019.

As Bengtsson and Ruonavaara explained when they introduced their Comparative Process Tracing method: "[…] processes consist of *sequences of events* that are ultimately product of actors' actions and interactions. And the analysis concerns how and from what "beginnings" (point A) certain institutions or policies have become what they are at point B."[110]

The process of externalising migration control did not happen overnight but rather, has developed over the past decades and requires identification of events affecting the current state of affairs in third countries in regards to the protection of migrant rights. The process of externalising migration control has been traced through time in two cases, the one of Libya and its relations with Italy, and the one of Morocco and its relations with Spain. As described in the previous chapters, the bilateral agreements are the focal points for the analysis of the impact of externalisation agreements on migrant rights, as they are regarded as the starting point and main incentive for third countries to adhere to European migration policies. Subsequently, the impact of *events* and *mechanisms* in the process of externalisation on the rights of migrants is evaluated.

Libya and Morocco share a lot of similarities. Both countries have similar geographical positions, being situated in North Africa, on the coast of the Mediterranean Sea. Because of this, they have had relations with European countries for centuries. Both countries have been colonies of European powers, giving the relationship with their European neighbours a multi-layered dimension. Libya and Morocco have experienced strife and resentment in their relations with their former overlords, and some tensions still persist. However, the Italo-Libyan and the Spanish-Moroccan relations have developed considerably in the 21st century, with Italy and Spain being the most important European partners of their North African neighbours. With the increase of irregular migration, the relationships between the European and African states changed. European countries struggled with the influx of irregular migrants reaching their territory, increasingly classifying the phenomenon as a security problem.[111] Both Italy and Spain sought to involve their African neighbour in the practice of stemming irregular migration flows. To this end, bilateral agreements were made during the 1990s, which established cooperation in the field of countering illegal migration from Africa to Europe. Although these early agreements had little effect on actually stopping migrants from reaching European soil, they are still an indication of the intentions of European states and can be regarded as the starting point of cooperation in the field of migration control between Europe and Africa. In the early 2000s, both Spain and Italy wanted to increase cooperation with Morocco and Libya

---

[110] Bo Bengtsson and Hannu Ruonavaara (2017) p. 55.
[111] J. Huysmans (2000) p. 756.

respectively, although in both cases, practices of expelling irregular migrants, restricting access, and increasing border surveillance, were met with criticism from human rights organisations. Fundamental changes in policy and in the level of cooperation on migration control were established in this time period. Spain managed to bring an end to the *Cayuco boat crisis* in 2006 by making agreements with African countries who allowed the *Guardia Civil* to patrol their coastline. Italy concluded a *Treaty of Friendship* with Muammar Gaddafi, in which joint patrols and increased cooperation in the field of irregular migration were established. Both events are prime examples of externalisation of migration control. Both events also build on previous arrangements and can therefore be classified as political focal points in the process of path dependency, continuing the historical trajectory of increasing cooperation in regards to migration, while restricting and securitising the borders between the continents.

The Arab Spring uprisings in multiple North African countries ushered in a new era of migration related problems. This was especially true for the case of Libya, as Colonel Muammar Gaddafi, who had functioned as a gatekeeper for the passage to Europe, was killed by the Libyan rebels. With his death, Libya was plunged into chaos as multiple factions, militias and governments emerged, vying for control of- and power over the country. This event can be considered a *crucial juncture* as the rather stable control of Gaddafi over irregular migration ceased to exist and in its place, new governments emerged who were unable or unwilling to commit themselves to policing the Libyan borders, merely to do Europe a favour.

In the years that followed, irregular migration soared and Libya became the main transit hub for hundreds of thousands of people. Italy made every effort to include Libya in its objective of stemming migration flows. Equipment, patrol boats, radar installations, police training missions and millions of euros were invested to assist the Libyans in establishing effective and restrictive migration management measures. The 2017 *Memorandum of Understanding* signifies a new chapter in the Italo-Libyan cooperation. While this treaty can easily be described as a *crucial juncture* as it clearly provided unprecedented measures for managing migration, it can also be regarded as a political focal point as it is a continuation and culmination of the previously established cooperation in the field of migration control. However, the treaty also sparked a lot of criticism as Italy could be implicated in human rights violations, externalising the responsibility for the protection of migrants' rights to a country with a very poor record in this field, in addition to being a country in civil war.

In Morocco, while migration pressures were mounting, King Mohammed VI regularised thousands of illegally residing migrants for a period of one year. This action can be classified as a *crucial juncture*, as Morocco was mimicking the restrictive migration policies of Europe, but now changed its focus to what would appear to be a more lenient approach to migration as well as to a more Africa-oriented

vision. The king's decision contributed to a broader strategy in which Morocco is shifting from being a country of transit, to becoming a country of destination for migrants. At the same time, Morocco continues its cooperation with the Spanish authorities and the European Union has also contributed to the funding of migration deterring policies. While Morocco has recently faced an increase in the number of migrants arriving in the country, it has also intensified its cooperation with Europe, and Spain in particular, acting as a buffer state in exchange for financial support.

Even though the Arab Spring uprisings have not substantially affected Morocco, the country's relatively stable conditions have not prevented the occurrence of migrants' human rights violations. While human rights violations in Libya can for a large part be attributed to the immersion of the country in war and chaos, the same cannot be said of Morocco, which is deemed a rather safe and stable country. Hence, a different explanation is required, one relating to the externalisation practices of European countries.

The externalisation of migration control to Africa has affected the way in which irregular migrants are perceived and treated in Libya and Morocco. Bilateral agreements, including less official schemes and practices, have been *events* in the externalisation of migration control. These agreements have consistently contributed to the externalisation of migration control and progressively restricted irregular migration. Due to the increasing number of agreements being made, it has become clear that the externalisation of migration control is on a continuous path. The drafting and signing of additional migration control agreements has depended on previous relations and arrangements between the European and African states involved. Every agreement and form of cooperation in this regard may be seen as a stepping stone in the process of externalising migration control and restricting irregular migration. It is through the tracing of this path dependent trajectory that several causal patterns or *mechanisms*, can be identified.

The efficiency mechanism can be identified when looking at the perception of actors in regards to economic benefits related to the outcome of a choice or decision. In the case of Libya, clear economic benefits were involved in Libya's decision to cooperate with Italy on migration control. Libya received boats, equipment, training, technology, and millions of euros from Italy. In the case of Morocco, economic benefits also played a role in accepting deals with European countries, as the EU is the most important trading partner for Morocco and future accords required the signing of readmission agreements. Furthermore, like Libya, Morocco also received millions of euros to curb irregular migration. For both Libya and Morocco, the bilateral agreements involved substantial economic benefits.

The efficiency mechanism can also be identified in the behaviour of militias operating in Libya. Due to the externalisation of migration control, Libyan militias initially seized the opportunity to

increase their smuggling and human trafficking profits and revenues. Later on, militias switched from trafficking to anti-trafficking activities, since better profits could be made due to Italian funding of restrictive Libyan migration measures. Overall, the decisions made by Libyan and Moroccan actors, have involved strong economic considerations due to the incentives provided through externalisation of migration control agreements.

The legitimacy mechanism also plays a role in the externalisation of migration control and its impact on the protection of human rights. In the case of Libya, after the fall of Gaddafi, multiple factions and governments emerged, vying for power. By signing agreements with European states, Tripoli's GNA acquired much desired international recognition of its rule over Libya. As such, the GNA could style itself as the legitimate government of Libya, thereby having an advantage over the Tobruk government in the eastern part of the country. The previously discussed role of militias is also important in regards to legitimacy. The switching of militias from illegal, to legal activities provided them with opportunities to be recognised as legitimate authorities, thereby retaining control over their territories and obscuring their former crimes, while gaining advantages over their competitors.

In both cases, power mechanisms can be identified in the externalisation events. The ability of European states to make North African states comply with their wishes and involve them in European migration policies is one example. Conversely, Libya and Morocco now hold some power over Europe in the sense that they have become buffer states which function as gatekeepers. Like they have in the past, both countries can threaten to put an end to the cooperation with Europe and release a 'wave' of irregular migrants, should Europe not take them seriously. Furthermore, the powers and mandates of Libyan and Moroccan migration authorities have expanded when it comes to dealing with irregular migrants. The mechanisms of efficiency, legitimacy and power have all been identified in the events contributing to the externalisation of migration control.

In both cases, migratory pressures led to the need for European countries to involve North African countries in migration control. The main interest of Spain and Italy in signing bilateral agreements with Libya and Morocco, has been the stemming of irregular migration flows, without specifying how this should be done, leaving the North African countries to decide this for themselves. However, standards for the protection of human rights are considerably lower in North Africa than they are in Europe. Furthermore, Libya and Morocco are less developed in a lot of areas when compared to European countries. In regard to democracy, economy, and institutions, Libya and Morocco have a long way to go before they reach European levels. As such, it should come as no surprise that by cracking down on irregular migrants, human rights considerations were not prioritised.

The major difference between Morocco and Libya, is that the latter has been engaged in civil war and chaos for the better part of a decade. Admittedly, the human rights violations in Libya have

been much more severe than the ones committed in Morocco. However, Libya is a war-torn country and as such, not safe for anyone, let alone vulnerable migrants, while Morocco is safe and relatively prosperous. Furthermore, without incentives for stopping migrants from reaching Europe, North African authorities would not have bothered with adhering to European requests. Therefore, it would appear that the crackdown on irregular migration in North Africa, on behalf of European countries, facilitates human rights violations of migrants, regardless whether a country is plunged into war and chaos or not.

Conclusion

Irregular migration has become one of the most contentious issues in the European Union and its Member States. European efforts to externalise migration control to countries beyond its borders, have sparked heated debates revolving around the security versus humanitarianism conundrum. In this research, the impact of bilateral migration control agreements on the protection of human rights of irregular migrants has been investigated.

Bilateral migration control agreements have effectuated the externalisation of migration control to countries that have fewer capabilities for dealing with migrants and have fewer commitments to the protection of human rights. In this sense, externalisation of migration control is very similar to the economic concept of outsourcing, in which economic activities are relocated to other countries. This is done because in other countries the wages and employee benefits are considerably lower than in western countries, and regulations are often less strict or non-existent. Therefore, companies have fewer responsibilities and face fewer consequences for violations.

The cases of Libya and Morocco have shown that due to stricter migration control policies, incentivised by European efforts to stem migration flows, the perception and treatment of migrants in those countries has changed for the worse. The reported atrocities in Libya, among them unlawful detention, torture, rape and slavery, can be linked to the crackdown on irregular migration in the country on behalf of European policies, as without such policies, there would be fewer incentives for Libyans to address the issue. Despite the fact that Libya is a country marked by strife and civil war, and Morocco is not, the latter too, has treated migrants in appalling ways, violating their human rights. Both Libya and Morocco benefit from adhering to European migration control requests, as mechanisms of efficiency, legitimacy and power have been identified as incentives for signing bilateral agreements on migration control with Italy and Spain.

The comparison made in this study suggests that externalisation of migration control to third countries can be linked to increased human rights violations. Although this might not have been the aim of the agreements, it is certainly a side-effect of the crackdown on irregular migration. Numerous agreements have been made between the EU and third countries on migration and as such, these agreements might also have resulted in increased human rights violations in those countries, similar to the cases of Libya and Morocco. Reports on human rights violations in those countries certainly seem to suggest so.[112]

Further research is required in order to establish whether the externalisation of migration control can be equated with the externalisation of the *responsibility* for the protection of human

---

[112] Mark Akkerman (2018).

rights. Furthermore, the fact that the main focus of European countries is on the deterrence and prevention of irregular migration, raises questions pertaining to the outsourcing of responsibility for the protection of human rights all together. At present, European attitudes toward irregular migration can be characterised by the phrase: 'Out of sight, out of mind.'

Bibliography

Official Reports and Documents

Akkerman, Mark, 'Expanding the Fortress', Transnational Institute (2018).

Amnesty International (2018) https://www.amnesty.org/en/latest/news/2018/09/morocco-relentless-crackdown-on-thousands-of-sub-saharan-migrants-and-refugees-is-unlawful/ consulted 22-06-2019.

Council of Europe, 'Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean', 2019.

ECtHR - Hirsi Jamaa and Others v Italy, application nr. 27765/09.

FRA, 'Scope of the principle of non-refoulement in contemporary border management: evolving areas of law', European Union Agency for Fundamental Rights, 2016.

Human Rights Watch, 'No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya', 21 January 2019.

Human Rights Watch, 'Libya: June 1996 Killings at Abu Salim Prison', (2006) https://www.hrw.org/news/2006/06/27/libya-june-1996-killings-abu-salim-prison consulted 8-6-2019.

International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, 2001, https://casebook.icrc.org/case-study/international-law-commission-articles-state-responsibility consulted 18-06-2019.

Readmission agreement Spain and Morocco – translated version: https://therightsangle.wordpress.com/2013/12/19/the-1992-spanish-morocco-readmission-agreement-in-english/ consulted on 12-06-2019.

United Nations, 'Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya', *Office of the High Commissioner for Human Rights*, 20 December 2018.

United Nations Convention relating to the Status of Refugees, https://www.unhcr.org/3b66c2aa10.

Universal Declaration of Human Rights, https://www.un.org/en/universal-declaration-human-rights/.

Press Releases

European Commission, 'Western Mediterranean Route: EU reinforces support to Morocco', Brussels, 14 December 2018, IP/18/6705.

European Council, 'EU-Turkey statement 18 march 2016', https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ consulted 20-05-2019.

Frontex, https://frontex.europa.eu/media-centre/news-release/number-of-irregular-crossings-at-europe-s-borders-at-lowest-level-in-5-years-ZfkoRu consulted 22-06-2019.

IOM (2019) https://www.iom.int/news/mediterranean-migrant-arrivals-reach-26090-2019-deaths-reach-597 consulted 22-06-2019.

Literature

al-Arabi, Abdulrahman, 'Local Specificities of Migration in Libya: Challenges and Solutions', *Robert Schuman Centre*, nr. 4 (2018) pp. 1-18.

Alexander, Isabella, 'Waiting to Burn: Spanish-Maghribi relations and the making of a new migrant class', *The Journal of North African studies*, nr. 1 (2019) pp. 152-174.

Andersson, Ruben 'A game of risk: Boat migration and the business of bordering Europe', *Anthropology Today*, nr. 6 (2012) pp. 7-11.

Andrijasevic, Rutvica, 'Deported: The Right to Asylum at EU's External Border of Italy and Libya', *International Migration*, nr. 1 (2010) pp. 148-174.

Baldwin-Edwards, M., and Derek Lutterbeck, 'Coping with the Libyan migration crisis', *Journal of Ethnic and Migration Studies* (2018) pp. 1-17.

Bengtsson, Bo, and Hannu Ruonavaara, 'Comparative Process Tracing: Making Historical Comparison Structured and Focused', *Philosophy of the Social Sciences*, nr. 1 (2017) pp. 44-66.

Berriane, Mohamed, Hein de Haas and Katharina Natter, 'Introduction: revisiting Moroccan migrations', *The Journal of North African Studies*, nr. 4 (2015) pp. 503-521.

Bialasiewicz, Luiza, 'Off-shoring and out-sourcing the borders of Europe: Libya and EU border work in the Mediterranean', *Geopolitics*, nr. 4 (2012) pp. 843-866.

Bigo, D. and A. Tsoukala, 'Understanding (In)Security', in: D. Bigo & A. Tsoukala (eds), *Terror, Insecurity and Liberty. Illiberal practices of liberal regimes after 9/11*, Routledge, 2008.

Carling, J., 'Migration control and migrant fatalities at the Spanish-African borders', *International Migration Review*, nr. 2 (2007) pp. 316-343.

Casas-Cortes, Maribel, Sebastian Cobarrubias and John Pickles, ''Good neighbours make good fences': Seahorse operations, border externalization and extra-territoriality', *European Urban and Regional Studies*, nr. 3 (2016) pp. 231-251.

Ceccorulli, Michela, 'Back to Schengen: the collective securitisation of the EU free-border area', *West European Politics*, nr. 2 (2019) pp. 302-322.

Connor, P., 'Number of Refugees to Europe Surges to Record 1.3 Million in 2015', *Pew Research Center*, (2016).

Ferreira, S., *Human Security and Migration in Europe's Southern Borders*, Cham: Palgrave MacMillan 2018.

Fisher, Daniel X.O., 'Situating Border Control: Unpacking Spain's SIVE border surveillance assemblage', *Political Geography*, (2018) pp. 67-76.

Frelick, Bill, Ian M. Kysel and Jennifer Podkul, 'The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants*', Journal on Migration and Human Security*, nr. 4 (2016) pp. 190-220.

Guttry, A., Francesca Capone and Emanuele Sommario, 'Dealing with Migrants in the Central Mediterranean Route: A Legal Analysis of Recent Bilateral Agreements between Italy and Libya', *International Migration*, nr. 3 (2018) pp. 44-60.

Haun, Phil, *Coercion, Survival, and War: Why Weak States Resist the United States*, Stanford: Stanford University Press 2015.

Heck, Gerda and Sabine Hess, 'Tracing the Effects of the EU-Turkey Deal: The Momentum of the Multi-layered Turkish Border Regime', *Movements Journal*, nr. 3 (2017) pp. 35-56.

Hilsum, Lindsey, *Sandstorm: Libya in the time of revolution*, New York: Penguin Press 2012.

Huysmans, J., 'The European Union and the Securitisation of Migration', *Journal of Common Market Studies*, nr. 5 (2000) pp. 751-777.

Lacher, Wolfram, 'Libya's conflicts enter a dangerous new phase', Stiftung Wissenschaft und Politik, nr 8 (2019) pp. 1-5.

Léonard, S., 'EU border security and migration into the European Union: FRONTEX and securitisation through practices', *European Security*, nr. 2 (2010) pp. 231-254.

Mafu, Lucas, 'The Libyan/Trans-Mediterranean Slave Trade, the African Union, and the Failure of Human Morality', *SAGE open*, nr. 1 (2019) pp. 1-10.

Micallef, M., and Tuesday Reitano, 'The anti-human smuggling business and Libya's political end game', North Africa Report, nr. 2 (2017) pp. 1-22.

Monzini, Paola, 'Sea-Border Crossings: The Organization of Irregular Migration to Italy', *Mediterranean Politics*, nr. 2 (2007) pp. 163-184.

Moreno-Lax, V. and Martin Lemberg-Pedersen, 'Border-induced displacement: The ethical and legal implications of distance-creation through externalization', *QIL*, nr. 1 (2019) pp. 5-33.

Natter, Katharina, 'The Formation of Morocco's Policy Towards Irregular Migration (2000–2007): Political Rationale and Policy Processes', *International Migration*, nr. 5 (2014) pp. 15-28.

Paoletti, Emanuela, 'Power Relations and International Migration: The Case of Italy and Libya', *Political Studies*, nr. 2 (2011) pp. 269-289.

Ronzitti, Natalino, 'The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New Prospects for Cooperation in the Mediterranean?' *Bulletin of Italian Politics*, nr. 1 (2009) pp. 125-133.

St. John, Ronald Bruce, *Libya: From Colony to Revolution*, Oxford: Oneworld 2012.

Stottlemyre, Steven, 'Libya and the International System: Retracing the Aftermath of the Lockerbie Bombing', *Digest of Middle East Studies*, nr. 1 (2011) pp. 50-64.

Swanson, Guy, 'Frameworks for Comparative Research: Structural Anthropology and the Theory of Action,' in: Ivan Vallier ed., *Comparative Methods in Sociology: Essays on Trends and Applications*, Berkeley: University of California Press 1971.

Tubiana, Jérôme, Clotilde Warin and Gaffar Mohammud Saeneen, 'Multilateral Damage The impact of EU migration policies on central Saharan routes', *CRU Report Clingendael* (2018).

Waever, O., 'The EU as a Security Actor: Reflections from a Pessimistic Constructivist on Post-Sovereign Security Orders', in: M. C. Williams and M. Kelstrup eds., *International Relations Theory and the Politics of European Integration: Power, Security and Community*, London: Routledge 2000.

Webber, Frances, 'Europe's Unknown War', *Race & Class*, nr. 1 (2017) pp. 36-53.

Internet Sources

Elbagir, Nima, Raja Razek, Alex Platt and Bryony Jones, 'People for sale: Where lives are auctioned for $400', *CNN exclusive report*, https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html consulted 25-5-2019.

Frontex, 'Migratory Routes', https://frontex.europa.eu/along-eu-borders/migratory-routes/central-mediterranean-route/ consulted 5-6-2019.

Lopez-Fonseca, O., 'Migrant mafias charging €18 for a chance to jump the border fence', *El País*, https://elpais.com/elpais/2018/08/23/inenglish/1535011686_744110.html consulted 22-06-2019.

Martín, María, 'Spain and Morocco reach deal to curb irregular migration flows', *El País*, https://elpais.com/elpais/2019/02/21/inenglish/1550736538_089908.html consulted 22-06-2019.

Rodriguez, José Maria, 'Spain's handling of the Cayuco boat crisis' (2017) https://www.euractiv.com/section/justice-home-affairs/news/spains-handling-of-the-cayuco-boat-crisis/ consulted on 14-06-2019.

Traynor, Ian, 'EU keen to strike deal with Muammar Gaddafi on immigration', *The Guardian*, https://www.theguardian.com/world/2010/sep/01/eu-muammar-gaddafi-immigration consulted 28-05-2019.