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Fortress Europe: Analysing the Human Rights Impact of EUBorder Externalisation in Third Countries since 2015

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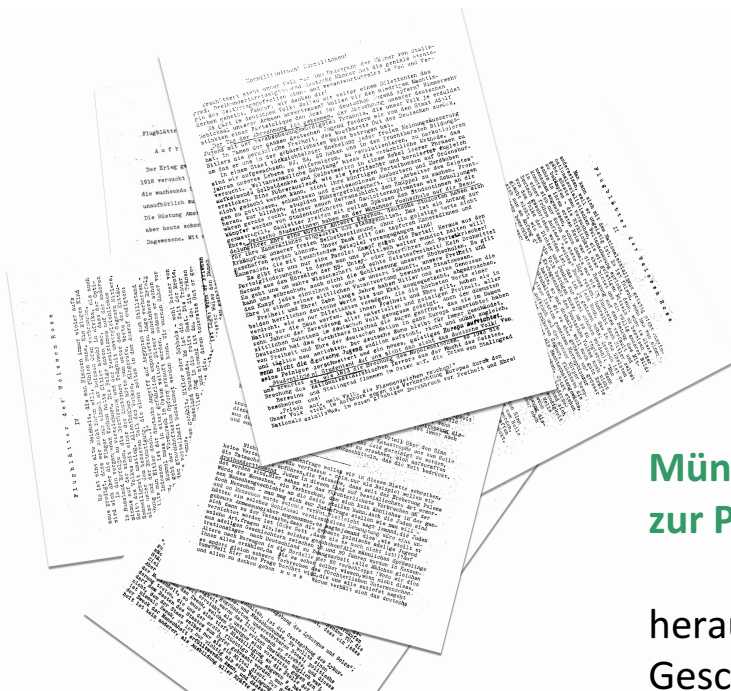zur Politikwissenschaft**

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List of Abbreviations

DC	Detention Centre
DCIM	Directorate for Combating Illegal Migration
EU	European Union
EUTFA	European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
ICCPR	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
LCG	Libyan Coast Guard
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

The massive 2015 refugee inflows represented a watershed moment in European politics. The arrival of approximately 1.5 million asylum seekers in 2015/16 (Council of the European Union, n.d.) prompted not only temporary border closures in some European countries, but also broader political debates on how to deal with the increasing number of refugees. While most ensuing policy debates focused on how to distribute asylum seekers across European countries, an equally important component of the European Union's (EU) response to the 2015 refugee 'crisis' was the externalisation of migration policies and border control to third countries, aiming to reduce inflows of refugees and migrants to Europe. Though officially credited as successful in significantly reducing migrant inflows, these externalisation measures led to the construction of a 'Fortress Europe' and left tens of thousands of refugees and migrants stranded in third countries, where they face severe human rights violations.

Externalisation is an umbrella concept describing the process of shifting functions normally undertaken by a state outside its own territory (Feith Tan, 2021). The United Nations High Commissioner for Refugees (UNHCR) defines externalisation in the area of migration more specifically as 'measures preventing asylum seekers from entering safe territory and claiming international protection, or transfers of asylum seekers and refugees to other countries without sufficient safeguards' (UNHCR, 2021). The EU's externalisation policies are often concluded with important transit countries, such as Libya, Morocco, or Turkey. However, an issue with concluding agreements with these countries is the neglection of refugees' human rights in those countries. In fact, Libya has not signed the Refugee Convention of 1951, and Turkey still maintains a geographical limitation to the convention, meaning that the Turkish government only accepts legal responsibility to protect refugees coming from Europe. Furthermore, most of the countries that the EU prioritises for border externalisation efforts are authoritarian, known for human rights abuses, and having poor human development indicators (Akkerman, 2018). Especially in light of current developments, such as the adoption of the Pact on Migration and Asylum in May 2024, as well as the deal between Italy and Albania for the construction of reception centres for migrants and refugees in June 2024, it is a relevant topic to examine. Thus, the purpose of this work is to answer the following research question: How has the human rights situation for migrants in third countries changed in context of the progressive externalisation of EU migration policies since 2015?

This work fits an analytical description. It will be examined how the externalisation of EU border and migration control has changed the human rights situation for migrants and refugees in Libya and Turkey. The period under review is from 2015 to 2023, a period of heavy migration, which necessitated increasing border externalisation and cooperation with third countries, to curb migration flows. For

the analysis of the human rights situation in third countries since 2015 two *typical* cases have been selected, i.e. countries that the EU has several agreements and treaties with aiming to externalise its migration and border control. The two selected cases for my analysis are Turkey and Libya, both being important transit countries and crucial partners for the EU in their externalisation of migration policies. The massive increase of refugees and migrants reaching European territory via the Eastern Mediterranean route, prompted the EU to collaborate with Turkey to curb migration flows to Europe. In that sense the EU-Turkey deal was successful, however it made Libya the new focal point for migration to Europe from which hundreds of thousands of migrants tried reach Italy on the Central Mediterranean route. The EU had to react to the increase in arrivals and thus adopted several measures, aiming to reduce the number of migrants and refugees reaching Europe. By examining these two cases, this study provides a comprehensive analysis of how the EU's externalisation policies impact human rights in third countries, contributing to the broader understanding of migration management and its ethical implications. The analysis will be structured according to three central human rights: the 'Right to Life' (Article 6) and the 'Right to Liberty' (Article 9) from the International Covenant on Civil and Political Rights (ICCPR), and the principle of 'Non-Refoulement' (Article 33) from the 1951 Refugee Convention.

In the interest of clarity, it is important to briefly explain the difference between the two terms 'migrant' and 'refugee'. According to the International Organization for Migration (IOM), a migrant is 'a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons' (International Organization for Migration, n.d.). A refugee however is defined as 'someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion' (UNHCR, 1951). For the purposes of this thesis, and to reflect the predominant populations in each country of focus, the term 'migrant' will be used generically when referring to individuals in Libya, given the high number of economic migrants. Conversely, the term 'refugee' will be used when referring to individuals in Turkey, due to the significant population of Syrian and other refugees. In other chapters, both the terms migrants and refugees will be used to encompass the broad spectrum of individuals affected by these policies. This approach aims to accurately represent the demographic realities while ensuring clarity and readability in the analysis.

This work will gather and interpret journal articles and reports from human rights organisations that deal with the human rights violations in Turkey and Libya, as well as official EU documents, such as treaties and press releases, to answer the presented research question. With the help of these, the correlation between securitisation of migration and increasing externalisation of EU migration and border control will be established. Subsequently, the evolution of EU migration policy is presented,

focusing on the shift towards externalisation. The methodology chapter outlines the analytical framework, detailing the specific human rights articles, and the rationale behind choosing Turkey and Libya as case studies. The analysis is divided into two main sections, the cases of Turkey and Libya, each examining the impact of externalisation policies on the right to life, the right to liberty, and the non-refoulement principle in the respective country and concludingly summarises the results for both cases. The conclusion reflects on the research question, interprets the findings, and provides an outlook taking into account the current developments in the EU's external migration policy.

2. Securitisation of Migration

This chapter seeks to examine how the topic of migration has been continuously securitised by political actors and thus facilitated the implementation of strict migration and asylum laws. It will be shown that the securitisation of migration legitimises the externalisation of migration policies. Hence, this chapter does not serve as a theoretical background, but rather as a contextualisation of the topic.

Migration has always been a security issue rather than a humanitarian one, which is also widely recognised in academic literature (Buzan, 1991; Waever et al., 1993; Huysmans, 2000; Lazaridis & Wadia, 2015). The securitisation of migration goes back to the early 1990s when the so-called Copenhagen School sought to understand how political actors constructed migration as a security issue (Waever et al., 1993). It is crucial to note that for securitisation, the concept of security is constructed by relative and subjective norms and depends on the political objectives of certain actors (Waever, 1993). So, it is the discourse that gives the concept a reality.

Characteristics of the political discourse in terms of migration and asylum are mainly linked with positive self-presentation, negative presentation of the other and association of migrants and refugees with crime, cultural threats and terrorism. An increased influx in migration is described as 'crisis' and the 'European way of life needs to be protected' as if it were under attack, which necessitates an urgent and securitised response (Xanthopoulou, 2024). The rights and personhood of migrants and refugees do not need to be protected, they are now only members of a group threatening the state and its borders. By creating a sense of emergency, excluding migrants and refugees is not only permissible but even righteous as an exercise of sovereign rights to state territory and borders (ibid.). This feeling of emergency dominates the EU migration laws and policies framing migration as a 'crisis' that requires an urgent response of prevention, thus justifying externalisation and repulsion measures.

The issue of migration has caused intense political debates in Europe, being often regarded as related to socio-economic or political crime, breakdown of law and order, unemployment, cultural and religious threats, terrorism and political instability. As a result, countries have felt the need to reconsider their border policies and migration law, which caused stricter migration policies in the European context, as well as internal policies of member states. Migration has been consistently treated as a security issue but has intensified especially since the so-called Arab Spring and a massive increase in migration from states in North Africa or the Middle East (Fakhoury, 2016). In the last decade, the political debate in the EU was strongly influenced by the migration-security nexus, overshadowing the humanitarian dimension and happened on two levels. First, on a discursive level, especially used by political actors and secondly, on a policy level aiming to strengthen security agencies such as Frontex and the externalisation and tightening of EU migration laws (Topulli, 2016). Both processes act reciprocally to sustain the securitisation dynamic: the rhetoric level justifies the implementation for more security equipment at the border and the material deployment of control technologies and devices sustains the legitimacy of securitisation discourses on migration (ibid.). In the last decade the establishment of European funds dedicated to external border protection, the strengthening of the Frontex agency and the introduction of externalisation policies with third countries could be observed, all aiming to reduce migrant flows to Europe.

Closing the borders to protect EU member states' sovereignty and their supposed national homogeneity from migrants has become a prevailing political argument conducive to the externalisation of migration management. The increasing link between security and migration has caused the militarisation and geographical shift of the Euro-African border towards the African continent. European migration policies now focus on delegating migration control to transit countries, creating 'buffer zones' and shifting border control further south (Gabrielli, 2014). The externalisation of EU borders inherently involves the securitisation of migration, prioritising security over humanitarian concerns, often compromising the safety and rights of migrants and refugees, exacerbating their vulnerabilities and potentially leading to human rights challenges (ibid.). In conclusion, one can assume that externalisation goes hand in hand with securitisation.

3. Development of EU External Migration Policy and Externalisation

The increasing securitisation of migration has led the EU to adopt a stricter and more restrictive approach to its migration policy. In this chapter, this development of and the still ongoing externalisation of EU migration policy will be discussed, taking a closer look at the most important milestones.

There is no unified definition of the EU's external migration policy. Niemann & Zaun (2023) refer to it as 'any policy that aims at managing migration outside the territory of EU member states'. This includes for example policies of extraterritorial migration management such as the externalisation of European borders to North African countries, restrictive border practices, return and readmission agreements as well as so called Mobility Partnerships with third countries. Originally the internal dimension of EU migration policy was more important, however over time the external aspect has evolved into a central pillar. Especially since the Arab Spring in 2011 and the migration 'crisis' in 2015/16 it has become the most dynamic and a crucial part within EU migration policy (Niemann & Zaun, 2023). The overarching goal with every treaty or agreement is that migrants and refugees don't even reach Europe's borders in the first place.

The Tampere European Council of 1999 was a significant milestone in the development of EU policies on asylum and immigration. The Council called for the EU to integrate its migration and asylum goals into its external relations. Thus, the EU's migration policy had an internal and external dimension ever since. The internal dimension encompasses policies within and between the member states, including the abolition of internal border controls, the harmonisation of asylum systems and a common visa regime, while the external dimension comprises the EU's relations on migration issues with non-EU countries, particularly in neighbouring regions. Internal and external EU migration policies have evolved since the Tampere Council, whereby the EU's external migration policies are largely based on the Global Approach to Migration (GAM) from 2005.

The GAM is the basic framework for EU migration policy relations with third countries and was intended to coordinate various policy instruments that the EU applies to engage with third countries. The approach was divided into three pillars: the EU aimed to organise legal migration and facilitate mobility, prevent and reduce irregular migration, and strengthen the synergies between migration and development (Council of the European Union, 2005). Officially the three pillars were equally weighted, in practice however it was the prevention of irregular migration that drove the European agenda (Hampshire, 2016).

The GAM was then further developed into the Global Approach to Migration and Mobility (GAMM), which was adopted in November 2011 and is now the EU's 'overarching framework of EU external

migration' (European Commission, 2011). Developed in the aftermath of the Arab Spring, the GAMM was driven by the EU's fear of increased migration from the Middle East and North Africa. Migration was portrayed as a security problem that needed to be prevented and reduced and in this process the EU should be supported by third countries (Fakhoury, 2016). In the context of the GAMM the EU launched or continued pre-existing migration dialogues and processes, with one of the main instruments being the Mobility Partnerships. They are non-binding and flexible agreements between EU member states and third countries (Cardwell & Dickson, 2023). The GAMM is structured into four pillars, which the Commission considers to be 'equally important' (European Commission, 2011): organising legal migration and fostering well-managed mobility, preventing and combating irregular migration and trafficking of human beings, promoting international protection and enhancing the external dimension of asylum, and maximising the development impact of migration (ibid.). Even though the EU claims that none of the pillars is more important than the others, 'preventing and combating irregular migration' is the most developed approach (Strik, 2017). The GAMM shifts European external border and exclusion mechanisms from post-arrival to pre-departure, reflecting the growing perception of migrants as a security risk (ibid.). This perception is evident in the expansion of migration-related databases for crime control, the increasing role of surveillance technologies and private security companies in European border policies, and the EU's reliance on neighbouring countries for border control and anti-smuggling efforts. The European Council (2014) has concluded that a 'sustainable solution can only be found by intensifying cooperation with countries of origin and transit, including through assistance to strengthen their migration and border management'. The UN Special Rapporteur on the human rights of migrants however criticised the direction the EU is heading in, 'a large majority of regional migration initiatives coming from the EU continue to be focused on issues of border control, and do not consider important issues such as the facilitation of regular migration channels.' (OHCHR, 2012).

The externalisation of migration policies has intensified since the refugee 'crisis' of 2015/16. In response to the increase in deaths in the Mediterranean Sea at the beginning of 2015, the European Commission presented a controversial European Agenda on Migration in May 2015, which included both internal and external policy measures. One of the main objectives of the European Agenda is to 'address the root causes of migration', aiming to integrate migration issues into development cooperation (European Commission, 2015). However, since its adoption, EU member states have often failed to fulfil their obligations to extend international protection and have pushed for externalising migration management through dubious bilateral agreements with third countries (Davitti & La Chimia, 2017).

The Valletta Summit on Migration between the EU and 35 African nations in November 2015 produced an action plan that further accelerated the growth of border externalisation measures. This plan included numerous measures to enhance military and security cooperation, such as equipment provision, information and intelligence sharing, and the development of communication networks for maritime surveillance (Council of the European Union, 2015). Additionally, the 2.5 billion Euro 'European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa' (EUTFA) was launched at the summit which was used to finance numerous projects in third countries in the following years (European Union Emergency Trust Fund for Africa, n.d.). This period has seen the intensification of the concept of 'Fortress Europe'. In 2020 the New Pact on Migration and Asylum was introduced by the European Commission to overhaul the EU's migration and asylum policies. It aims to ensure fair sharing of responsibilities among EU member states, streamline asylum procedures, and further enhance cooperation with third countries to manage migration flows effectively (European Commission, 2020). Introduced in the context of ongoing migration challenges and the aftermath of the 2015 refugee 'crisis', the pact aims to strengthen the EU's external migration policy by fostering partnerships with non-EU countries, enhancing border security, and addressing the root causes of migration.

Frontex, the European Border Agency, plays a special role in the EU's external migration policy. It was introduced in 2004 to manage operational cooperation at the EU's external borders with a budget of roughly six million Euro (Council of the European Union, 2004; Frontex, 2005). However, over the years, its role and budget have significantly expanded, reaching nearly 850 million Euro in 2023 (Frontex, 2023). Frontex now coordinates border security efforts among EU member states, assists in sea and land border protection, search and rescue operations, and the return of irregular migrants. The 2015/16 migration 'crisis' further intensified Frontex's security practices, including intelligence gathering and cooperation with Europol and the North Atlantic Treaty Organization (NATO) (Niemann & Zaun, 2023). In the past decade Frontex has faced criticism for human rights violations, particularly regarding pushback operations that forcibly return migrants to non-EU countries where they face severe treatment (among others, HUMAN RIGHTS WATCH, 2021; Schmitz, 2023).

4. Methodology

This chapter focuses on the methodology used in this paper. The research design and the three human rights articles structuring the analysis will be presented, as well as the rationale behind the decision to utilise them. Finally, the motive of the case selection will be explained.

4.1 Research Design & Analytical Framework

This work fits an analytical description thereby falling under the category of a *generalising description*, which aims to provide a broad understanding of the impact of EU migration policies on human rights (Gerring, 2012). The development of the human rights situation in third countries after the increasing externalisation of migration and border control to the respective countries, will be examined aiming to generalise these findings to a broader population. This research can be further categorised as *synthetic*, as it integrates multiple dimensions of human rights violations into a comprehensive analysis (ibid.). By combining these different aspects, this study provides a unified and detailed account of the impact of these policies on migrants and refugees in Turkey and Libya. This approach allows for a holistic understanding of the broader implications of EU migration policies, highlighting the interconnectedness of various human rights issues.

The analysis of the human rights situation in the two cases will be structured according to three central human rights in the area of migration. The United Nations (UN) (n.d.) define human rights as 'rights inherent to all human being, regardless of race, sex, nationality, ethnicity, language, religion, or any other status'. They prevail over all other legal obligations and can therefore be referred to as *ius cogens* norms, meaning that no derogation from them is permitted and any treaty inconsistent with them should be considered void (Baxewanos & Raza, 2013). Central international human rights agreements are the Universal Declaration of Human Rights (UDHR), the ICCPR, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. In the European context the European Declaration of Human Rights and the Fundamental Rights Charter are the central human rights treaties. The cornerstone of refugee protection is the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

The UDHR was intended as a statement of principles, setting a common standard of achievement for all peoples and all nations around the globe. Even though it is not legally binding, the UDHR has been incredibly influential in international and domestic law across the globe (OHCHR, 2012). Many of its principles have been incorporated into other legally binding international treaties, such as the ICCPR

or the Refugee Convention and its Protocol. Only by ratifying an international human rights convention a state commits itself to implementing the international human rights convention into domestic laws and policies. The Refugee Convention was ratified by 146 countries, and 147 countries are parties to the 1967 Protocol (UNHCR, 2015). Libya however has signed neither of them (United Nations Treaty Collection n.d. a, United Nations Treaty Collection n.d. b). Turkey signed and ratified the Convention and its Protocol however with a geographical limitation, restricting its responsibilities to only European refugees (UNHCR, 2015). The ICCPR was signed by 179 countries including Turkey and Libya (OHCHR, 2023).

The three articles of interest are chosen from the ICCPR and the Refugee Convention because, unlike the UDHR, they are legally binding and do not apply only to European countries like the European human rights treaties but are recognised worldwide. The articles of interest are central human rights or rights for refugees and according to earlier research most likely to be violated. These articles provide a comprehensive framework for evaluating the human rights situation of migrants and refugees in the context of EU external migration policies. The selected articles are the following.

Article 6, ICCPR: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.' (UN, 1966)

The right to life is paramount as it safeguards individuals against extrajudicial and arbitrary killings. This work aims to examine incidents involving extrajudicial and arbitrary killings by the Turkish border guard and the Libyan Coast Guard (LCG), as well as killings in Libyan detention centres (DC). These cases highlight the violations of the right to life that migrants and refugees face in these regions. Reports from human rights organisations, including eyewitness accounts and interviews will be analysed to provide a detailed examination of these violations.

Article 9, ICCPR: 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.' (UN, 1966)

The right to liberty protects individuals from arbitrary arrest and detention, ensuring that no one is deprived of their liberty without due process. This analysis will focus on the arbitrary and, in the case of Libya, also indefinite detention of migrants and refugees. The conditions within these DCs will be scrutinised, again examining reports of human rights organisations.

Article 33, Refugee Convention: 'No contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on

account of his race, religion, nationality, membership of a particular social group or political opinion.' (UNHCR, 1951)

The principle of non-refoulement prohibits the return of refugees to territories where their life or freedom would be threatened. This work will examine illegal pull-back missions conducted by the LCG, which forcefully return migrants and refugees to Libya, where they face severe human rights abuses. Additionally, the arbitrary expulsions of migrants and refugees by Libyan authorities, as well as the unlawful deportation of Syrian and Afghan refugees back to their countries of origin by Turkish authorities, will be investigated. These practices not only violate international law but also expose individuals to heightened risks of persecution and harm.

By structuring the analysis around these three articles, this work aims to provide a thorough examination of the human rights violations resulting from the externalisation of EU migration policies. This approach will help highlight the specific ways in which these policies impact the fundamental rights of migrants and refugees in Turkey and Libya.

4.2 Case Selection

To answer the research question and examine the impact of these policies on the human rights of refugees and migrants, two representative cases were chosen. A direct comparison of the two cases was neither intended nor necessary, as the objective of this work is not to determine why human rights violations might be worse in one country than in the other. Instead, this work aims to analyse the development of the human rights situation in third countries in the context of the progressive externalisation of the EU's migration and border control policies, compiling the results of the analysis of the two countries and then drawing conclusions about the human rights compatibility of EU migration policy. To analyse this development, two *typical* cases were selected because they represent the average or usual conditions of the phenomenon being analysed (Seawright & Gerring, 2008), i.e. cases that are representative for the cooperation of the EU with third countries in the area of migration and border control. This approach ensures that the findings from these cases are more likely to be applicable to other similar situations. For this research, selecting *typical* cases helps in understanding the general impact of EU migration policies on human rights in a broader context. This aligns with the goal of a *generalising description*, which is to recognise common patterns and apply them to a wider population.

For the case selection, it was necessary to find two cases that were known to be important partners in the EU's external dimension of migration policy, in order to then analyse the development of the

human rights situation in the respective countries. Turkey was an obvious choice due to the central role of the EU-Turkey deal of 2016 in the EU's externalisation strategy in the context of migration. When hundreds of thousands of people arrived in Europe via the Eastern Mediterranean route in 2015, the EU and its member states were overwhelmed by the rapid increase in refugees, leading to the adoption of the EU-Turkey Agreement. Central to this agreement is the '1:1 resettlement scheme,' under which one Syrian refugee residing in Turkey would be resettled to an EU member state for every Syrian returned to Turkey from the Greek islands.

Libya was chosen as the second case because after the implementation of the EU-Turkey deal, which effectively sealed off the Balkan route to Europe, Libya emerged as the new focal point in the refugee 'crisis'. Consequently, many migrants and refugees started to embark from Libya, trying to reach Italy via the Central Mediterranean route. The EU had to respond to this sharp rise and the numerous deaths in the Mediterranean and therefore implemented various externalisation measures, such as the Memorandum of Understanding (MoU) and Operation Sophia. The political situation in Libya makes this case even more relevant. The political landscape has been highly unstable since the 2011 uprising and the end of al-Gaddafi's regime. The collapse of state security institutions left a gap that was filled by armed groups and militias, which has severely impacted governance and the rule of law, causing a situation where militias often have more power than official security forces and can commit crimes and human rights violations with impunity.

These two cases are ideal for analysing the effects of externalisation policies on the human rights situation of migrants and refugees in third countries. However, generalising the findings may be challenging.

5. Analysis: Human Rights Impact of EU Migration Externalisation in Third Countries

The ensuing chapter looks at the human rights consequences of various externalisation policies and treaties with Turkey and Libya. The analysis of the human rights impact is structured based on the three previously selected human rights articles.

5.1 The Case of Turkey

Geographically located at the crossroads of Europe and Asia, Turkey has taken in thousands of asylum seekers escaping from civil wars and massive conflict in recent decades, both from countries in Asia and Africa and increasingly from countries in the Middle East and Eastern Europe. Historically Turkey has always been a country of origin, transit and destination for migrants and now hosts one of the largest migrant populations in the world with approximately 3.87 million people (UNHCR, 2023b), with a vast majority (over 3.2 million) of them being Syrian refugees (UNHCR Operational Data Portal, n.d.). Turkey was also at the centre of the refugee 'crisis' in 2015/16, as a large number of refugees transited Turkey via the Eastern Mediterranean Route in order to reach European territories. Neither the member states individually nor the EU as a whole had the capacities to quickly address the root causes of mass migration, which left the EU with the only option to externalise migration and border controls. In other words, the EU wanted to assure that Syrian refugees are contained in a third country before reaching European soil. Albeit the worsening bilateral relations due to the rising authoritarianism in Turkey and Erdogan's strong anti-European discourse, completing a deal with Turkey was crucial.

In October 2015, the EU and Turkey formulated a joint action plan aiming to manage the refugee 'crisis'. This plan included financial aid from the EU for Turkey's refugee accommodations in exchange for Turkey's efforts to limit migration flows to the EU and readmit migrants who didn't qualify for international protection. Despite these efforts, the plan did not substantially decrease irregular migrant arrivals. Consequently, in a critical meeting in March 2016, EU leaders finalised the EU-Turkey Refugee deal, aimed at curtailing dangerous sea crossings and managing the 'crisis' more effectively. In the agreement a '1:1 resettlement scheme' was established, with the aim to deport new illegal migrants entering EU territory to Turkey (European Council, 2016). In return the EU promised to relocate one Syrian refugee in Turkey for every one returned to Turkey from the Greek islands (ibid.). Turkey also committed to take all necessary measures to guard its sea and land borders to prevent illegal migration into EU territories and given that all benchmarks have been met, the EU agreed to visa liberalisation for Turkish nationals. Additionally, the EU promised Turkey transfer payments for humanitarian aid of

six billion Euro until the end of 2018 (European Council, ibid). In June 2021 EU leaders greenlighted another funding to Turkey of 3 billion Euro for the period 2021 to 2023 to provide assistance to Syrian refugees on its territory and to help the country boost border controls (European Commission, n.d.).

Although Turkey is a signatory to the 1951 Refugee Convention, it is one of the few countries that maintains a geographic limitation clause of the convention. This limitation implies that the Turkish government only accepts legal responsibility to protect refugees coming from Europe and is particularly problematic in the case of Turkey, as most people seeking protection in the country come from non-European countries, like Syria, Iran, Iraq, Afghanistan and Somalia (Global Detention Project, 2021). Non-European refugees are only granted 'temporary protection' or 'conditional refugee status', which offer fewer protections and rights.

5.1.1 Article 6, ICCPR: 'Right to Life'

In the joint action plan, the EU promised to strengthen the patrolling and surveillance capacity of the Turkish coast guard and other relevant Turkish authorities and further committed to closer cooperation between Turkey and Frontex. Since then, patrolling in the Aegean Sea has stepped up, with Frontex working closely together with the Greek and Turkish coastguards and NATO ships. The Frontex Operation Poseidon was already introduced in 2006, but the financial and technological resources were increased since the EU-Turkey agreement, specifically the budget for the operation has tripled (Frontex, 2015). This operation covers a number of aspects of cross border crime as well as coast guard functions such as search and rescue missions (Frontex, n.d.). However, there have been several reported incidents where the Turkish Coast Guard in collaboration with Frontex has been accused of engaging in violent or threatening actions against refugees at sea. Reports highlight instances where Turkish Coast Guard personnel allegedly used physical force and fired gunshots to manage or deter refugees trying to reach Europe via the Aegean Sea. One prominent example of these practices is a reported incident from November 2017, where Turkish Coast Guard members were accused of firing gunshots and physically attacking refugees, creating panic and forcibly returning them to Turkish shores (Sea-Watch, 2017b). Additionally, there have been broader claims of increasing violence by Turkish Coast Guard and gendarmes, including the use of intimidation tactics on beaches and during sea crossings to prevent refugees from leaving Turkey (Dettmer, 2016).

In June 2018, Turkey finished the construction of border wall along most of its 911-kilometer border with Syria to combat smuggling and irregular border crossings (Devranoglu & Coskun, 2016). Since then, Turkish border guards have routinely used violence to block refugees fleeing hostilities and dire

conditions, including shooting, beating, and summarily expelling them back to Syria. On March 11, 2023 for instance, Turkish border guards beat and tortured a group of eight Syrians trying to cross into Turkey irregularly. Two people died in Turkish custody, while the others sustained serious injuries. Two days later, a Turkish border guard shot and killed a Syrian man who was ploughing his land near the border. (Human Rights Watch, 2023b). Human Rights Watch has documented further instances of Turkish border guards using violence against Syrian and other asylum seekers, migrants, and smugglers on the Turkish-Syrian border in November 2015, April and May 2016, February 2018, and November 2022 (Human Rights Watch, 2015; Human Rights Watch, 2016; Human Rights Watch, 2018; Human Rights Watch, 2022b). In total, 277 incidents between October 2015 and April 2023 were documented, with at least 234 deaths and 231 injuries, the majority occurring while victims attempted to cross the border (Human Rights Watch, 2023b). Twenty-six incidents involved children, with at least 20 killed and 15 injured (ibid.).

Even though Turkey intended protection for Syrian refugees, since the refugee 'crisis' in 2015 they have been the targets of both physical attacks and increasingly restrictive policies, both at Turkey's borders and inside the country. The borders with Syria have been closed to all but emergency human-itarian cases since 2015, and remain effectively closed to new refugees from Syria, prompting many to rely on smugglers (Global Detention Project, 2021). Those attempting to cross the border can face lethal force by Turkish military and gendarmerie border guards, detention in military facilities, and violent pushbacks (ibid.). This indicates how border externalisation measures lead to a shifting of the burden, where European countries try to pass on the responsibility of handling forcibly displaced per-sons to their, often less developed, neighbours, resulting in the militarisation and strengthening of border control in these countries.

To keep migrants out of Europe and outsource border control, EU states have provided the Turkish government with security and surveillance technology valued at over 80 million Euro in exchange for border protection. This support included a transfer of 35.6 million Euro from Brussels to the Turkish company Otokar as part of its Instrument for Pre-accession Assistance regional development program, funding the construction of Cobra II armoured military vehicles now used to patrol the Syrian border. Additionally, the EU commissioned the arms manufacturer Aselsan, majority-owned by the Turkish state, to supply Ankara with 30 million Euro worth of armoured and non-armoured surveillance vehi-cles for patrolling the Turkish-Greek land border. As part of the EU-Turkey deal the EU agreed to pay Turkey six billion Euro if Turkey kept refugees within its borders. Although this money was intended to aid Syrians in Turkey, 18 million Euro went to a Dutch company that produced six patrol boats for the Turkish Coast Guard. Until the summer of 2015, the border between Turkey and Syria remained open, allowing approximately 3.5 million Syrians to seek refuge in Turkey, more than any other country.

However, under pressure from the EU, Ankara subsequently closed this escape route. Now, those attempting to escape the war in Syria must either pay significant sums of money or risk their lives. Ultimately, the EU's refugee agreement with Turkey has shifted the crisis. While the number of boat crossings to Greece has decreased, resulting in fewer deaths in the Aegean, the danger has moved to the Turkish-Syrian border, where people continue to die attempting to cross. (Alkousaa et al., 2018)

5.1.2 Article 9, ICCPR: 'Right to Liberty'

Turkey has one of the world's largest migration-related detention systems, operating around 30 removal centres, in addition to ad hoc detention sites at borders, airports, and police stations (Global Detention Project, 2021). In the period from 2015 to 2019 alone, a staggering 1.2 million people have been arrested and deprived of their liberty in Turkey (Global Detention Project, 2020). Previously falling under the authority of the interior ministry and managed by the national police, since the introduction of the Law on Foreigners and International Protection in 2013, the Directorate General for Migration Management has been responsible for removal centres. Under Turkish law, pre-removal detention can last up to one year (six initial months plus a maximum of six additional months) (Global Detention Project, 2021). The Special Rapporteur on the Human Rights of Migrants (2013) argued that this duration was excessively long for immigration-related detention and recommended monthly reviews to prevent prolonged detention of migrants. Despite this, the six-month extension permitted by the law is still routinely applied in practice (Global Detention Project, 2021).

Turkish Law provides several grounds for pre-removal administrative detention, as well as grounds for administrative detention of asylum seekers and people in international protection procedures. However, on repeated occasions human rights organisations reported that Turkey was arbitrarily detaining migrants and refugees: in the case of Syrian refugees, the detention was often arbitrary, because they were afforded 'temporary protection' status under Turkish law and could therefore not be returned to Syria at that time and for other groups the reasons for detention were never even provided (Amnesty International, 2015b). In 2019 for example Human Rights Watch reported about the arbitrary arrest, detention and deportation of groups of Syrian refugees to the Idlib province, which was one of the most dangerous parts of Syria at the time (Human Rights Watch, 2019b). None of the Syrians, some of whom were detained for up to six weeks before being deported, were charged with any offense or given the opportunity to challenge their detention. Only one individual interviewed was able to contact a lawyer who successfully prevented their deportation. Detaining and deportation of Syrians is arbitrary and unlawful, as they could not be safely returned to Syria. Deporting them would risk violating

Turkey's non-refoulement obligations. A more detailed examination of this topic will be provided in the following chapter.

Many detainees face indefinite detention without clear legal grounds. They are often coerced into signing 'voluntary return documents' and some have been physically forced to provide fingerprints as consent for their detention and subsequent return. Living conditions vary between DCs, however can be described as very poor overall. Common issues include clogged toilets, broken sinks, poor ventilation, intermittent hot water supply, and overcrowded dormitories. Conditions for women and children are particularly harsh. They often encounter inadequate hot water and ventilation and lack proper medical treatment. Allegations of sexual harassment by male guards are not uncommon, and children are frequently detained with little provision for their activities. Detainees typically remain incarcerated without freedom of movement. Their mobile phones are often confiscated, and they have limited access to communication means, resulting in isolation and restricted access to information. Overcrowding is a persistent issue, and medical care is often insufficient, with detainees reporting visible health problems but no access to treatment. Instances of violence by guards have been documented, with detainees reporting bruises from beatings and similar allegations of mistreatment in multiple facilities. (Global Detention Project, 2021)

The EU has provided Turkey with substantial funding for the construction and maintenance of its removal centres. Prior to 2016, the EU allocated over 89 million Euro for the construction, renovation, and support of removal centres in Turkey (Human Rights Watch, 2022a). As part of the EU-Turkey deal, the EU initially committed 3 billion Euro to Turkey. Following this, an additional 60 million Euro was provided to the Directorate General for Migration Management to support Turkey in managing, receiving, and hosting migrants, particularly irregular migrants detected in Turkey and those returned from EU member states (ibid.). This funding facilitated the construction, refurbishment, and staffing of 22 removal centres and thus the possibility for further arbitrary detentions of migrants and refugees (ibid.). In December 2021 the European Commission announced another 30 million Euro financing decision to support capacity building for Turkey's hosting centres (European Commission, 2021). The EU-Turkey deal expanded Turkey's detention estate with the help of EU funding and has subsequently led to an increase in detentions and summary deportations or refugees. Many of these removal centres were originally intended to serve as reception centres for international protection applicants with EU funding. However, following the EU-Turkey action plan on migration and the EU-Turkey deal, these facilities were repurposed to serve as removal centres. This shift has caused criticisms regarding the use of EU funds for purposes that may contribute to human rights abuses (Human Rights Watch, 2022a). The repurposing of EU-funded facilities for detention purposes raises ethical and legal concerns.

5.1.3 Article 33, Refugee Convention: 'Non-Refoulement Principle'

Under the geographical limitation that Turkey has applied to its accession to the UN Refugee Convention, Syrians and others coming from non-European countries are not granted full refugee status. Syrian refugees are registered under a 'temporary protection' regulation, nevertheless they are being deported or threatened with deportation to Syria.

As described previously, under the EU-Turkey deal for every Syrian returned to Turkey from Greek islands, another Syrian would be resettled from Turkey to the EU. Despite the deal the number of refugees did not decrease significantly. By 2018, Turkey was hosting around 60% of all Syrian refugees worldwide, with a reported 3.5 million registered refugees. This number increased dramatically to 3.7 million by 2021 (UNHCR Operational Data Portal, n.d.). Greek authorities can still deport migrants if Turkey is deemed a 'safe third country' or 'first country of asylum'. Hence, one of the main assumptions EU leaders made is that Turkey is a safe third country. As a matter of fact, however '[i]t is becoming increasingly difficult to maintain the claim that Turkey is a safe place for refugees' (Alkousaa et al., 2016). The safe third country concept applies to a country a migrant entered when fleeing from their origin and where they could have applied for protection but did not. The EU has five criteria for a country to be considered as a safe- third country, a central one being the respect of the principle of non-refoulement (UNHCR, 2018). The EU has presumed Turkey as a safe third country even though it does not provide refugee status to people coming from a non-European country, does not recognise the rights of refugees mentioned in the Refugee Convention and especially does not ensure non-refoulement protection. So even though the EU may not directly finance or support the deportation from Syrians to their country of origin, by implementing the EU-Turkey deal and thus the 1:1 resettlement scheme, the EU facilitates the deportation of Syrians and thus the violation of the non-refoulement principle. For the refugee deal to be legal, Turkey must allow returned refugees to request status and access all rights under the 1951 Convention. However, refugees in Turkey often face unlawful detention and deportation.

Especially since 2019, Turkey's stance on refugees, especially Syrians, has shifted towards advocating their return, driven by government and public sentiment. Domestic developments seem to have accelerated this illegal refoulement. In 2018 and 2019, the economy faltered, and the cost of living relative to incomes rose, leading to increased public criticism of the support provided to Syrian refugees (The Economist, 2019). Tensions between Turkish citizens and Syrian refugees appeared to be rising, although precise measurements are difficult. Some politicians have exploited the situation, blaming Syrian refugees for increasing unemployment. Following a National Security Council meeting in mid-July 2019, Erdogan stated, 'Due to the reactions coming from citizens, we need to elaborate new policies

for Syrians. We will encourage them to return. Criminals will definitely be deported.' (BLT Türk, 2019). The principle of non-refoulement, which forbids the return of refugees to a country where they have a reason to fear persecution, is thus under significant threat in Turkey.

Human Rights organisations reported that Afghan and Syrian refugees were detained and forcibly returned only hours after the implementation of the EU-Turkey deal (Amnesty International, 2016). In October 2022 the Turkish government said that over 529,000 Syrians had returned home (Anadolu Agency, 2022). However, it is questionable if these returns are truly voluntary. Contrary to Turkish authorities' claims that no one is deported to Syria, it is likely that hundreds of people were forcibly detained and transported to one of the world's most dangerous countries. Turkish authorities arbitrarily arrested, detained, and deported hundreds of predominantly male Syrian refugees back to Syria between February and July 2022 alone (Human Rights Watch, 2022a). Deported Syrians recounted that Turkish officials apprehended them at their homes, workplaces, and on the streets. Turkish officials commonly justify deportations by stating that refugees are unregistered or outside their registered province. However, even individuals with valid IDs have been deported (Amnesty International, 2019). They were detained in poor conditions, subjected to physical abuse, and coerced into signing voluntary return forms (Human Rights Watch, 2022a). According to interviews led by Amnesty International with Syrian refugees, the Turkish authorities used varying degrees of coercion to pressure refugees to agree to 'voluntary' returns (Amnesty International, 2015b). Syrians consistently report being misled about the 'voluntary return' forms they are forced to sign or being intimidated and beaten into compliance. The deceptive tactics used to obtain signatures on these forms were among others, being told it was a power of attorney, an expression of their desire to remain in Turkey, a registration document, proof of exiting a police station, or confirmation of receiving a blanket from the DC. After forcibly signing the return forms they were driven to border crossing points with northern Syria and forced across at gunpoint. During these journeys, deportees reported receiving insufficient food and water and being handcuffed with plastic ties (Amnesty International, 2019). While most deportees were not mistreated during the journey, some Syrians reported being beaten or witnessing others being beaten by the gendarmerie (ibid.). Most of the deportees were men, but some children and families were also affected. Even when only the breadwinner is deported, the remaining family members in Turkey often feel unable to survive and subsequently leave for Syria themselves.

However, not only Syrians, but also about 53,000 Afghan refugees were deported from Turkey between 2018 and 2019 (Global Detention Project, 2021). The country also summarily expelled thousands of Afghans, including women and children. Afghan families reported repeatedly trying to cross the Turkish border, only to be caught by police and either deported or detained (ibid.).

European leaders have compromised human rights standards to make the deal work and consequently violate EU and international law, undermining long-term human rights commitments. These circumstances point to the conclusion that '[i]n their desperation to seal their borders, EU leaders have wilfully ignored the simplest of facts: Turkey is not a safe country for Syrian refugees and is getting less safe by the day' (Amnesty International, 2016). John Dalhuisen, Amnesty International's Director for Europe and Central Asia, expressed his concerns: 'It is clear where this is all heading: having witnessed the creation of Fortress Europe, we are now seeing the copy-cat construction of Fortress Turkey.' (ibid.).

5.2 The Case of Libya

Due to its geographical proximity to Europe and its strategic location along the Mediterranean Sea, Libya has always been used as a gateway by migrants from both West and East Africa seeking to reach Europe by boat. Since the downfall of the Muammar al-Gaddafi's regime, the country has been in chaos, with numerous serious human rights violations being committed with impunity.

The political landscape has been highly unstable since the 2011 uprising, being characterised by the presence of multiple governments and a myriad of militia groups competing for power. After the end of al-Gaddafi's regime in 2011, Libyan government institutions gradually weakened and fractured, exacerbating the problems of refugees and migrants even further. Today, three governments, divided along geographical and ideological lines, compete for power, each with limited control over parts of the country. The collapse of state security institutions left a gap that was filled by armed groups and militias. The political instability has severely impacted governance and the rule of law, causing a situation where militias often have more power than official security forces. This has significant implications for migration policies and the treatment of migrants and refugees in Libya, often resulting in dire human rights situations (Amnesty International, 2017). The legal framework further deteriorates the human rights situation for migrants and refugees in Libya. Libyan law criminalises the irregular entry, stay, and exit of migrants from its territory, followed by possible further immigration detention while awaiting mandatory deportation and an indefinite re-entry ban (ibid.). The legal framework, coupled with the lack of opportunities for migrants to regularize their status in Libya, have created an environment where migrants in irregular situations face constant threats of arrest and indefinite detention. These conditions often amount to torture or ill-treatment, followed by the risk of deportation from the country.

After the implementation of the EU-Turkey deal, largely sealing off the so-called Balkan route to Europe, Libya became the new focal point, from which many forcibly displaced persons tried to reach Italy via the Central Mediterranean route, which the IOM dubbed the 'deadliest […] migration route in the world' (Missing Migrants Project, n.d.). Since 2014 there have been more than 17,000 recorded deaths and disappearances, with a dark figure that might be even higher (ibid.). To deal with this situation and to try stopping migrants from coming to Europe, it was clear that the EU, and Italy in particular, needed to engage Libya as part of an externalisation of migration and asylum policy – despite Libya's non-recognition of UNHCR and the 1951 Convention, and a dismal track record on its treatment of migrants. Under agreements with the EU, particularly Italy, Libya has received support to strengthen its coast guard and border control capabilities to prevent migrants from embarking on dangerous journey across the Mediterranean Sea. These EU-funded interventions have effectively made Libya a gatekeeper of Europe's southern border.

5.2.1 Article 6, ICCPR: 'Right to Life'

An independent fact-finding mission on Libya by the UNHCR stated after an investigation from July 2022 until March 2023 that it has 'grounds to believe that the EU and its member States, directly or indirectly, provided monetary and technical support and equipment, such as boats, to the LCG and the Directorate for Combating Illegal Migration (DCIM) that was used in the context of interception and detention of migrants' (UNHCR, 2023a). Support from the EU to the LCG comes for example via a funding, technological support in the form of drones provided by Frontex or various operations aiming to strengthen and train the LCG.

The Operation Mare Nostrum was launched in October 2013, aiming to patrol the Mediterranean and rescue refugees in danger at sea. Between October 2013 and October 2014, Mare Nostrum ensured the rescue of 166,600 people (Amnesty International, 2015a). Criticism from other European governments arose as the influx in migration increased. The operation began to wrongly be regarded as a pull factor for refugees and migrants, which ultimately led to the decision to end of the operation by the end of 2014. As a follow-up mission and to continue supporting Italy with patrolling Europe's southern sea borders the Frontex joint operation Triton was launched. Triton's resources were insufficient to address the unfolding humanitarian crisis in the Mediterranean, because contrary to the assumption of European leaders that the operation Mare Nostrum acted as a pull factor to refugees and migrants, the departures from Libya continued (ibid.). Two major shipwrecks occurred in the period of one week in April 2015, claiming 1,200 lives, which made the EU realise that Triton was an inadequate response to the situation in the Mediterranean (Amnesty International, 2017). European leaders then agreed to

expand the resources of Triton and launched the European Union Naval Force Mediterranean, later relabelled operation Sophia. In the months after the start of the operation tens of thousands of lives could be rescued at sea. However, with the increasing number of migrants and refugees coming to Europe via the eastern Mediterranean and Balkan routes and thus growing public concern about their reception and integration, the political priorities changed. EU governments started to prioritise countering smuggling over rescue operations in the central Mediterranean, exploring ways to outsource border control to transit countries outside of Europe, with the aim of preventing refugees and migrants from entering European territory. The provision of ships, planes and helicopters by EU member states and collaboration with NATO patrols made it the first overtly militaristic reaction against refugees on EU level (Akkerman, 2017). In 2016, the Council of the EU extended the mandate of Operation Sophia to build the capacity of the LCG and provide training for it (EUNAVFOR MED Operation Sophia, n.d.). The LCG is formally part of the Libyan navy, operating under the Ministry of Defence. Despite concerns from the UN Panel of Experts, established by the UN Security Council, about potential violations of the UN arms embargo, Operation Sophia declared the training program exempt, arguing it was not related to military activities, a contentious point given the coast guard's affiliation with the Ministry of Defence (United Nations Security Council, 2018; European External Action Service, 2016). After the end of Operation Sophia's mandate, European Union Naval Force Mediterranean Operation IRINI was launched in March 2020 (Council of the European Union, 2020). Its core tasks include enforcing the UN arms embargo against Libya and monitoring illegal oil exports, but also the expansion and training of the LCG. The European agenda behind this is clear: refugees should not reach Europe. In 2023 its mandate was extended until 2025 (Council of the European Union, 2023a). So, the human rights violations against migrants and refugees and pull-back missions on the part of the LCG in the Mediterranean will continue even though the EU is aware of the human rights violations happening in Libya.

Also, Frontex plays a role in the pull-backs by the LCG. Frontex operates various well equipped aerial reconnaissance aircraft and a drone, enabling the agency to gather extensive knowledge about developments at sea, specifically about boats in distress (Sea-Watch, 2024). However, Frontex does not use this knowledge to support rescue missions, but primarily provides the LCG with this information, facilitating the interceptions and pullbacks of people in distress to Libya (ibid.). Without the information from Frontex, the LCG 'would not have the technical and operational means to intercept these boats on such a scale.' (Sunderland and Pezzani, 2022) Despite the role of Frontex in interceptions in the central Mediterranean and many more human rights violations, the EU continues to strengthen the role and the budget of the agency.

Further policies facilitating the abuse of refugees and migrants in Libya are for instance the Malta Declaration implemented in February 2017, which emphasised 'training, equipment, and support to the

Libyan national coast guard and other relevant agencies' as its primary goal (Council of the European Union, 2017). Additionally, the EU provided funding to enhance Libyan maritime surveillance capabilities in the amount of 42 million Euro in the first phase and another 16.8 million Euro in the second phase via the EUTFA (European Union Emergency Trust Fund n.d. a; European Union Emergency Trust Fund n.d. b).

While these externalisation measures have significantly reduced the number of people reaching Europe via the central Mediterranean and decreased deaths at sea due to fewer departures, it has had severe human right consequences. Over the past year, the LCG has been responsible for several incidents at sea that have endangered the lives of refugees and migrants on the boats as well as the lives of NGO humanitarian workers at sea. A Panel of Experts on Libya found that the coast guard is 'directly involved in [...] grave human rights violations' and 'the sinking of migrant boats using firearms' (United Nations Security Council, 2017). LCG officials conducting interception operations have used threats and violence against refugees and migrants on board boats in distress – the very people they are supposed to rescue.

On November 6, 2017, for example, a rubber boat in distress sent a call for help. The LCG arrived at a high speed and acted aggressively, ignoring coordination efforts and causing panic among the migrants. As a result, several migrants jumped back into the water in fear. The LCG's uncoordinated and violent behaviour, including beating migrants and throwing objects at Sea-Watch rescue boats, exacerbated the chaos, which resulted in the death of at least 20 people. (Sea-Watch, 2017a; Sea-Watch, 2020)

This case is representative of numerous similar incidents in the Mediterranean (e.g. Sea-Watch, 2021; Médecins Sans Frontières, 2017b). By providing training, equipment, and support in various forms to enhance the LCG's capacity, European governments have designated and empowered the LCG as a proxy with the job of intercepting refugees and migrants at sea, to then transfer them back to Libya, where their human rights will almost certainly be violated. The EU's support has also marginalised NGOs, who could otherwise rescue and disembark individuals in Europe, leaving the LCG to increasingly handle such intercepts (Amnesty International, 2017).

Since the shift in the position of European leaders from prioritising saving lives to reducing the number of crossings, the number of people trying to come to Europe via the Central Mediterranean route has dropped significantly. The lower number of departures has resulted in significantly lower numbers of deaths at sea; however, the increasing sealing of the Central Mediterranean route has led to the detainment of migrants and refugees in a country where they are exposed to severe human rights violations and abuses. After interceptions at sea the LCG returned thousands of migrants and refugees to

Libya's shores. Due to the support from EU member states the number of such pull-back operations has increased significantly (Amnesty International, 2017). Even if migrants and refugees trying to cross the Mediterranean don't die during the interceptions of the LCG, there is significant possibility that they will die in DCs. Numerous reports, including Human Rights Watch and Amnesty International, have documented extrajudicial killings, torture, and brutal treatment within these centres (e.g. Amnesty International, 2020; Human Rights Watch, 2019a). For instance, the IOM reported the killing of six migrants in a DC in Tripoli, highlighting the extreme dangers faced by detainees (International Organization for Migration, 2021). Moreover, even when refugees and migrants are not killed outright, the appalling conditions in these centres lead to deaths from insufficient healthcare and medicine. The lack of adequate medical treatment, combined with overcrowded and unsanitary conditions, results in a high mortality rate from preventable diseases and untreated injuries (Médecins Sans Frontières, 2019). These conditions exemplify the severe violation of the right to life, as migrants and refugees are left to suffer and die in inhumane conditions without access to the necessary care and protection. Information about the EU's financial and technological support of Libyan authorities in the area of detention will be provided in the following chapter.

5.2.2 Article 9, ICCPR: 'Right to Liberty'

The criminalisation of irregular entry, stay, and exit, combined with the lack of legislation or infrastructure to protect asylum seekers and trafficking victims, has led to mass, arbitrary, and indefinite detention – now the primary migration management system in the country. This system has enabled severe abuses to occur in detention facilities, where refugees and migrants are vulnerable to authorities, militias, and armed groups, often collaborating with smugglers for financial gain. The absence of judicial oversight in the detention process and the impunity for officials have institutionalised torture and other forms of ill-treatment in these centres. In September 2022, the Prosecutor of the International Criminal Court even said in a statement that according to his office's preliminary assessment, crimes against migrants in Libya 'may constitute crimes against humanity and war crimes.' (International Criminal Court, 2022)

After being returned to the Libyan mainland by the LCG, refugees and migrants are being transported to DCs, where they are held indefinitely. Between 2017 and 2022 alone, over 82,000 refugees and migrants have been intercepted by the LCG and were returned to Libya, with a majority of them being detained (Amnesty International, 2022). Currently thousands of migrants are detained in centres managed by the DCIM, a division within the Libyan Ministry of Interior, executing legislation that criminalises entering, staying in or leaving Libya irregularly (Euro-Mediterranean Human Rights Monitor, 2023).

Thousands more are being held in places of captivity run by militias and criminal gangs. In both cases, people are unlawfully detained in inhuman conditions and subjected to torture and other inhuman treatment or punishment, including sexual violence. They are also at times killed or left to die after being tortured, exploited, abused or sold on for forced labour and other forms of exploitation to other militias, armed groups or criminal gangs (Amnesty International, 2017).

The DCIM, in charge of the DCs, was established as a division of the Ministry of Interior in 2012 to tackle the large migration flows into the country. DCIM's mandate is to tackle irregular migration by acting as a quasi-law enforcement body and more specifically by arresting anyone who has entered illegally, by organising the deportation of irregular migrants and by managing the DCs where the migrants are held (El Zaidy, 2019). There are no current numbers of active DCs, however, according to an assessment of the IOM in 2022 there are 13 of such facilities (International Organization for Migration, 2023). In 2018, OHCHR reported that the DCIM has 26 functioning DCs (UNSMIL & OHCHR 2018). However, numbers are difficult to confirm because the DCIM frequently closes centres and opens others and moreover Libya doesn't officially recognise UNHCR, which makes the collection of reliable data more difficult. As there is no legal oversight by Libyan prosecutors, managers and guards of the centres can engage in extortion and torture with total impunity.

Thousands of men, women, and children remain arbitrarily detained in DCIM centres in Libya without due process or access to lawyers or judicial authorities to challenge the legality of their detention. The overwhelming majority of detainees have never been brought to court as required by Libyan immigration legislation. Many migrants and refugees end up in DCIM DCs following interceptions at sea by the LCG. Others are rounded up from their homes in Libya without warrants during raids in neighbourhoods with high migrant concentrations or taken from checkpoints or the streets by members of armed groups, police, and DCIM officials. These arrests are frequently accompanied by violence and the confiscation of all belongings, including documents, telephones, money, and other valuables, which are almost never returned upon release or repatriation. Migrants and refugees are held indefinitely, often for periods ranging from days to months, without any possibility of having the legal or substantive grounds of their detention reviewed by judicial authorities. The limited options for ending their indefinite detention include evacuation to safe third countries through successful lobbying by UNHCR repatriation, deportation by Libyan authorities or the IOM's Voluntary Humanitarian Return program. The only alternative being indefinite detention, torture and other ill-treatment in DCs, the extent to which these returns are voluntary remains questionable. There is a risk that migrants in lack of better options, accept to return to a country where they may be exposed to persecution, torture or other human rights violations. For many refugees and migrants who cannot secure their release through ransom or return home via IOM's Voluntary Humanitarian Return program, the only option left is

indefinite detention. In light of these circumstances, it is common for individuals to attempt escapes from DCs. The guards often respond with excessive and unnecessary force, sometimes resulting in lethal consequences. (UNSMIL & OHCHR 2018)

Conditions across DCs in Libya are generally inhuman, falling short of international human rights standards. In many centres, migrants and refugees are crammed into hangars or comparable structures unfit for human habitation, characterised by severe overcrowding, inadequate lighting and ventilation, and insufficient access to washing and sanitation facilities. During visits to DCs, the United Nations Support Mission in Libya observed hundreds of migrants and refugees packed into spaces meant for far fewer people (UNSMIL & OHCHR 2018). Additionally, the lack of adequate food and potable water in some facilities has resulted in widespread malnutrition. Often less than 2 litres of water per person, and food with as low as 800 calories is provided (Médecins Sans Frontières, 2017a).

Overcrowding and poor hygiene conditions increase the risk of diseases spreading throughout the centres. However, the access to medical treatment is generally limited to what is provided by UN agencies and other humanitarian organizations, including Médecins Sans Frontières and some local groups, which is inadequate given the overwhelming needs. Migrants needing hospitalisation for injuries, sickness, or childbirth rely on Médecins Sans Frontières and other international organisations, as hospitals often refuse to admit them. Detention conditions also negatively impact the mental health of migrants and refugees, many of whom have already suffered traumatic experiences before. (UNSMIL & OHCHR, 2018)

The climate of impunity for sexual violence, lack of female guards, and absence of safeguards creates an environment where women and girls are highly vulnerable to sexual exploitation. Women detained in DCIM facilities consistently reported being strip-searched by or in front of male guards, subjected to intrusive cavity searches, and being inappropriately touched during searches. The United Nations Support Mission in Libya also reported of rape, sexual violence, and beatings and threats against women if they refused sexual intercourse. (UNSMIL & OHCHR, 2018)

Libya's extensive detention policy creates an environment of impunity for torture, exploitation, and other abuses, so that guards frequently torture and maltreat detainees to extort money from them and their relatives. Common methods of torture reported by survivors include beatings with water pipes, metal bars, and sticks; forcing detainees into uncomfortable positions for prolonged periods; punching, kicking, and electric shocks. It was also reported that DCIM officials and militia members forced detainees to listen to the screams of their loved ones being tortured while on the phone. If refugees or migrants cannot raise the funds needed to pay the ransom for their release, they are given two options: contact a former employee who will pay the ransom in exchange for the detainee working

for them for free until the debt is paid off, or contact a fixer known to the guards who will perform the same role. Reports from refugees and migrants include horrid cases of abuse, such as being deprived of food or prevented from calling their families until they paid the ransom. (Amnesty International, 2017)

Despite being fully aware of the dire human rights situation in Libya, European governments have chosen to implement migration-control policies that enhance the capacity and resolve of Libyan authorities to prevent sea crossings. In November 2017, EU migration commissioner, Dimitri Avramopoulos, said 'we are all conscious of the appalling and degrading conditions in which some migrants are held in Libya' (as cited in Human Rights Watch, 2019a). He and other EU officials have repeatedly asserted that the EU aims to improve conditions in Libyan DCs, acknowledging the grave and widespread abuses. However, interviews conducted by Human Rights Watch with detainees, DC staff, Libyan officials, and humanitarian actors revealed that EU efforts to improve conditions and treatment in official DCs have had a negligible impact (Human Rights Watch, 2019a). Instead, EU migration cooperation with Libya is perpetuating a cycle of extreme abuse. The EU is supporting the LCG, enabling it to intercept migrants at sea and return them to Libya, where they are subjected to arbitrary detention.

European governments have been assisting Libyan authorities responsible for unlawful detention through various policies and agreements. In February 2017, the Malta Declaration was adopted by members of the European Council, focusing on the Central Mediterranean route. The declaration prioritised providing 'training, equipment, and support to the Libyan national coast guard and other relevant agencies' and implementing measures 'to ensure adequate reception capacities and conditions in Libya for migrants,' in collaboration with the UNHCR and IOM (European Council, 2017). EU leaders also supported Italy's bilateral efforts to cooperate with Libya on migration, through the Memorandum of Understanding signed only days after the adoption of the Malta Declaration. This declaration emphasised strengthening the integration of migration within the EU's official development assistance for Africa, utilising resources under the EUTFA. Specifically upgrading and financing of 'temporary reception camps under the exclusive control of the Libyan Ministry of Interior,' were planned (Odysseus Network, 2017). As no open reception centres or camps exist in Libya, Amnesty International interprets these reception centres as existing DCIM DCs (Amnesty International, 2017). The MoU additionally updated previous agreements between Italy and Libya, with Italy and the EU helping the LCG enhance their maritime surveillance capacity by providing financial support and technical assets (Odysseus Network, 2017). Since 2017, Italy has allocated 32.6 million Euro for international missions to support the LCG, with 10.5 million Euro earmarked in 2021 (Médecins Sans Frontières, 2022). The financial support for the LCG has come at the expense of migrants' and refugees' human rights, as virtually everyone intercepted at sea by the LCG ends up in a Libyan DC.

'Rather than creating voluntary, legal, and safe alternatives to crossing the Mediterranean Sea, the EU and Italy have struck a deal in which Libya serves as a place where migrants are contained,' says Juan Matias Gil, Médecins Sans Frontières head of mission for search and rescue operations in the central Mediterranean. 'Meanwhile, Europe looks away while in Libya a system of exploitation, extortion, and abuse is funded and promoted by the EU and Italy.' (Médecins Sans Frontières, 2022)

The MoU was extended in 2020 and in 2023 again renewed for another three years (Amnesty International 2020; Human Rights Watch, 2023a). Additionally, in July 2017, the EUTFA adopted a program with 46.3 million Euro in funding to reinforce the integrated migration and border management capacities of Libyan authorities (European Commission, 2017). Since 2013, the European Union Border Assistance Mission Libya also has supported Libyan authorities in developing border management and security at the country's land, sea, and air borders (European External Action Service, 2021). Its mandate has been extended in 2023 for another two years (Council of the European Union, 2023b).

EU institutions have tried to minimise the EU's direct involvement and deflect attention from their responsibility for the serious abuses they have contributed to by focusing on funding projects implemented primarily by member states. Finally, by transferring European development and other aid resources into the EUTFA, a fund that can be used with reduced transparency and limited supervision, and then using those funds to realise projects such as the European Union Border Assistance Mission Libya, they have reduced avenues for holding decision-makers to account for the harmful contributions made.

5.2.3 Article 33, Refugee Convention: 'Non-Refoulement Principle'

Problematic in this context is that Libya is not a member state to the 1951 Convention on Refugees which defines the term 'refugee' and outlines their rights as well as the legal obligations of states to protect them – especially the principle of non-refoulement.

The violation of the principle of non-refoulement in Libya can be observed in two ways. On the one hand, pull-back missions of the LCG violate this principle, because Libya cannot be regarded as a safe country for migrants and refugees, because of the dire human rights situation in the country. And on the other hand, Libya engages in the arbitrary expulsion of migrants and refugees to their countries of origin, where they face serious risks, including persecution and torture.

The interceptions at sea represent a clear violation of the non-refoulement principle, because it has been consistently highlighted that Libya cannot be considered a safe place for the return or disembarkation of migrants (OHCHR, 2021). Migrants in Libya systematically face the risk of unlawful killings,

slavery and forced labour, arbitrary detention, torture, gender-based violence, exploitation, lack of access to health and other human rights violations and abuses by both state and non-state actors.

Furthermore, Libya engages in arbitrary and collective expulsions without individual assessments of migrants' rights or protection needs. In 2019 and 2020, at least 7,500 migrants have been expelled from Libya's external land borders (OHCHR, 2021). These expulsions often occur without any legal procedures, judicial oversight, or access to legal assistance. Migrants are frequently expelled to countries where they face serious risks, including persecution and torture, which is a direct violation of the non-refoulement principle. Moreover, the expulsions often lack due process and procedural guarantees. Migrants do not have the opportunity to challenge the legality of their return, nor do they receive individual assessments of their cases. This systemic lack of due process raises significant concerns about collective expulsions and potential chain-refoulement, where migrants expelled from Libya are further expelled by other countries.

It has been repeatedly reported about the severe conditions and dangers faced by migrants during these forced returns. Many are subjected to long, perilous journeys across the Sahara Desert in overcrowded vehicles without adequate safety, food, water, or medical care. These conditions exacerbate the vulnerability of migrants and constitute further violations of their human rights. (OHCHR, 2021)

Particularly concerning are the large-scale expulsions from al-Kufra in the southeast of Libya, where the UN Secretary-General has noted ongoing reports of mass deportations by the DCIM (Secretary-General of the United Nations, 2021). These actions, under so-called 'emergency procedures,' raise concerns about collective expulsions and potential refoulement. The al-Kufra DC has effectively become a deportation hub. Witnesses reported that migrants from Chad, Eritrea, Ethiopia, Somalia, South Sudan, and Sudan were detained without formal judicial orders or opportunities for judicial review, often taken from their workplaces or the streets and transferred to al-Kufra before being expelled to their countries of origin. Migrants were not given procedures to challenge their detention or expulsion. Officials at the border verified identities based solely on the migrants' own identification; in the absence of documents, migrants were registered without verification as nationals of the receiving countries.

In conclusion, Libya's practices of forced return and expulsion violate the principle of non-refoulement through arbitrary detentions, lack of due process, and exposure of migrants to severe risks and human rights abuses. These actions are in direct contravention of international human rights laws designed to protect individuals from being returned to situations where they would be at significant risk of harm.

Although the EU or its member states are not directly involved in the expulsion of refugees and migrants, they indirectly facilitate the deportation of migrants to dangerous third countries and pull-back

missions in the Mediterranean by providing financial and technological support to the LCG and other Libyan authorities. The MoU, funding from the EUTFA and various Frontex operations such as Operation Sophia and Irini should be mentioned in this context. In order to avoid redundancy, these measures will not be presented and explained further, since they have already been described in detail in previous chapters.

5.3 Findings

The period after 2015 saw an increasing externalisation of the EU's migration and border control to Libya and Turkey. With measures and agreements, such as the EU-Turkey deal, funding via the EUTFA, or the implementation of the MoU, the EU and its member states provide the financial, material and political support for third countries to deal with the large number of refugees and migrants in their countries.

In Turkey however this has caused the deterioration of the human rights situation for refugees and migrants. The implementation of the EU-Turkey deal and subsequent agreements has led to heightened border controls and increased detentions. The Turkish Coast Guard and border forces, often supported by EU funding and equipment, have been reported to use violence – including beating and shootings – and intimidation against refugees, thereby violating the right to life. Additionally, Turkey violates the right to liberty through arbitrary detention in poor conditions in removal centres, funded by the EU. Detainees face prolonged detention without legal grounds or due process, often coerced into signing 'voluntary return' documents. DCs in Turkey are plagued by poor living conditions, and reports of abuse, including sexual harassment and inadequate medical care. Despite the 'temporary protection' status for Syrians, many have been unlawfully deported, breaching their right to seek asylum. Turkey's policy of deporting refugees, sometimes under coercion or through forced 'voluntary' returns, violates the principle of non-refoulement and exposes refugees to further harm in their countries of origin.

In Libya, the increased EU support to the LCG and other authorities through funding, training, and equipment has facilitated a system where migrants are intercepted at sea and returned to Libyan DCs. The LCG engages in violent interceptions at sea, causing deaths and injuries among migrants, thus violating the right to life. By returning them to Libyan DCs, the right to liberty, as well as the non-refoulement principle are violated, as migrants and refugees are being brought back to a country, which cannot be regarded as a safe third country, and there they are being arbitrarily detained for an indefinite time under inhumane conditions. These centres are notorious for their inhumane conditions,

including overcrowding, lack of sanitation, inadequate healthcare, and widespread abuse, including extrajudicial killings and torture. Additionally, Libya violates the non-refoulement principle by conducting arbitrary expulsions without legal procedures, returning migrants to dangerous countries where they face persecution and torture.

Overall, while the externalisation policies have aimed to reduce migrant flows into Europe, they have resulted in severe human rights abuses in transit countries like Libya and Turkey, where refugees and migrants face dire conditions and systemic violations of their fundamental rights. Even though a causal link between increasing externalisation and human rights violations cannot be proved, the financial, material and political support facilitates these abuses, thus deteriorating the human rights situation in third countries.

6. Conclusion & Outlook

This work aimed to answer the question how the human rights situation for migrants in third countries changed in context of the progressive externalisation of EU migration policies since 2015.

First, it was outlined how the increasing securitisation of migration has resulted in stricter EU asylum and migration policies and additionally in the externalisation of the EU's external borders. Since the 2015/16 refugee 'crisis' in particular, migration has been primarily associated with issues such as crime, cultural threats and terrorism, which has legitimised a more restrictive migration policy and agreements with important transit and origin countries. To prevent this supposed danger from reaching the European continent, the EU's external borders were increasingly externalised. An overview of the EU's external migration policy was provided in the following chapter, followed by an identification of a growing trend towards externalisation measures parallel to an increased securitisation since 2015.

Subsequently, the analytical framework, the three human rights articles used to structure the analysis of the two countries, and the rationale behind choosing the two cases were presented. Libya and Turkey represent *typical* cases of EU border control externalisation, making them ideal to examine the development of the human rights situation in third countries. By choosing and analysing *typical* cases, the results can be generalised and applied to other third countries. Before the analysis of the cases, a brief overview about the political situation and the role in the 2015/16 refugee 'crisis' of the respective country was given.

The results strongly indicate that the human rights situation in both countries deteriorated in the period under review. All the three selected human rights articles were frequently violated by Libyan and Turkish authorities and a correlation can be observed between the increasing externalisation of EU migration policies and human rights violations in third countries. When analysing the human rights situation in Turkey, the focus was primarily on the measures of the EU-Turkey deal, whereas in Libya several different treaties and agreements, such as the MoU, the Malta Declaration or any Frontex operations, were examined. The results suggest that since the EU has provided financial support and concluded agreements with the respective countries, the situation for refugees and migrants has worsened.

Establishing a causal relationship, however, is beyond the scope of my work, as this deterioration could be attributed to unobserved circumstances, such as political instability or economic dissatisfaction, as well. In the case of Turkey, the decline of the Turkish economy and a sharp increase in the cost of living led to criticism and an increasingly negative perception of Syrian refugees. Some politicians took advantage of this shift and changed the previously open-door policy to an increasingly strict and

restrictive migration and asylum policy. In particular, the violation of the non-refoulement principle is also exacerbated by the geographical limitation of the Refugee Convention. Thus, non-European migrants are not granted 'refugee' status and deportation to dangerous third countries such as Syria and Afghanistan are facilitated. In the case of Libya, the politically unstable situation since the fall of Gaddafi and a legal framework that criminalises the irregular entry, stay, and exit of migrants and has increased the number and severity of human rights violations. The fact that Libya did not sign the Refugee Convention additionally implies a lack of legal protection and human rights for refugees in the country. While this study highlighted significant correlations and contextual links, it did not establish direct causality. Hence, future research is needed to address the gap in understanding the causal relationship between the progressive externalisation of EU migration policies and human rights violations against migrants and refugees in third countries. Such research would provide more definitive evidence on whether and how EU externalisation policies contribute to human rights abuses, thereby offering a clearer basis for advocacy and legal action aimed at protecting the rights of migrants and refugees in affected regions.

While European migration policies are clearly facilitating abuses in third countries and exposing an increasing number of people to these dangers, it would be wrong to conclude that the alternative to flawed cooperation is no cooperation at all. The situation for refugees and migrants in third countries will not improve, nor will the number of deaths at sea be reduced, by completely withdrawing international engagement with the Libyan authorities on migration-related issues. However, it is essential – from a legal, moral, and political perspective – that the aims and nature of this cooperation are rethought. The focus must shift from merely preventing arrivals in Europe to actively protecting the rights of refugees and migrants.

By externalising migration and border control, the EU does not solve the 'problem' of migration but shifts it to other countries. Instead of addressing the root causes of migration or facilitating safe regular migration routes, the EU and its member states have implemented a series of measure to block migratory routes and to prevent migration to Europe as far as possible, relying on third countries as 'guards' of Europe's borders. What happened in Libya and the Central Mediterranean route as a result of the EU-Turkey deal can now also be observed in Tunisia. Reports indicate that more migrants are departing from Tunisian shores, attempting to cross the Mediterranean to Italy due to the dangers and challenges posed by the Libyan route, which prompted the EU to shift its focus to Tunisia to control migration flows. In July 2023, Ursula von der Leyen, President of the European Commission, travelled to Tunisia alongside Italian Prime Minister Giorgia Meloni and former Dutch Prime Minister Mark Rutte to sign a strategic partnership agreement. The main focus of the pact is cooperation in controlling border flows, which comes in the form of significant funding (105 million Euro) to enhance its border

management capacities. 'The ranking of the countries sending these boats is changing accordingly. It used to be Türkiye, now it's Tunisia, and soon it will be Algeria. It's just how they're managing the borders now.' (Òscar Camps as cited in González, 2023)

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