Migration and Torture in Today's World

edited by
Fabio Perocco

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Società e trasformazioni sociali

Serie diretta da | A series edited by
Pietro Basso
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Edizioni
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Abstract

This book analyses torture, inhuman and degrading treatment towards migrants worldwide, integrating overviews from several contexts and disciplines.
It highlights that today migrants' mistreatment is a global phenomenon, a frequent and continuous element of the migratory experience (in countries of departure, of transit, of arrival), an intrinsic component of state policies, and an extreme form of that structural violence which is inherent to the contemporary war on migrants at the global level.

Keywords   Migration. Torture. Structural violence. Inhuman and degrading treatment. Migrants. Racism. Migration policies.

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Migration and Torture in Today's World

Torture, Structural Violence and Migration

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Abstract   This essay highlights that torture has become a structural element of the migratory experience in most of the world, especially as a result of the worsening of the conditions of migration and the torture crisis. Considering several contexts (Central America-US, Balkans, North Africa), this essay examines the factors underlying such processes and points out that mistreatment of migrants is related to the tightening of migration policies and the escalation of institutional racism, which – with securitisation policies, politics of fear, hyper-detention, theories on the criminal law of the enemy – favour contexts permeable to violence towards migrants.

Keywords   Torture. Structural violence. Migration. Migrants. Racism.

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1 Introduction

Despite mankind's accomplishments over time, torture – in this volume intended in a broad sense, not in the strict legal sense of the term[1] – is still a widespread phenomenon throughout the world and a very topical fact. Like racism, it is more alive than ever, it is not something old from the past. Like violence against women, it is a phenomenon that affects the four corners of the planet and not just some 'underdeveloped' country. The events that in the last two decades have caused the most stir and that were in the spotlight (Abu Ghraib, the G8 in Genoa, Guantánamo) are just the tip of the iceberg and above all, they are not exceptional cases: torture is a regular, systematic, everyday practice. It is not a matter of loose cannons, of rotten apples, accidental malfunctioning of State apparatuses or of the system. It is not an unusual event, something anomalous, isolated, carried out by monsters or insane criminals: torture is a social phenomenon, with deep social roots, and an integral part of the system.

This book examines torture and the inhuman treatment of migrants in different contexts of the world, according to a perspective of social production of torture (Gjergji 2019 and in this volume; Hajjar 2013; Mackert 2015). Gjergji notes that in history and geography torture has not been applied indistinctively to everyone, to the whole population, but rather to a specific segment: the exploited, the dominated people and groups supporting the productive system, the subordinated working class (slaves, servants, labourers, proletarians). Conversely, the cases of torture against people from the upper classes were indeed individual episodes and not mass ones, which targeted individuals who were tortured as traitors of their own class, having defended the exploited and the working classes. In this sense, torture is also indirectly linked to the economy, to political economy, to the mode of production, and not only to the forms of political and institutional regimes; it is a social phenomenon pertaining to the economic-productive dynamics, so that the dehumanisation of the tortured aims at the devaluation of work, the material and political annihilation of the exploited groups. Specifically, in the modern age torture has become a part of the dynamics of the market, changing along the never-ending change of capitalism, which incessantly and incessantly transforms society and thus torture, too.

This book highlights that specific factors, above all the war on migration, have created everywhere preconditions and contexts permeable to migrants' torture, turning it into a global and structural phe-

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[1]   As is known, torture, inhuman and degrading treatment, intentional violence, are different concepts with distinct legal definitions. In this text I refers to torture in a broad sense, including moral torture.

nomenon. The torture of migrants has become a structural element of the migratory experience in several parts of the world: sometimes it is the cause for departure or something they experience when leaving; it is a frequent experience along the migratory path, the transit migration, the journey; it is a reality that migrants sometimes experience in receiving countries. They suffer torture, violence, and inhuman treatment in the sending countries, in the countries of transit, in receiving countries, during movements within receiving countries, so much so that torture is a pervasive element of migration in the contemporary world.

But the individual acts of personal violence against migrants are part of the structural violence that is ingrained in a system of unequal social relations (of production, race, gender). They are part of the structural violence arising from the historical system of inequalities; they are part of the structural violence that manifests itself in the inequalities between classes, races, genders, nations, existing in the various spheres of social life (work, housing, health, education, rights etc.); they are part of the structural violence that reflects social injustice and at the same time manages not to manifest itself, to conceal itself and its origins, to make itself considered a natural element (Galtung 1969).[2] Personal violence – which is closely linked to structural violence – is the epiphenomenon of social domination under the banner of exploitation and subordination; structural violence refers to the social structure and its inequalities – i.e., the class structure and class inequalities: "behind structural violence is inequality, above all in the distribution of power" (Galtung 1969, 175). Therefore, the individual act of violence against the individual migrant is equivalent to a collective action against a collective subject within the framework of historically determined relations. In this framework, the persistence of inequality over time (and consequently of structural violence) is the maintaining factor of the stability and continuity of personal violence, inhuman treatment, and torture – as equally stable, enduring, continuous phenomena.

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[2] This structural character enables violence to not present itself as such, or even to present itself as anti-violence ('humanitarian violence'). As Galtung observes, this is due to the fact that it is "built into structure" (1969, 171).

2 Torture. A Social Relationship of Submission, with Deep Social Roots

Torture is a social relationship of submission with systemic social roots (see § 3), which goes beyond the people directly affected. Society and circumstances produce it and normalise it: it does not exist in an isolated and random manner, rather it is present within specific contexts, in certain social relationships, in particular narratives, so that in each historical-political-social-cultural context there is a specific potential for torture that turns some individuals or groups into hostile, enemies, "torturable subjects" (Jubany et al. 2019, 119).

Compared to the past, torture practices have changed, but the meanings and the targets have remained roughly the same. As a deliberate destruction of the personality and dignity of the victim through the infliction of severe physical or mental suffering (Lalatta Costerbosa 2016, 9), torture annuls and dehumanises the person, destroys their dignity and identity, and reduces them to an object. An animal, a sub-human, a human animal (Sartre 1958). In his play *Dead Without Burial* of 1946, Sartre portrays torture victims like dead people without burial, who are unable to speak and are broken inside: people physically alive but dead inside, because with torture, as he will say in the introductory essay to the book *The Question* (or. ed. *La Question*) by Henri Alleg, you let the body live but you will kill its spirit (Sartre 1958).

A form of extreme intentional violence aimed at the full submission of the subject, torture is inscribed in unequal social relationships of production, class, race, and gender. It is the expression of unequal relationships of power, which leads to the humiliation of the subject, their physical and psychological demolition, to leave them dumbfounded and with no hope for the present and the future. Torture does not end with the end of the afflictions: it produces a very deep trauma on the mind, on the brain, on the body, constantly relived and reopened by the insistent and intrusive memory of the trauma itself (van der Kolk 2014).

Torture is not just about violence and trauma happened in the past, but also and above all, the continuous memory of the tortures suffered and the haunting return of the trauma, the incessant irruption of the traumatic past into the present, which compromises and paralyses the future. In annihilating the subject's humanity, torture destroys plans and hopes for independence, freedom, and solidarity, both of the tortured person and of those around them, both individual subject as well as collective subject.

Whether it's judicial torture (to punish, to extort information) or political torture (to annihilate the enemy, the political opponent, the rebel), torture has a wide social scope that goes beyond those who are directly hurt by it. It aims to restrict freedom of thought and ac-

tion of the tortured person and their entourage, to discipline the tortured victims and their social circle, to warn society as a whole and, in particular, the groups defying the social order, to warn those who go against the ruling class, those who break the rules of the established order (Scott 1959).

An extreme mode of affirmation and consolidation of the power of the ruling class through the production of terror, of fear (Lalatta Costerbosa 2016), torture is often part of the process of establishing and maintaining social domination, the material exploitation of one social class over another, of the imposition of a given worldview by a socially dominant group (one class, one caste) over another group qualified as an opponent, a criminal, a subversive, an enemy, an outlaw. Practised on individuals, to destroy their egos, identities, and personalities, torture instils terror in the tortured person's entourage and in society, to impose social silence, to weaken the social resistance of dominated populations and groups, of subordinate classes.

It is, as emphasised by Butler (2009), part of the 'civilising' mission pursued by the ruling classes and implemented by the institutions or subjects representing the established power. It is an integral element of domination and control over individuals, groups, and classes, defined and considered dangerous, deviant, criminals, and subversive. A normal and normalised practice directed against subjects considered harmful, frightening, and recalcitrant towards the dominant economic and political order, torture is a modality of debasement, submission, and inferiorisation, individually and collectively, through the affirmation of the superiority of the torturer over the tortured person. The torturer is not only the individual perpetrator who puts torture into practice, but also the collective subject (a social class, a dominant group) who creates the favourable conditions for torture and who directly or indirectly arms the perpetrator's hand.

In history and geography, there are many cases of torture as a result of a continuum of violent practices coming from State institutions, from centres of power, to subdue and dominate subjects considered and defined as threatening, riotous. Here, for conciseness, I will only mention the case of the Roma people in modern and contemporary Europe, a population against whom discriminatory and persecutory policies have five centuries of life. Such persistence, as observed by Di Noia:

> was an integral part of the struggle against vagrancy that the rising capitalism unleashed in Europe from the end of the 15th century. But within this centuries-old process of proletarisation of the labor force there is undoubtedly a specifically anti-Ziganism hue [...]. Forced into slavery, deported, branded with fire and mutilated, chained, massacred, executed, sterilised, deprived of their children, the Roma have survived European 'civilisation' merg-

ing with the rest of the grassroot classes or increasingly resorting to secondary economic activities, continuously eroded by the capitalist development [...]. So, as for the European peasants expelled from the countryside and reduced to vagrancy, the States of modern Europe have forced the Roma to choose between paid slavery, social marginalisation and extermination. In other words, capitalism, *by destroying their traditional basis of existence*, closed to them the road of the past and instead opened up the way to decline and ethnocide. (Di Noia 2016, 24-7; emphasis in the original)[3]

3 Against Torture

International law establishes a full prohibition against torture, that cannot be subject to exceptions, exemptions, or suspensions. Article 5 of the *Universal Declaration of Human Rights* of 1948 declares that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* of 1984, which entered into force in 1987, establishes an absolute prohibition of torture, without exception. Article 3 of the *Geneva Convention on The Treatment of Prisoners of War* prohibits torture and mistreatment of soldiers or civilians prisoners of wars. Article 7 of the *International Covenant on Civil and Political Rights* of 1966 declares that no one can be subjected to torture or degrading treatment, not even in the event of exceptional public danger threatening the existence of the nation (Art. 4).

Article 3 of the 1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, even in the event of war or other public danger threatening the life of the nation (Art. 15). Article 5 of the *African Charter of Human and Peoples' Rights* of 1981 states that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment shall be prohibited. Article 5 of the 1969 *American Convention on Human Rights* states that no one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with the respect due to the inherent dignity of the human person.

Considering torture in the context of migration, the Global Compact for Migration (GCM), approved on 19 December 2018, mentions

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[3] Unless otherwise indicated, all translations are by the Author.

torture in the chapter on returns and readmissions (United Nations 2018a). During the negotiations for the GCM, Europe stressed the responsibility of the countries of departure concerning returns and readmissions, as well as the legal obligation for States to take back their nationals, by including this point in Objective 21: "Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration". However, as returns and readmissions may involve the risk of torture, Objective 21 provides that States

> commit to facilitate and cooperate for safe and dignified return and to guarantee due process, individual assessment and effective remedy, by upholding the prohibition of collective expulsion and of returning migrants when there is a real and foreseeable risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm, in accordance with our obligations under international human rights law.

In the Global Compact on Refugees (GCR), approved on 17 December 2018, torture and inhumane treatment are addressed extensively, urging to consider victims of torture as specific beneficiaries of public policies for refugees (United Nations 2018b). States are required to increase their capacity to address the specific needs of torture survivors, and specific provisions for victim support are set out. In section "Reception" (part "Addressing Specific Needs"), the GCR provides that

> the capacity to address specific needs is a particular challenge, requiring additional resources and targeted assistance. Persons with specific needs include: children, including those who are unaccompanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender-based violence, sexual exploitation and abuse or harmful practices. (United Nations 2018b)

Moreover, it urges States to create mechanisms for identification, screening and referral of those with specific needs to appropriate and accessible processes and procedures. In chapter "Meeting Needs and Supporting Communities" (section "Health"), the GCR asks States to contribute

> with resources and expertise to expand and enhance the quality of national health systems to facilitate access by refugees and host communities, including […] survivors of trafficking in persons, torture, trauma or violence, sexual and gender-based violence. (United Nations 2018b)

In February 2018 the UN Committee against Torture (CAT) issued new guidelines on the rights of asylum seekers, that strengthen their protection from torture following returns and readmissions (United Nations 2018c).

Therefore, international law – transposed into the domestic law of many States of the world – considers torture a crime of absolute and specific gravity, establishing a full prohibition against it. The prohibition of torture is peremptory and mandatory because torture, in addition to damaging physical and psychological integrity, annihilates human dignity, which constitutes an absolute, intangible, inviolable good, the basis of humanity and human rights. It is never negotiable in the interest of the State, it is never admissible in the name of the State. Human dignity, being the foundation of all human rights, prevails over any requirement of justice or security (Gonnella 2013, 26, 93).

This conception of torture as an absolutely negative element – until a few centuries ago in Europe torture was part of the criminal code – is the result of multiple elements and social forces.

Among these we find the historical movement of the grassroots classes, which, remaining in the West, over the centuries have shaken off with great effort and many conflicts the status of 'thing', of an object without rights, imposed by the ruling classes and (imperial, feudal, religious etc.) absolute power. It was a long, complicated historical process, not at all linear, which over time has seen the gradual acquisition of civil, political, and social rights, the progressive (albeit incomplete) conquest of the right to have rights. A process in which the working class and the rising urban bourgeoisie have raised the topics of the universality of human dignity, of equality, of the social (not natural) roots of inequality. This acquisition took place through political struggles, social conflict, daily resistance; it was not a spontaneous and free contribution by the ruling classes and the State apparatus, on the contrary. Think, for example, of the massive phenomenon of the witch-hunt organised by European States and the ruling classes to sweep away popular beliefs, especially in the rural world, and impose a new worldview, functional to the rising capitalism and bourgeois society (Levack 2015). Or, another example, is the harsh repression in the modern era of *jacqueries* and social protest movements, with a more or less religious background, countering the waged slavery imposed by the rising capitalist economy.

Then there was anti-colonialism, with the liberation movements of oppressed peoples, which denounced and fought slavery, racism, and torture as structural elements of the colonial system. The slave system of exploitation of the Africans and natives entailed death by exhaustion, it was based on organised violence and daily terror, with torture as a founding element of this system – both in the slave trade phase (slave economy) and in the agricultural production phase in

plantations (plantation economy). Torture was a structural factor of the slave system and racism that supported it; the slave trade, the slavery of the natives and Africans in the colonies – who were considered human beasts or sub-humans – was equivalent to a long collective daily agony (Ferro 2003; Stannard 1992), to a mass hell:

> The life of a slave was one long torture. It started with his capture by the raiding parties; it ended with his death on a West Indian plantation. Once the slaves had been landed and sold for labour in the islands their persecutions increased in number and extent. Before, the treatment they received, terrible as it was, stopped short of mutilation and flogging in its more fiendish forms, for the good and sufficient reason that a slave who was a cripple or whose back was scarred with unhealable weals would not fetch as good a price as would one sound in appearance. But when a planter had purchased a slave he was in many cases moved by no such motives of clemency. The probability was that he would keep the slave until worn out with labour or until death came, and in the meantime his object was to secure from his purchase the last ounce of effort that torture or punishment could extract. (Scott 1959, 120-1)

Another element was the anti-torture school of thought that developed over the past centuries, especially in Europe, which prepared the ground for torture's (albeit formal) abolition. Born in the sixteenth century with the reflections and stances of Juan Luís Vives, Michel de Montaigne, Erasmus of Rotterdam, and Thomas More, such movement judged torture to be a practice against humanity and a useless practice from a judicial-investigative point of view (Lalatta Costerbosa 2016). It strengthened in the seventeenth century, thanks mainly to the work of Friedrich Spee von Langenfeld, and consolidated in the eighteenth century with the works of Christian Thomasius, Montesquieu, Cesare Beccaria, Wilhelm von Humboldt, Pietro Verri, Joseph von Sonnenfels, Gaetano Filangieri. They, in laying the legal and philosophical foundations of abolitionism, highlight the dual judicial significance of torture (punishment, sentence; ways of extorting information and confessions) and the dual political significance of torture (subjection and destruction of the enemy; ways of government through fear).

Finally, there are the horrors of the Second World War, the atrocities of Nazi-Fascism, concentration camps, the extermination of Jews, Roma, political opponents and *Asozialen* in general, in other words, the set of events of the early twentieth century that will represent a fundamental turning point in the prohibition of torture.

Yet, torture remains a permanent phenomenon, more alive than ever. Why is that?

4   The Roots of the Contemporary Torture Crisis

Despite international law setting out an absolute prohibition of torture, despite the rich legal and philosophical tradition, despite the abyss of the Second World War, in today's world torture is a widespread phenomenon, a regular and organised practice: fifteen years ago, 132 States were proven to practice it more or less systematically (Cassese 2011, 143); in 2015 there were 122 countries where torture was practised (Noury 2016, 113); in 2019 the number rose to 144, so much so that international observers speak of a fully-fledged 'torture crisis', given its undaunted spread and worsening. Basically, a global phenomenon that affects the whole planet, involving most of the States that have signed the various conventions on the subject, and which has led to talk of a global crisis of torture.

In the world, there are more than one hundred companies producing torture instruments: a very flourishing industry, which – together with the equally flourishing security industry – produces a multitude of electrical devices, chemicals, sprays, foams, for the torture system. A system that operates in an accurate, precise, scrupulous manner (even in self-concealment), which counts on several 'experts' including medical staff. Often, doctors are a permanent and central element of the torture system, as Bhatia and Burnett demonstrate for the English context (2019), or the massacre of Bolzaneto during G8-2001 (Calandri 2008) and the Cucchi case (Bonini 2021) demonstrate for the Italian context. Torture is

> conducted in a serious and rigorous way by 'professionals' in the sector […] there are international schools for torturers, there are doctors who witness torture with specific tasks: identify the weak points on which the abuse can be focused, keep the victim under control so that he or she does not die during torture, awake the passed out victim, treat the victim so that he or she can undergo new sessions […]. 60% of the people who have been treated at the Centre for the Rehabilitation of Victims of Torture in Copenhagen have been tortured in the presence of doctors. (Scaglione 1999, 4-5)

Therefore, torture is a structured and structuring phenomenon.

Multiple factors, closely intertwined, have helped to keep torture alive. I refer, first of all, to the unstoppable rise of securitarian ideology, security policies, within the globalisation of the neoliberal ideology and policies (Bigo 1998; 2005; 2014; Wacquant 1999). A rise which has constituted a profound and multiform process, which has reached the stage of 'obsession for security' (Klinenberg 2001), and which is an integral part of the governance of contemporary society, and a pervasive element of daily life.

Using the formula "it is the people who ask for this because they feel insecure", whereas they are made insecure by the structural precarisation of social life, this regime of truth is embodied by a complex of security policies, practices of social control, phenomena of militarisation of daily life, which somehow favour the practices of torture. The security paradigm, based on the institutional production of social insecurity and on the social construction of the public security problem, has facilitated acquiescence towards torture and inhuman and degrading treatment.

I also refer to fear policies, discourse and culture (Furedi 1997; 2018; Glassner 1999; Skoll 2010; Wodack 2015), the dissemination of which has been an equally profound process, which has supported the social production of insecurity and the securitisation of the society, with States and fear professionals as the main protagonists.

The globalisation of fear has supported the formation of contexts favourable to torture; it has fed exceptional, emergency situations (the terrorism of the emergency), in which torture thrives. The paradigm of fear has played an important role in

> restoring a public space for the practice of torture […]. In this dialectical relationship between fear, security and freedom, a new legitimation of torture as an investigative and punitive practice has found its place. (Gonnella 2013, 101-2)

I refer, then, to the eclipse of the welfare state and the parallel rise of the penal state (Wacquant 2009a). With the strengthening of the mechanisms of discrimination, exclusion, the State has had a leading role in the creation of inequalities, of State inequalities; in particular, it was one of the main protagonists of the double process of social production of exclusion and criminalisation of socially produced exclusion.

Wacquant (2009b) stressed the close relationship between State violence and the rise of the penal state in the context of the growing criminalisation of the poor, so that those living on the margins of society experience a persistent danger of being subjected to torture, which is part of the apparatus of control over their daily reality. This transformation of the State from welfare to warfare *via* workfare, together with the authoritarian drifts affecting the State and society in various countries, has facilitated the presence of environments open to torture.

Another factor is the set of political and legal theories which, in the name of a 'state of necessity', emergency, national security, justify torture by derogating from fundamental rights and the rule of law. These theories, which have been established in particular in the United States since 9/11, and which are in line with anti-terrorist legislation, affirm the admissibility of torture in the interests of the State in exceptional cases.

According to Dershowitz (2002; 2004), who generally condemns torture, it can be used in special, circumscribed, exceptional situations by means of 'light torture', which uses a certain 'physical pressure' – even though, according to the author, statements/confessions made under torture must be supported by concrete evidence otherwise they alone have little value. The author states that, since torture is widespread throughout the world despite prohibitions and conventions, its use should be codified and regulated, turning it into a practice that takes place in the open, to protect both the tortured person in order to prevent him from being subject to arbitrariness (i.e., to 'inhuman', 'unregulated' torture) and the people in charge for torture.

These reflections, made by some States to justify torture practices, open up enormous problems, including the questions of the admissibility of the state of necessity as the legal basis for the lawfulness of torture and the identification of a 'light', 'human' torture that causes little suffering and causes very little damage. With regard to the first point, the use of the concept of 'state of necessity' turns a prohibition that is (or should be) absolute into something relative and ensures that the definition of the situation on which you decide (whether or not to resort to torture) is based on subjective elements. In this regard, Cassese notes that the state of necessity "is a small door through which any arbitrariness can pass" and "operates as a circumstance that eliminates the torturer's responsibility" (2011, 145-7).

As for the second point, the debate on the just suffering to be inflicted on the tortured person is simply ridiculous, because on the one hand the concept of 'humane torture' is inconceivable (being torture inhuman by definition and completely banned) and on the other hand (should it be decided to make the ban relative) it is practically impossible (as well as unthinkable) to objectively establish a threshold of suffering: what would a 'just suffering' be? Who and how do you decide this? According to which criteria and elements? Just as ridiculous and grotesque, are the various ploys and linguistic camouflages that have been adopted around the world to humanise, normalise, with technical-bureaucratic language, torture: "coercive interrogations", "interrogations for salvation", "coercive and forced interrogation", "violently imposed cooperation for the salvation of human lives" (Lalatta Costerbosa 2016).

According to Jacobs, a distinction should be made, within a single, common system of criminal law, between a "criminal law of the citizen" (*Bürgerstrafrecht*) and a "criminal law of the enemy" (*Feindstrafrecht*), in which the enemy is the one conspiring against the established order and which for this reason should enjoy a limited, conditional recognition of fundamental human rights. Because of his attitude and behaviour, the enemy should be ousted "from the Law, thus not providing the minimum cognitive guarantee necessary for his treatment as a person" (Jacobs 2007a, 17) "as rights are taken

away from him, he is not treated as a person in law" (2007b, 118). This compression of the substantive and procedural guarantees of the rule of law should take the form of a special criminal law that also punishes potentially dangerous or long-standing behaviour ("the treatment of the enemy, who is immediately blocked at the previous stage and who is fought as dangerous" [Jacobs 2007a, 19]), which provides for different sentences than those for citizens and which allows 'legal torture' if several human lives are in danger. Torture is intended as a tool to be used against persons "in respect of whom the presumption of a behaviour faithful to the law is no longer in force" (Jacobs 2007b, 125). This denial of the universalism of fundamental rights, however – Jacobs warns – should rarely and temporarily be applied, for exceptional cases, in a broader spectrum of police law.

Now, these theories, which were part of the ideological armour of the 'endless war', of the export of democracy by cannon fire, of the war on terror, are a philosophical-legal component of the ideological background of the relaunch of neocolonial aggression against the countries of the South of the world for the new distribution of the world market. Reworked and disseminated by various cheap journalists and opinion leaders, these theories have facilitated the creation of environments favourable to torture. Several essays contained in this volume highlight how *exceptionalism* and *arbitrariness*, which are structurally characteristic elements of immigration, combine with the exceptionalism and arbitrariness of the enemy's special law.[4]

Then there is another factor. I am referring, finally, to the terrible living and detention conditions in prisons in most parts of the world. Despite some timid steps forward in recent decades, there has not been a real process of opening up societies towards prisons nor opening up prisons to society, just as there has not been a real breakthrough in the conditions of prisons. On the contrary, there has often been a new composition of the prison system around a prison-centric vision, around an ultra-secure and merely punitive perspective of detention, which has translated in several countries into a dual phenomenon of hyper-detention (Wacquant 1999; 2009a) and worsening of prison conditions (overcrowding, degradation of buildings and living environments, worsening of the quality of life).
In Brazil, for example, where hyper-detention is an instrument of social control in a country with one of the worst inequality indexes in the world, the system that structures mass imprisonment is the most fertile ground for torture practices and in this context immigrants are among the main victims of this process, while the combination

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[4]   However, in the 1970s and 1980s in Argentina (Carpinetti 2019), in Brazil (Quintanilha, Villen 2019), in Italy (Gonnella 2013), the criminal law of the enemy was already a consolidated reality well before such theories.

imprisonment/expulsion is an additional factor of exposure to torture (Quintanilha, Villen 2019).

5 The War on Migration and the Globalisation of Torture against Migrants

The relationship torture-migration has affected and crossed the past centuries, but today it is still alive, albeit in different forms than in the past. This persistence is due to various reasons, including the conditions of migration and migration policies in the context of neoliberal capitalism.

In the last decades the 'governance' of migration under the banner of criminalisation and repression has favoured situations, conditions and environments permeable to migrant torture, however in the last years a new phase of 'war on migrants' has fed, multiplied and worsened such situations. This phase is the result of the consolidation of trends and elements already present in the last decade: the globalisation of restrictive, selective and repressive migration policies; the expansion and intensification of anti-immigrant propaganda; the generalisation of institutional racism and discrimination with States around the world that compete in worsening the conditions of migration.

Militarisation of migration policies, securitisation and externalisation of borders, new deterrent devices, rejections and readmissions, illegalisation of migration, privatisation of migration governance, criminalisation of migration and conception of migration as a crime, enlargement of the underground economy and of severe labour exploitation, 'contracting' of migratory movements to criminal organisations, imprisonment in detention centres as an ordinary practice of reception, representation of migrants as invaders, freeloaders and criminals, a pandemic of national security: all these are elements that have favoured a permeable ground for torture (by public officials and others) – as underlined also by the UN Special Rapporteur on Torture, according to whom repressive migration policies can cause torture and degrading treatments (Melzer 2018).

Thus, within the global crisis of torture, migrants are often victims of torture (Pérez-Sales 2018). Torture is not the prerogative of any area of the world, it concerns all countries – of the South and North of the world, the countries of departure, of transit, of arrival – contrary to the dominant idea that torture and degrading treatment are typical of non-Western States that do not respect fundamental rights because of their 'culture'. Ouali, in this volume, points out that

> these practices are said to result from behaviour stemming from certain cultural traditions whereby 'The West' sits at the top of

the scale in terms of respect for human rights […] this culturalist approach produces not only a polarisation between cultures which persecute and those which protect, but also a 'normalisation' of the persecutions practised in European countries […]. This social representation is often accompanied by an opposition between 'refugee-producing' countries, and those that welcome them.

Obviously, there is a lack of data on torture among them, as this is an illegal practice, concealed and secret by definition. Some studies indicate estimates: 75% of forced migrants may be torture victims (Sigvardsdotter et al. 2016); two-thirds of the victims supported by the UN Voluntary Fund for Victims of Torture are migrants and refugees (UNVFVT 2017); in Europe torture and inhuman treatment are a frequent reality in migration contexts, especially at border crossings, in detention, during deportation, pullbacks (FRA 2017; 2018; Melzer 2018).

Within the torture/migration relationship, we find the phenomenon of harassment, sexual violence, rape, suffered by migrant women along the migration route, in transit countries, in the countries of destination, in the four corners of the planet. For its number and for its extent, sexual violence appears to be a specific and systematic mode of degradation, dehumanisation, and domination of immigrant women.

War on migrants from Global South of the world is the war against the poor of the continents of colour, made poor by yesterday's colonialism and today's neocolonialism.

Considering migration from Africa and the Middle East to Europe, the war on migrants sees the participation in different ways of single European States, the European Union, large sectors of the mass media, several political parties, multilateral bodies. Through a number of regulations, agreements, laws, memoranda and treaties, the Schengen Agreement has been given a growling face, fixing the features and instruments of a repressive migration policy. The path began in 2006 with the Rabat Process and continued with the Khartoum Process (2014), the Malta Agreements (2015), the treaty with Turkey (2016), the various Pacts on Immigration and Asylum (*Agenda on Migration* 2015, Malta 2019, *New Pact on Migration and Asylum* 2020), the *Italy-Libya Memorandum* (2017) and several bilateral agreements.

Thus Europe has become a machine for rejections, expulsions, forced repatriations. In 2020, at the height of the COVID-19 pandemic, under the pretext of health security, the largest mass rejections in decades took place, mainly affecting Croatia, Greece, Italy, Malta, Spain (*The Guardian* 2021). The massacre in Melilla on 24 June 2022 is the poisonous fruit of the resumption of the 'cooperation' agreements between Morocco and Spain.

The strengthening of borders, their movement in the countries of departure or transit, the outsourcing of controls and borders in Af-

rica, detention camps for migrants in countries of origin or transit, individual and collective rejections at sea and by land: all this has led to a deterioration in the migratory path and conditions of migration, as well as the further illegalisation of migrants. These processes, frankly authoritarian, legitimised treatments typical of subjection relations, and certainly not citizenship relations; they have facilitated inhuman treatments so that torture has become a frequent experience along the migratory path, a constitutive element of the 'journey': from Syria (Ben Farhat et al. 2018); from sub-Saharan countries (Lorenz, Etzold 2022), through Tunisia, Morocco, (Gadem 2018; Migreurop 2007; Médecins Sans Frontières 2013; Ouenniche, Saaid 2019), Lybia (UNSMIL, OHCHR 2013; 2016; 2018; Veglio 2018), Israel (Biancolin in this volume; Guarnieri Jaradat 2017; Ravid 2022); to Turkey and Greece (Baird 2014).

The handing over of migration – made illegal and clandestine – into the hands of criminal organisations has increased the exposure to mistreatment by smugglers, gangs, traffickers, who have carried out countless abuse, thefts, kidnappings, physical, psychological, sexual violence, and blackmail. On the other hand, the militarisation of migration has multiplied mistreatment, illegal detentions, and the use and abuse of force by the police.

The media have made a huge contribution to the war on migrants. In an obsessive and hammering way, they represented them as invaders coming from sick retrograde worlds, voracious locusts of 'our' welfare state (Perocco 2022), lazybones endowed with the lowest animal instincts, importers of crime, fixing a completely negative image that has fed aversion and rejection against them. They have created an image of strong and profound extraneousness, encouraging punitive policies, preparing the ground for violence, aggression, and torture.

Several political parties also took part in such war. They reduced immigration to a military and national security issue to be entrusted to the navy and border police; they tickled the native populations with the conviction of occupying a privileged position and enjoying special treatment by the State, and they urged them to keep a 'right distance' and keep a close watch on the refugees. There was no lack of contributions from intellectuals, who contributed to the legitimation of the public discourse on migrants as radically different, to be kept out of immaculate Europe or to be isolated at the margins.

Even the immigrant populations who had been living in Europe for a long time were involved in this attack. A deluge of laws, circulars, regulations, measures of national and local authorities, penalised them in the most varied areas of social life (stay, residence, work, health, access to services, school, housing, private autonomy), limiting their rights and making their working and social conditions more precarious in a context of general worsening conditions of the class-that-lives-from-labour – to put it in the words of Ricardo Antunes.

The public discourse has lost all restraint in depicting immigrant populations as a *global threat*, an unprecedented danger from which to defend oneself in every aspect: work, housing, schooling, welfare state, livability of neighbourhoods, public health, individual and national security, local communities, genetic heritage, culture, identity (national, religious), Western values. In this war of words, the media industry of contempt has coined multiple inferiorising stereotypes built ad hoc to stigmatise, legitimising any form of abuse.

This anti-immigrant fury aims to prevent or slow down the social rootedness of immigrant populations, because it makes the foreign workforce less docile, less flexible, less available, and less expensive. Stabilisation and social insertion increase the social value of immigrant populations, and increase the expectations and resistance of migrant workers, who want to see their dignity and their right to treatment as human beings in all respects, not as animated tools of work.

In this effort of utmost widening of circular and temporary migration (Perocco 2018a), limiting it – if possible – only to people with high professional qualifications, the false idea has spread that circular migration would be equally advantageous for the countries of destination, the countries of departure and the migrants. In this perspective some social forces are focusing on temporary and circular migration, that is, on the employment of temporary workers, without families, with few links with the receiving country, who self-compress their social needs, taking for granted the temporary nature of their presence. In the last twenty years, there has been a proliferation of public discourses, measures and bilateral agreements between States aimed at carrying out temporary migrations. With the help of the majority of European States, entrepreneurial associations, the European Union, an institutional and administrative process was started, and it created several bilateral agreements, projects, mobility partnerships, memorandum on temporary, circular, seasonal migrations.

On this, Gjergji (2016) pointed out two elements: the combination of circular migrations and bilateral agreements implies a 'migration model' in which – rigorously selected – migrant workers move according to the rhythms of production cycles and short-term fluctuations in the labour market; policies in support of temporary migration go beyond the traditional migration policies of European countries and the European Union but at the same time integrate the repressive policies of European States by institutionalising the precariousness of immigrant workers and making temporary migration the only channel for legal entry. Therefore, these migration policies prepare and entail a workforce offering the most sought-after element in the economic system: full availability for a limited time.

Now, this multiple process of precarisation, criminalisation and atomisation of migration intensifies the commodification of the for-

eign workforce, bringing it closer to the condition of an animated labour tool. Such extreme *commodification of migrant labour* is a further element that favours the formation of contexts and environments available for degrading practices.

6 Libya. An Outsourced Torture Industry

It is no mystery that the public policies of the European States and the European Union contribute to feeding – directly or indirectly – the torture of migrants. In general, as mentioned above, I refer to the complex of elements that generate, favour or support the formation of conditions permeable to torture: the militarisation of migration policies, the criminalisation of migration, the illegalisation of migrants (made 'illegal'), the privatisation of migration governance, the delegation of migration movements to criminal organisations. In particular, I refer, for example, to the relocation of European borders in Africa, which has led to the creation of detention camps in the countries of departure and transit (especially in North African countries, but not only) and which took place within a process of extension (to Africa, Turkey, South-Eastern European countries) of the EU Hotspot Approach inaugurated in 2015. The spread of detention camps in several African countries (especially in, but not limited to, the coastal ones) has turned them into large open-air hotspots.

In Libya, the detention camps are run by Libyan police forces, the Libyan military, the Libyan Coast Guard, Libyan militias, but they were wanted and are organised by European countries.[5] In the Libyan centres the torturers are local people (or sometimes they are migrants), but Europe has made a fundamental contribution to the formation of the context – the Libyan police forces, which sell the detainees to criminal organisations which in some cases have been reduced to slavery, are trained and supplied by European countries, first of all by Italy. Co-responsibilities of European countries are strong and direct; in this sense, the Libyan torturers and their authorities are to be criticised (without putting everything in one basket, demonising the entire Libyan population, which, in the wake of the colonial representations, is still portrayed as a population of cannibals), together with their European counterparts.

The three-fold process of precarisation, militarisation and externalisation of migration policies has been based mainly on agreements

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5 On 14 November 2017 the UN High Commissioner for Human Rights defined "inhuman" the collaboration between the EU and the Libyan coast guard: https://news.un.org/en/story/2017/11/636022-libyas-detention-migrants-outrage-humanity-says-un-human-rights-chief-zeid.

(public or secret), aimed at the control and containment of migratory movements, selective admission, expulsion, readmission and forced repatriation of migrants.

In this context, the *Italy-Libya Memorandum of Understanding*, never passed through Italian Parliament, has subcontracted to the Libyan Coast Guard and local militias a series of control and management functions (including the delegation to Libya of the activity of refoulement at sea) with which the *Geneva Convention on the Status of Refugees* and the principle of non-refoulement were circumvented. In this regard, Algostino (in this volume) in stressing that the prohibition of torture yields before policies of closing and externalising borders, warns that readmission agreements, although they contain formal references to the protection of fundamental rights, when concluded with States such as Libya, violate the prohibition of torture and inhuman or degrading treatment in violation of the principle of non-refoulement.

Algostino highlights that such violations may also occur in the case of indirect return or when non-EU countries are entrusted with controls, identification, detention, readmission agreements, in their anxiety to facilitate returns, may lead to the introduction, also in the countries from which the returns are made, of modalities of identification, detention and return that integrate inhuman or degrading treatment. Violations also occur with the policy of closure of ports in Southern Europe since the conditions on board ships sentenced to stay at sea for days constitute inhuman or degrading treatment, for which those who order the closure of ports are responsible. Preventing entry into territorial waters violates the prohibition of torture, at least as a prohibition of inhuman or degrading treatment, both in relation to the conditions of the forced stay, not to say *tout court* 'detention', on ships, and in relation to the violation of the duty of rescue. For Algostino it is a fully-fledged delocalisation and outsourcing of State torture, which takes place, I add, within the process of transformation of the State in which it is increasingly marked by a progressive authoritarian involution.

These processes have produced a favourable environment for the torture that migrants from sub-Saharan countries suffer in Libya. A country where inhuman treatment has become systematic over the past fifteen years. A recent study (Barbieri et al. 2019) of 120 asylum seekers and refugees arriving in Italy from Libya, who received psychological assistance for trauma-related mental health problems between 2016 and 2018, revealed that the vast majority of them had suffered some form of torture and inhuman treatment. In addition to actual torture (80.8%), they experienced lack of food or water (76.7%), imprisonment (64.2%), non-sexual assault (60%), lack of shelter (56.7%), disappearance or kidnapping (42.5%), being close to death (40%), serious physical injury (35%), ill health

without access to medical care (34.2%), murder of a family member or friend (30%), and so on. 79% of the patients had post-traumatic stress disorder.

Then, with the arrival of the pandemic, between restrictions and lockdowns, this situation worsened further (Perocco 2021; Sanchez, Achilli 2020). State authorities, coastguards, warlords, militias and various traffickers enjoyed new room and scope for manoeuvre to organise the human trafficking chain – or to reinforce rejections, thanks to European countries obstructing rescues.

7 The System of Dehumanisation in the Balkans

Along the 'Balkan route'[6] – a set of different routes through southeastern European countries that constantly change depending on various factors, including the level of institutional violence – the mistreatment and torture of migrants and asylum seekers is, as Augustová highlights in this volume, a structural element of the transit route and migration policy at the local level. Maltreatment, traumatic events and torture experiences are regular, persistent, multiple, widespread and severe.

A study carried out in the summer of 2019 on 54 persons in the Bihać and Velika Kladuša (Bosnia and Herzegovina, BiH) camps rejected at the Bosnian-Croatian border, which used the Harvard Trauma Questionnaire (Iraqi version), showed that the majority of the respondents had traumatic experiences during the trip and their stay at the border: 98.14%

> reported experiencing multiple forms of physical and psychological trauma during their pushback or attempted border crossing [...], 81.5% reported having their property looted, 70.4% stated that they had been physically harmed of which 46.3% maintained that they had been subjected to beatings to the head, 40.7% claimed that they had been physically tortured or perceived themselves as torture victims. (Guarch-Rubio, Byrne, Manzanero 2021, 67, 73)

The interviewees – the majority of whom presented trauma symptoms – stated that they had suffered multiple torture experiences caused by the police forces: during the stay, while waiting to cross the border, they suffered prolonged exposure to rain and/or cold (92.6%), to strong heat, sun or light (59.3%); they were punched, slapped, kicked or stricken with objects (55.6%). During their detention period on the border, 66.7% was deprived of food and water for long

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6 For a critique to this term see Kurnik, Rasza 2020.

periods of time, of medical care; 64.8% was exposed to dirty conditions leading to ill health; 46.3% deprived of sleep; 29.6% chained or tied, forced to undress in front of people; 25.9% beaten on soles of feet with rods or whips; 14.8% witnessed the sexual abuse, rape or torture of someone; 13% was electrocuted, forcibly arranged in various humiliating or sexually explicit positions; 3.7% was burned (by cigarettes, electrically heated rods, hot oil, fire, or corrosive acid) or had their head submerged in water with near-drowning, suspended from a rod by hands and feet for longs period of time.

A study carried out between June 2018 and January 2019 on pushbacks and State violence at the borders between BiH and Croatia, which included 94 people stranded in informal camps or in temporary centres in Bira (Bihać) and Miral (Velika Kladuša), documented that a third of those interviewed had experienced violence (Amnesty International 2019). Many were intimidated, beaten, sprayed with pepper spray; detained for hours without food and water before being left at the Bosnian border; their documents, mobile phones and chargers were seized or destroyed:

> Croatian police took their shoes, warm clothes and sleeping bags and forced them to walk barefoot for kilometers through freezing rivers and streams […] this has become a widespread practice […]. Croatian police has strategically used adverse weather conditions to subject refugees and migrants to this new type of physical trauma. (Amnesty International 2019, 5, 14)

Médecins Sans Frontières, which provided medical assistance at the temporary centre in Miral, between June and November 2019 treated 80 migrants who presented "severe physical trauma, including broken limbs and ribs, serious cuts and bruises, that they reportedly suffered in the hands of Croatian police" (Amnesty International 2019, 14).

A study of 656 pushbacks that occurred in 2019 at the Croatia/BiH and Croatia/Serbia border revealed that 255 persons had 'clear indicators' of torture or inhuman and degrading treatment committed by Croatian authorities (BVMN 2019). The cause was an excessive and disproportionate use of force (physical assault, use of police batons, fists, kicking, police dog attack, punching), electric discharge weapons, forced undressing, threats or excessive force with firearms (intimidation, mock executions, pistol-whip, firing live-ammunition), inhuman treatment inside police vehicles, detention with no basic facilities.

Examining the 1,423 testimonies of violence suffered by migrants in the course of illegal pushbacks in the Border Violence Monitoring Network (BVMN)[7] database as of 16 March 2022, the number of cas-

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[7] https://www.borderviolence.eu/statistics.

es of violence and the multiplicity of types of violence show a terrifying picture: 71.9% suffered beating with batons/hands/other; 63.1% theft of personal belongings; 39.7% kicking; 35.4% destruction of personal belongings; 27.4% insulting; 25.9% reckless driving; 25.5% forcing to undress; 17.8% pushing people to the ground; 16.5% exposure to air conditioning and extreme temperature during car ride; 14.4% threatening with guns; 9.6% gunshots; 6.1% dog attacks; 5.9% water immersion; 4% electric shocks; 3.3% pepper spray; 2.3% sexual assault.

A study carried out in Serbia in multiple sites on 992 migrants/refugees who attended Médecins Sans Frontières clinics and received mental health care from July 2015 to June 2016, showed that 83% of patients had mental health symptoms (Arsenijević et al. 2017). 22% of patients had suffered physical trauma caused by acts of violence (beating, robbery, incarceration, threat by a gun or knife, tear gas, rape or forced sex, torture, shot with gun, kidnapping), two-thirds out of which were perpetrated by State authorities within or outside Europe (Bulgaria, Hungary, Serbia, Macedonia).

The Danish Refugee Council (2021) documented that violence and ill-treatment continued uninterruptedly in 2020 and 2021: in the period January-February 2021 alone, 247 people reported being deprived of their private belongings (clothes, footwear, money, telephones); five people reported that their personal documents were retained or destroyed, 191 people reported being subjected to inhuman treatment – including forced river crossings, being stripped of clothes in the open, being stripped of underwear, shoes and shoelaces being taken away before being ordered to walk to BiH, being forced to lie on the ground and keep the head in the snow for almost an hour (Danish Refugee Council 2021, 5).[8]

Collective expulsion, illegal pushbacks, maltreatment and torture affect everybody: men and women, adults and the youth. A study carried out in Serbia (Médecins Sans Frontières 2017a, 4) highlighted that of the young men and boys treated by MSF in the first six months of 2017,

> 69% (86) of MSF's mental health patients under 18 reported experiencing direct violence. The majority 57% (71) had visible physical injuries, including cuts with razor blades and knives, severe beatings, food and water deprivation, sensory deprivation.

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[8] The Danish Refugee Council in 2020 documented that the illegal pushbacks which took place between 2 and 16 October near Velika Kladuša resulted in the fact that migrants "bore visible injuries from beatings (bruises and cuts) [...] brutal and extremely violent behaviour, degrading treatment, theft and destruction of personal belongings" (*The Guardian* 2020).

A study on the pushbacks experienced by children and unaccompanied children in Croatia in 2017-2019 underlined that beatings (19%), theft of personal belongings (16%), destruction of personal belongings (12%) and kicking (10%) are the most frequent forms of violence; adding up to reckless driving (8%), pushing on the ground and forcing to undress (4%), threatening with guns and gunshots (3%) (BVMN et al. 2020, 11).

7.1 Systemic Violence

From studies and other existing sources (reports, reports of international human rights monitoring human rights etc.) the characteristics of the phenomenon in this area may be identified. Firstly, ill-treatment and violence follow a recurring pattern, from which a pattern of *regular violence* emerges: beatings with sticks, dog bites, use of pepper spray, kicking and punching, robbery, destruction of personal belongings.

Secondly, abuse is not confined to a specific geographical context. The phenomenon concerns, more or less, all countries affected in some way by the 'Balkan route': Turkey, Greece, North Macedonia, Montenegro, Kosovo, BiH, Serbia, Hungary, Bulgaria, Romania, Croatia, Slovenia, Italy, Austria – from the Greek-Macedonian border to the Serbian-Hungarian, Bosnian-Croatian, Italian-Slovenian borders (Amnesty International 2020; Augustová, Sapoch 2020; BCHR et al. 2017; BVMN 2020a; 2020b).

Thirdly, mistreatment and violence are a phenomenon that is also extensive in time. Since 2016, i.e., since the closure of the 'Balkan route', it has not stopped, indeed in recent years, especially in 2020, it has intensified and worsened (BVMN 2020b, 9). The arrival of the pandemic has made it less visible, also due to a reduced presence of activists, social workers, NGOs and journalists due to the lockdowns, but no less acute: the combination of health restrictions and anti-migrant measures has exacerbated the vulnerability of migrants, who have been further isolated and distanced from urban centres and main transit routes, and have witnessed restricted access to asylum application and health care. In the name of health security,[9] which is used to classify border crossings as a 'threat to public health', border controls have become stricter and the loops have tightened. Especially during lockdown periods, migrants have found themselves stuck and stranded in temporary camps; lockdowns have reduced the presence and support of associations, with further aggravation for mi-

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[9] Based on the guidelines established by the European Commission (2020), allowing border officials to "refuse entry to non-resident third country nationals where they present relevant symptoms or have been particularly exposed to risk of infection".

grants, who, gripped by despair, have sometimes made extreme gestures, practising self-torture, self-harm, with related suicides or suicide attempts.

Finally, this phenomenon is underestimated, since related and indirect events, the 'side effects' of punitive migration policies and State violence, are not counted and not considered, such as, for example, the injuries and fatal accidents that occur along the way, when crossing borders, on inaccessible and risky routes – as the war on migrants forces them to take secondary, less travelled but more dangerous routes. Not to mention the accidents that occur in the temporary camps that 'house' migrants waiting to cross the border, where living conditions are so degraded that injuries, accidents and illnesses are the rule. Not to mention, finally, the violence perpetrated by private security companies, criminal organisations, and traffickers against migrants, who are often reluctant to report to the police (sometimes colluding with the traffickers) the violence they have been subjected to by border forces or traffickers, for fear of retaliation or of being repatriated as undocumented.

7.2 Pushbacks and Confinement

Along the 'Balkan route', the mistreatment and violence against migrants has a regular, systematic, extensive and severe character. These are not isolated cases carried out by a few 'rotten apples' or 'loose cannons' in the police force: they constitute a 'standard practice', a routine, which outlines an organised character and is part of a real system of dehumanisation of migrants. This system has its foundation on at least four elements: illegal pushbacks, repressive and punitive migration policies, confinement of migrants in indecent conditions, and institutional racism.

As for pushbacks, the abuse and disproportionate use of force by police and border agents is an integral part of the collective expulsions that have affected thousands of people in recent years (Amnesty International 2019; BCHR et al. 2017; BVMN 2020b). First Hungary, Bulgaria and Serbia, then Slovenia and Croatia especially since 2018, have used pushbacks as a modus operandi, in which intentional and State violence – which inevitably results in inhuman treatment and torture – is constitutive and intrinsic.

The closure of the 'Balkan route', the externalisation of borders by the EU, and the assignment of the Balkan States to guard the EU borders whether they like it or not, has led to an increase in violence and has made illegal pushbacks a regular practice. Pushbacks are an integral part of the process of brutalising migrants and over time have become the main mode of border management at EU borders, a model for pushing back, pushing away, intimidating migrants in

transit and the volunteers who help them (Augustová, Sapoch 2020; Kurnik, Razsa 2020; Stojić Mitrović et al. 2020).

The same chain pushbacks along the EU borders (e.g., the Italy-Slovenia-Croatia-BiH backward route[10]), produced by the passing back and forth of responsibilities between the different States involved, are links in the chain of migrants' dehumanisation.

Ill-treatment and violence are closely linked to the migration policies of the States involved in the 'Balkan route' and to EU policies, of which pushbacks are a consequence. Local migration policies – linked by a system of links and determinations between the EU, EU Schengen countries, non-Schengen EU countries, and non-EU countries – have mainly two aspects: security policies of entry blockades and readmissions; confinement and settlement of migrants outside the EU in undignified living conditions.

The first dimension concerns the securitisation and militarisation of borders, the creation of walls and barriers, the denial of access to asylum processes, the use of cutting-edge technology to intercept and reject migrants, operations return and readmission. This is done with the support of Frontex, DCAF (Geneva Centre for Security Sector Governance), IOM, OECD, ICMPD; with the participation of the region's States in international police programmes such as PCC-See (Police Cooperation Convention for Southeast Europe) and in projects such as Cepol's (European Union Agency for Law Enforcement Training) 'WB PaCT' and Europol's 'Empact' (Migreurop 2021). All under the banner of the fortification of countries such as Serbia, Croatia, BiH, which have applied for EU membership and therefore have to execute the requests coming from the EU, also carrying out the activity of refoulement, readmission and return for countries a little further north such as Italy, Austria and Slovenia.

The Balkans swarm with national border forces, international police, officials of international agencies and multilateral organisations engaged in the conception and application of migration 'governance' policies and practices, i.e., in the control, repression and rejection of the undesirable, who, through chain pushbacks, are progressively pushed out of the EU borders, especially towards BiH or North Macedonia. So much so that a large part of the funds allocated by the EU for migration in the Balkans are allocated to security instead of reception and integration.

By making migration a police-military issue, the results are inevitably mistreatment and violence. The establishment of such an anti-migrant deterrence apparatus cannot but produce inhuman treatment, since deterrence is based on the production of suffering and pain (physical and psychological). This deterrence apparatus and its

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10   The Court of Rome in January 2021 sentenced them for the first time in Italy.

effects are then normalised, legalised, through routines, soft-law instruments, legitimations from the top of State institutions (which often deny the abuses, as is the case with Croatia) and the EU, by falsely technical and neutral language such as 'migration management'. For example, the legalisation of the aforementioned processes and their consequences have been sealed in the New Pact on Migration and Asylum of 2020, which assigns Croatia and Greece the role of pre-screening procedures through pre-screening centres (with consequent temporary administrative detention) and other countries a pre-triage role (Refugee Rights Europe 2020, 10).

The second dimension concerns the removal and confinement of migrants and asylum seekers who, while waiting to apply for asylum and cross the border, experience indecent living conditions.

In the temporary centres of the Una-Sana canton (Sedra in Cazin municipality, Bira and Borići in Bihać, Ušivak in Hadžići, Miral in Velika Kladuša), Vučiak, Lipa, Blazuj, in BiH; in the camps and reception centres in Croatia, Serbia (such as Sombor), North Macedonia, Kosovo, Albania, Montenegro, the situation is dramatic, not to say hellish: serious sanitary deficiencies, inadequate and insufficient housing (some live in the woods, in the open, in squats, tent cities, old factories), overcrowding, promiscuity, cold, hunger, injuries and fatal accidents, evictions, all in an atmosphere of abandonment and hostility. These poor reception conditions, a consequence of the migration policies of the 'Balkan route' States and the EU super-State, constitute a form of mistreatment.

The EU's rejection policy has amassed thousands of people in the Western Balkans (especially BiH, Serbia, North Macedonia) in camps and centres that are at once places of (very poor) reception, confinement and informal detention, in which one experiences psychological torment, even due to a condition of suspension, of suspended time. From or to these places, migrants move or are forcibly moved, from one centre to another, from one camp to another, on their long journey through the Balkans. These places – often run by international organisations that have dispossessed authorities and local populations of their reception – are actual spaces of confinement and segregation, where various legal problems are bypassed and 'things can be done'.

This policy of confinement has created a myriad of large and small camps, more or less formal, more or less precarious, transforming the Western Balkans into a sort of large hotspot, a large refugee camp at the EU border (Refugee Rights Europe 2020). The promise of EU membership and the arrival of funds from the EU have encouraged these countries to increase the number of 'reception' places and to multiply the camps, which are often located far from the EU borders, in isolated and inaccessible places, and are run in the name of control and discouragement of the people accommodated (Migreurop 2021).

This policy of confinement brutalises, isolates, ghettoises. It subjects people to degrading conditions, to physical, psychological, moral torture; it exposes them to systemic violence. All this is the bitter fruit of the camp system and its logic of confinement, the main (if not the only) system that has so far, as elsewhere, been adopted to deal with migration in the Balkans.

7.3 Neocolonialism and Exploitation

This migration policy, which officially calls a halt to migration, in fact produces a mass of very cheap workers, displaced in the Balkans, waiting to enter the European labour markets in dribs and drabs under conditions of extreme vulnerability, blackmail and exhaustion. This policy does not actually block the arrival of migrants in the EU in a totally hermetic way, rather it inferiorises masses of working men and women who endure humiliation and arrive in Europe on their knees. It does not stop migrants at all: if anything, it selects them, humiliates them, puts them in debt, socialises them into the inferiority and subordination they deserve in Europe. It prepares future workers, subjected to torture, destined for super-exploitation. Supported by racist ideology, this policy fuels anti-Slavic racism outside the Balkans when portraying the Balkan countries as countries of troglodytes who by nature or culture mistreat migrants.

It is therefore very important to properly frame the mistreatment of migrants in the Balkans. They are the result of a set of factors that are not exclusive to the Balkan context, but which have developed strongly there in recent years: the securitisation, militarisation and criminalisation of migration; the channelling into reception centres run under the banner of control and brutalisation; the exacerbation of institutional racism (which has fuelled popular racism); the spread of neocolonial policies, practices and discourses. In this affair, all the States involved in the 'Balkan route' have responsibilities, albeit distinct ones, including the EU and the rest of the individual EU States, which, again in a differentiated manner, are co-responsible. In this regard, Kurnik and Rasza (2020, 19) observe that "the EUropeanisation of the migrant route, i.e., the imposition of EU control over mobility, resonates with other layers and meanings of Europeanisation and alerts us to its persistent colonial character". Just saying: *piscis primum a capite foetet*.

8   **Between Scylla and Charybdis. Migrants Torture in Central America-Mexico-USA**

In Central America, on the southern border of Mexico, on the US-Mexico border, the situation is the same. The historical and geographical context is different from the Balkans or the Mediterranean context seen above; the same local contexts that make up the 'Central American-Mexican route' are characterised by specificities and internal differences; however, a regime of structural violence against migrants also reigns in this area.

It takes place on at least three closely interconnected levels: the personal, everyday violence, which occurs throughout the area in question, not only at the borders; the institutional, systemic violence, linked to State policies and the practices of the (administrative and police) authorities; historical violence, properly structural, embedded both in the living legacy of colonialism and in the capital as concentrated violence[11] – i.e., not only violence as a constant method of capital accumulation, but also collective, class-based violence, constituted by the processes of expropriation, impoverishment, extortion of surplus value, commodification of labour, alienation of the worker, determined by the historical system of capitalist relations.

As far as personal violence is concerned, for at least four decades the journey made by hundreds of thousands of people from Central American countries (especially from the Northern Triangle: El Salvador, Honduras, Guatemala) to the United States via Mexico has been characterised by abuse and suffering, however in the last fifteen years it has become a mass ordeal in which violence and exploitation are widespread, acute, and systematic (Vogt 2013). As in the case of the Balkans seen above, violence is constitutive of the transit along the route from Central America to the US via Mexico: it is a routine intrinsic to the security policy and immigration enforcement that dominate throughout the area (Vogt 2017), it is a continuum stretched throughout the journey – albeit differentiated in presence and intensity according to place and time.

Violence against youth and adults, men and women, occurs anywhere along the route.[12] The US-Mexico border is only one point, the penultimate point, of the route, which is constituted of several primary and secondary routes, multiple external and internal borders. The last point of this journey-ordeal is on US territory, where

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11   Marx's words.

12   Ciudad Suárez, on the Southern border of Mexico, has become 'famous' due to abductions and violence against migrants coming from the Northern Triangle. See Médecins Sans Frontières 2019.

migrants very often end up locked up in detention centres – in a mocking passage *from one hell to another*.

On Mexican territory, on the one hand, there is the violence perpetrated by the forces of law and order: extortion, deportations, disappearances, physical abuse, abuse of force, illegal practices, killings. On the other hand, there is the violence of criminal organisations, of gangs: threats, extortion, kidnapping with ransom demands, rape, smuggling, pushing out of trains, disappearances, killings. In addition to these two main actors, there are also people who provide a public service (bus, train, and taxi drivers), *passeurs* and various others who speculate on migrants made illegal and forced to go through the back door. Even if it is not always easy to identify the perpetrators of such violence, since more than sometimes the aforementioned figures are accomplices, the system of exploitation of undocumented migration on which parasites, large and small, thrive emerges clearly.

In recent years, the tightening of security policy and immigration control, the militarisation of borders in the name of the war on crime and the war on terror, has made the situation even worse. The migrants' path is increasingly marked by extreme suffering, so much so that the caravans that have recently developed represent a sort of self-defence method for the migrants in transit themselves. Cases of physical and sexual violence are very numerous, the percentage of women raped and/or sold to sex traffickers is high, ransom demands for abducted people or blackmail in exchange for shelter and food are the rule (Médecins Sans Frontières 2017b; Amnesty International 2014).[13]

As for institutional violence, linked to State policies, Vogt (2017) reminds us that the militarisation of the southern Mexican border and the internal corridors in Mexico began in the 1980s, when – under pressure from the United States, which effectively imposed the externalisation of its borders on the southern Mexican border – the dual process of police inter-State cooperation (US, Mexico, Central American countries)[14] and immigration control[15] began. In the following two decades, Mexico, completely absorbed by the US immigration and security agenda, as the Plan Sur (2001) also testifies, hardened

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[13]   According to the Mexican Human Rights Commission cited in the report, around 20,000 people are robbed each year, earning the gangs around 50 million US dollars annually. Between the Guatemalan border and Veracruz, on the Gulf coast of Mexico, in a journey of 900 kilometres, the gangs get on the train and demand a toll for each station crossed, threatening to throw emigrants – including children – off the roof of the train or to kill relatives remaining in the country of origin if the latter do not send the emigrants the money needed for their ransom.

[14]   A part of the wider global policing process among States.

[15]   Mirroring and at the same time what happened in Europe with the Schengen treaty: is this a coincidence?

immigration control both on the southern border and within its own national territory, in the name of war on drugs, on crime, on terror.

Restrictive and repressive migration policies have closed the channels of regular access, clandestinised migration, and thrown migrants into the hands of organised crime, which is indeed 'organised' – that is, specialised in deviant responses to social needs, in high-risk and highly profitable operations, in collusion with political power. Being organised as a business, organised crime took little time to set up the undocumented migration industry, in addition to the drug industry and the prostitution industry, which together with the arms and toxic waste trafficking industries form part of the humongous illegal economy existing – symbiotically with the legal economy – in the world economy. Subsequently, Vogt (2017) notes, the clandestinisation of migration and its management by organised crime has been used by the US (and Mexico) as a reason to further tighten security policy and immigration enforcement. In this 'regime of truth', based on the mechanism of reversing the relationship between cause and effect, migrants are portrayed as voluntarily seeking clandestinity while illegal migration is portrayed as the result of uncontrollable forces.

The security policy, the punitive and repressive migratory policies of Mexico(USA), have led to a dramatic worsening of the conditions of migration, forcing migrants to board speeding trains, to take secondary routes in desert or mountainous areas, in inaccessible and desolate areas, with the consequent increase in accidents and deaths. Condemned for taking dangerous routes (i.e., for choosing poorly…), migrants are subjected to an institutionalised regime of State violence punctuated by illegal practices and abuse of force by law enforcement within a largely militarised territory that results in a variable geography of migration transits and accidents (Slack et al. 2016).

Concerning structural violence, linked to the old and new colonialism, the capitalist system of social domination and exploitation in a neoliberalist vein, I quote the observations of Vogt, according to whom violence against migrants in Central America-Mexico should be placed in:

> a deeper historical context of structural forms of violence that precipitate migration from Central America. This includes legacies of war, violence, and everyday economic and social uncertainty throughout the region […]. [A] historical continuum of violence in the lives of present-day migrants helps explain their choices to leave and that migration today can be understood as the most recent iteration of centuries of exploitation of people in Central America and Mexico, where violence is crucial to that exploitation and to profit making […]. [T]he violence people experience along the migrant journey echoes both the violence and the struggles

for dignity that have shaped their entire lives […] violence of migration becomes relative to the violence of everyday life at home […]. Wartime violence has given way to "violent pluralities" […] of state and nonstate actors through organised crime, corruption, gang violence, lynching, and paramilitarism, in which the lines between political violence and criminal violence become blurred […]. El Salvador, where transnational circulations of migrants and deported gang members and zero-tolerance policing strategies are embedded within a longer legacy of U.S. involvement in the region. (Vogt 2013, 766-8)

There are three important points to underline. One concerns organised crime, i.e., the fact that in the last twenty years, especially since 2011, the presence of powerful criminal organisations in the Northern Triangle of Central America has strongly increased, with negative consequences on the daily lives of the population, especially the poor in rural areas. While criminal organisations used to compete for space in the drug market, grouping together in cartels, their activities have subsequently diversified, with the practice of extortion against local communities with a high level of brutality standing out.

In El Salvador, for example, criminal organisations such as MS-13 or Barrio 18 control the distribution of consumer goods and sugar plantations, and affect the agro-food chain and local economies. The strength of these criminal organisations, which work in several Central American countries, but also in the United States and Canada, finds no restraint from local governments, paralysed by corruption. The governments of these countries, shattered by neoliberal globalisation and placed in the lower layers of the international division of labour and the world market, have neither the strength nor the will (being very often part of the corrupt power system) to defeat violence, land-grabbing, local conflicts, corruption, and arms trafficking.

A second point, closely related to the first, concerns the worsening – after proxy wars, civil wars – of the working and living conditions of the mass of the population, the plunging into poverty and precariousness of a large part of the (urban and rural) working class, the sharpening of social polarisation and inequalities in all spheres of social life (income, work, health, education, housing etc.), the exacerbation of environmental racism, racial health inequalities, environmental health inequalities. That is the permanent, structural and irrepressible root of emigration from these countries.

Compared to this, the phenomenon of caravans, increasingly powerful since 2018, represents a phenomenon of social and political contestation by people fleeing violence, extortion, inequality, the impossibility of living a decent life, a normal life. The caravans are convoys of protest against the difficulties of survival, against increasingly heavy and unbearable living conditions, against inequality and precarious-

ness, against the political class and the political-economic power system. Thus, like so many African or Middle Eastern migrants on their way to Europe, many Central American migrants are also faced with Scylla and Charybdis, i.e., the choice (which, like all choices, is a forced one) of the lesser evil: 'to die at home' or 'to die in the desert'.

A third point concerns the historical legacy behind all this, which is behind the journeys of violence and the landscapes of violence, the violence of migration and the violence in one's own country, and the deterioration of living conditions under the neoliberal sky.

Aviña explains it in this volume, when pointing out that personal violence and institutional violence descend from a historical system of unequal social relations resulting from centuries of colonialism, imperialism, nationalism and militarism.[16]

9 Disappearance and Mistreatment. The Logic of Institutional Violence During Transit and After Arrival

Disappearance is a feature of contemporary migration policies and torture is part of the annihilation policy typical of the capitalist society, of which disappearance policies are a paradigm (Caloz-Tschopp 2019). The disappearances and policies of disappearance, historically and structurally present in colonies, imperialist conquests, wars, dictatorships (for example in South America, which produced the phenomenon of *desaparecidos*), are now visible in migrations and sometimes in migration policies or in daily institutional practices.

Caloz-Tschopp points out that the kidnappings and the dead in Central America, in the Mediterranean, in the deserts, in the Alps, in the Balkans, are black holes in which the disappearances of migrations have fallen, in which nothingness is the last face of torture. If in the period of the slave trade torture took place on ships, on plantations, and was a structural element of colonial domination and violence, now torture is found in detention centres, in departure areas, in border and transit areas, in arrival areas, and is an integral part of contemporary migration dynamics and migration policies. Today it is recognisable in the deaths at sea, in the camps, at the borders, in violence against migrant women, in disappearances. Torture and disappearance, however, the author underlines, are also intrinsic elements of globalised capitalist domination, which seeks to take possession of the State and requires the servitude of migrants. Thus, the disappearances and the policies of disappearance can be con-

16 The very same "Migrant Protection Protocols" (Kocher 2021) and the recent re-emergence of Title 42 have deep historical roots.

sidered as the paradigm of contemporary capitalism, in which the structural violence of the State is inflicted on migrants for administrative crimes linked to the prohibition of departure, entry and stay. But torture and torture policies are not only linked to migration and security policies, they are also linked to labour policies and to political economy.

After a hellish journey, after the detention in countries of transit, there is a criminalisation in arrival countries. One example is Greece, as Takou shows in this volume. Along with the violence of far-right groups such as Golden Dawn (Karamanidou 2016), there is the State violence of rejections (which are de facto normalised), of Kamps (where thousands of people are relegated in inhuman conditions), of walls (complete with kilometre-long metal nets, radars, sound cannons). Another example is the new hellish journey that, once they have arrived in Italy through the Balkans or the Mediterranean, migrants undertake via dangerous and hyper-militarised routes (Susa Valley, Ventimiglia, Bolzano, Trieste) to countries beyond the Italian borders, where rejections, incidents and violence are the rule (CCAR 2018; Médecins Sans Frontières 2020).

For Spain, Jubany et al. (2019) stress that asylum seekers, particularly those who have been victims of torture, suffer the inefficiency of asylum systems and are potential victims of the torture produced by the direct use of violence in the application of particularly punitive migration policies. In a context of growing criminalisation of migration, violence by public officials in the application of migration policies is regarded as normal, as a result of the legitimate use of force to protect national sovereignty. Even those who have obtained international protection are vulnerable, given the strengthening of the securitisation of borders, where detention and deportation are a constant occurrence, thus exposing them to violence and degrading treatment. Jubany and Rué in this volume highlight the sum of physical aggressions at borders by which migrants are subjected to different forms of violence by the migration control apparatus – which lay at the basis of the Melilla massacre.

In the US, as Aviña points out in this volume, the degrading treatment of migrants from the Southern border is a structural long-standing method, deriving from a political and legal system, with deep roots, based on a logic that combines settler colonialism, militarism and exploitation. A legal system of dehumanisation, confinement, punishment, and expulsion of migrants based on whiteness as a subject of law, whose basic principles assume that the legitimate subject is white, while the qualification of non-whites as 'others, aliens, strangers' (i.e., inferior) prevents or limits both their entry and equality in legal protection (Moss et al. 2019). These associations, deeply rooted in the social structure of the United States, have negatively influenced the migration policy of any administration over time,

so much so that the Trump Administration itself did not invent anything new, it only extremely exacerbated a migration policy that was already punitive and restrictive in itself and turned this exacerbation into a pillar of national politics – so that the US has arrested more than a million people at the US-Mexico border between October 2021-March 2022.[17]

Ouali, referring in this volume to Belgium (but her observation can be extended to most of the world), points out that the regime of violence inflicted on undocumented migrants and their children within the detention centres constitutes a form of torture, that the inhuman and degrading treatments that take place in the centres represent clear forms of torture specific to those centres. Biancolin, in this volume, explains how in Israel administrative detention is a system of repression of dissidents and at the same time a form of torture – mainly psychological. In this regard, the detention of immigrants (Ceccorulli, Labanca 2014), the globalisation of administrative detention as an automatic response to 'irregular' migration, and the globalisation of administrative detention as a model of governance of dissent and control of the poor are all elements that facilitate inhuman treatment. In Ireland, for example, the Direct Provision Asylum Centres are proved to be sites of racialised State violence (Lentin 2022).

Italy has been a forerunner of the war against migrants. It has had a leading role in the processes of casualisation and criminalisation of immigration that have taken place in Europe. Punitive and repressive laws and provisions – such as Law 189/2002, Law 94/2009 ('security package'), Law 46/2017, the Italy-Libya agreements, the ban of NGOs in the Mediterranean Sea, Law 132/2018 ('security decree'), Law 77/2019 ('security decree bis') – have exacerbated a long process of devaluation and demonisation of migrants by favouring the formation of conditions, environments and climates permeable to torture, inhuman and degrading treatment.[18]

As regards Law 132/2018, I will mention only a few provisions of it: with the lengthening of the detention, the applicant for international protection can be welcomed with 210 days of administrative detention without having committed any crime; the maximum period of detention of the foreigner being expelled within the Repatriation Centres is raised from 90 to 180 days; the revision of the places suit-

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17   The US has arrested more than a million people at the US-Mexico border between October 2021-March 2022; see Parti, Hackman 2022.

18   The UN Committee against Torture in its remarks on the situation in Italy has come in for some harsh criticism of the Italian State, including dissatisfaction for the law that introduced the crime of torture, the migration policy, the exercise of public force. Furthermore, it has made critical observations with respect to the prohibition of non-refoulement, the Italy-Libya agreement, ill-treatment in hotspots and detention centres, administrative detention of foreigners (OHCHR 2019).

able for detention pending expulsion is introduced, which provides for the possibility of temporary detention of the foreigner pending the definition of the procedure of validation of the accompaniment to the border in structures other than the Centre for Repatriation "at the availability of the public security authority or in suitable premises at the border office" (or in unspecified "indeterminate structures"). Together with the 'List of safe countries of origin', the principle of the "internal flight alternative" is introduced, which provides for the possibility of rejecting the application for protection if the applicant may be returned to a different area of his/her country of origin (considered safe) than the one from which he/she fled. The law in question, as can be seen, introduces elements that may favour inhuman treatment.

In Italy, the administrative detention of immigrants is a real black hole. This detention – which is applied without having committed a crime but only for not having complied with the administrative rules on entry and stay in the national territory – takes place in Repatriation Centres, hellholes where rights violations, terrible sanitary conditions, serious violations of the right to health,[19] overcrowding, violence, deaths, suicides, self-harm, are the rule, and where the standards set by the European Committee for Prevention of Torture are not respected (CILD 2021).

In addition, there are many other elements, widespread in the country, that can lead to describe Italy as a land of violence against migrants: agony on ships stuck in the middle of the sea, rejections, shipwrecks (starting from the sinking in 1997 of the Albanian ship Kater i Rades by an Italian corvette [Leogrande 2011]); the quarantine ships (Spada 2021); forced labour and severe exploitation in the countryside, in homes, in shipyards; segregation in camps and shantytowns; expulsion from the reception system; detention of minors; violence, organised raids and massacres (Castelvolturno, Rosarno, the 80 or so Polish labourers murdered in the Apulian countryside [Borretti 2010; Leogrande 2008; Pettenò 2010]).

All this has consequences on arrival countries because the war on migrants determines the extension of the hotspot approach to all immigrants, already resident. In a sort of halo effect, suspicion, sharp-eyed control, and exceptionalism, fall on all immigrants, increasing the risk of violence and mistreatment towards them, increasing precarity, vulnerability, and fear.

This system of immigration treatment offers the labour market a mass of frightened workers, extremely prone to be blackmailed, who,

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19 Inadequate certification of suitability for entry into the CPR (Repatriation Centres), lack of observation rooms, unlawful isolation practices, absence of psychiatric support, abuse in the administration of psychotropic drugs.

after having experienced incredible hardship, are willing to accept the most miserable conditions. It implies and determines the (social, professional, political) selection of migrants and their socialisation to exploitation: in transit migration, they live hellish conditions and experiences, which prepare and socialise them to social inferiority, to subordination, to what awaits them in the countries of destination.

Therefore, here we see a root of the social production and the 'function' of torture against migrants: it is a way to inferiorise immigration, to weaken its strength, its resistance; it is a modality of the process of devaluation of immigrant workers and women workers within the global process of devaluation of labour.

In such a pedagogy of instability, the war on migration 'educates' migrants to permanent precariousness, but it also 'educates' local populations to hostility, to contempt. This treatment brutalises migrants in the first instance, and as a result the native populations who are intoxicated with racism.

10 The Connection Between Racism and Torture

The globalisation of migrants' torture has taken place in a global context characterised by a violent revival of racism, which is certainly not the result of ignorance or fear of the foreigner: racism produces, legitimises, and preserves inequality; racism is the inequality, racism is inequality. As a systemic and endemic factor of modern society, an integral and constitutive element of capitalism, racism refers to a material relationship of exploitation between races, classes, genders, to a social relationship of domination that includes an ideological dimension that naturalises, justifies, and legitimises exploitation and inequality.[20] Because of this feature of racism, in order to understand the connection between torture and migration, it is necessary to focus on racism and its role in the aforementioned connection.

Basso (2016) points out that racism degrades ideally who is already in a material condition of inferiority and exploitation. Turning the Black slave physically, psychically and morally into a beast, dehumanising the colonised, declaring the natural inferiority of non-white people, all preserved and reproduced the social relationship of domination of colonialist Europe on the colonised populations.

Colonialism constituted the historical and material foundation of racism: if Europe was the cradle of racism, its parent was colonialism. The same racial doctrine was born as the ideology of subjugation of Black and Native people, in particular as the ideology of Black slav-

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[20]   In this paragraph, in the discussion about racism, I will refer also to de Gobineau [1853-55] 1967; Evola [1941] 1994; Gliozzi 2000; Guillamin 1972; 1995; Stannard 1992.

ery in American plantations, working as ideological support for slavery and the colonial system. The colonial ideology justified the colonies' exploitation and legitimised slavery (which valorised colonies), giving birth to the elaboration of the racial doctrine.

Rooted into preexisting unequal material relationships, the racial doctrine produced over time an image of colonised (and Black) people as naturally inferior beings. Lazy, abulic, primitive, childish people who just climbed down a tree; creatures unwilling to work, without ingenuity, will, determination, spirit, personality, enthusiasm, wit – 'natural' qualities, instead, of the white, bourgeois, European man. An elitist, anti-egalitarian, voluntarist doctrine (because it incites the fight against races and lower classes), racism pursues the inequality between races, classes, genders, and nations, becoming a State policy, racial policy, racial state, party programme and action.

Basso emphasises that the racial ideology appears as the *ideology of international division of labour*, functional to the combined and unequal world development, peculiar to capitalism. Functional to the existence of countries specialised in providing cheap labour and commodities and countries which absorb others' resources – namely countries specialised in losing out and countries specialised in cashing in on it, to put it in the words of Galeano.

If racism is the ideology of the international division of labour produced by colonialism and emerged with capitalism, it is also – the author highlights – the ideology of exploitation of proletarians and women, that is the *ideology of the social division of labour*. It is based on racial, class, nation and gender oppression; and in being the ideology of 'social race' of non-white people, of proletarians, of women, it is a weapon against colonised people, but also a weapon against workers. The rejection of blood mixing contains and expresses the rejection of social classes mixing, of downgrading, of proletarianisation, the will to maintain the social structure inequalities and class division.

Racism, as the author observes, is therefore right at the intersection between the international division of labour (the world division into dominant and dominated nations) and the social division of labour (the division of society into social classes). And so it refers to the essence and development of capitalism, to the position occupied by the Black social race, the proletarian social race, the women social race: racism is born in, with and for capitalism. Wallerstein (1988) stated that it is the magic formula that allows capitalism to minimise production costs, starting from labour cost, and to minimise political turmoil costs, increasing as much as possible the workforce stratification through divisions and racial hostilities. Racism, the racialisation of this or that population, *serve* to reduce the cost of labour, workers' rights (in both the Global South and North), and the social struggles of the working class. Racism is a weapon of mass oppression but also of mass division.

It is in this theoretical and historical framework that the relationship between racism and torture finds its place: torture constitutes a structural element of racism. It is the concretisation of racism on the body of the colonised, the oppressed; it is an instrument used by racism in the process of dehumanisation and submission of the one who is considered inferior or insubordinate with respect to exploitation. Torture is the trademark of racism on the skin of the colonised, the mark of inferiority on the body.

If for Sartre (1958) torture is a system, this system in turn is part of the racial system, of racism as a system of inequalities between classes, races, genders, and nations. Several contributions in this volume highlight the link between racism and torture, starting from Gjergji, who examines the relationship racism/torture as the main element of the relationship torture/migration. Nowadays, the relationship torture/migration is strictly linked to the global rise of racism under the neoliberal sky.

The violent upturn of institutional racism in the last two decades in many countries of the world has consisted mainly of anti-immigrant racism, whose radiating centres are Europe and the United States, from where it has spread to the four corners of the planet, becoming a truly global phenomenon – along with the equally global phenomenon of racial inequality linked to immigration (the inequality resulting from being an immigrant in a foreign country).

Such rise of racism has had as its undisputed protagonist *State racism* (Basso 2010), which has been the main propellant of racial discrimination (institutional and de facto) and the first producer of popular racism that has spread in many countries. In Europe, from xenophobia in the name of the welfare state to municipal racism, from the selective racism of State policies to immigrant hunting by extreme right-wing groups, institutional racism has fed new and old forms of racism. At the top, in terms of intensity, reach and systematicity, we find Islamophobia and racism against Muslim immigrants, Romaphobia and racism against Roma, racism against undocumented migrants – today in particular asylum seekers. With respect to the various forms of racism that make up the world system of contemporary racism (anti-African, anti-Slavic, anti-Chinese etc..) for at least twenty years Islamophobia has undoubtedly been the most widespread and deepest form of racism: it is the main and highest expression of contemporary racism, it is the spearhead of racism of the neoliberal era; in the world system of racism, racism against Muslim immigrants leads the ranking (Perocco 2018b).

The exacerbation of anti-immigrant racism aims to counter the social rooting of immigrant populations, to push them back into marginal positions, to debase their social value, to reduce the so-called social and political costs of immigration, to slow down or influence the direction of the processes of social transformation induced by immi-

gration. It has led to the reduction of immigrants' social rights, has fuelled the tightening of migration policies, has washed away multiculturalism and even neo-assimilationism in favour of exclusion and rejection, has played a fundamental role in the social and political construction of popular racism and the feelings of hostility of indigenous peoples towards immigrant populations, favouring the formation of conditions and environments permeable to torture practices. With which to debase, inferiorise, bestialise immigrant populations.

The increase in migrants torture is linked to the surge in institutional racism in the neoliberal context. The systematic demonisation of migrants has paved the way for degrading behaviour towards them, visibly dehumanising the individual migrants who have suffered it. For several decades immigrants have represented a social group that is constantly dehumanised (becoming a torturable subject), and the State has provided a remarkable contribution to this process. A racist 'governance' of migratory movements has not only led to the proliferation of walls in border areas and detention centres, but it has also had a decisive role in the normalisation of city militias against undocumented people, the denial of reception, the spread of violence with blood and without blood against immigrant populations, the detention of minors, raids. Augustová highlights that in the Balkans something similar happened, which saw the participation of old and new colonialism, the racialisation of migrants, and securitarian discourse and policies. Biancolin, in this volume, underlines the continuity between institutional racism and State violence in Israel, which first affected political dissidents and now asylum seekers.

11 Conclusions

I conclude by dwelling on four points: the health protection of torture victims, the global context, the structure of the volume, the perspectives and the role of migrants.

First, as indicated by Geraci and Mazzetti in this volume, torture and inhuman treatment have complex consequences on the physical and mental health of migrants and refugees (Mazzetti 2008; Pérez-Sales 2018), thus specific ways of management and psycho-social intervention, appropriate policies for health/welfare protection, are necessary.

Access to medical and psychological care and the needs of migrants who are victims of torture are still limited (IRCT 2016); medical checks to identify migrants who are victims of torture and reception facilities are often inadequate (FRA 2017). The very same asylum applications sometimes hurt torture victims and may worsen the trauma; often migrant victims of torture experience barriers due to their increased mistrust of authorities and the psychological consequences of torture

(UNVFVT 2017). Therefore, a lot of work shall be done on this front: both in terms of the structural causes underlying torture and in terms of social responses to migrants who are victims of torture.

Second, the aforementioned analysis does not conclude the analysis of the issue. Indeed, it is necessary to link the phenomenon of torture against migrants with general social processes of contemporary society (hyper-polarisation and global apartheid, commodification of the entire social life, transformation of the State, attack on social rights and the welfare state, world political disorder, spread of violence), framing it within the wider social context, of the overall social dynamics, also to avoid the risk of representing migration as something in its own right. For example, Quintanilha and Villen (2019), in stressing that in South America immigrants in vulnerable socio-economic conditions are increasingly exposed to violence, including torture (especially non-white people and women who cross borders without visas), point out that this is happening in a "scenario of deep economic crisis, violent attack on rights and working conditions, the rise of extreme right-wing parties and the growing militarisation of the region" (Quintanilha, Villen 2019, 229). Carpinetti (2019), another example, in examining the Argentinian context, points out that today torture is the result of legislative and/or administrative acts formulated in democratic systems, and is linked to the processes of transformation of the democratic State and democracy in the society of structural crisis.

Third, the volume. This book, which continues the volume *Tortura e migrazioni/Torture and Migration* published in 2019 by Edizioni Ca' Foscari, examines torture, institutional violence and the degrading treatment of migrants in different contexts of the world. After a theoretical article by Iside Gjergji on the relationship between racism and torture, Alexander Aviña examines in a historical perspective the State violence against migrants in the making of the US-Mexico border along the last century and today. Aviña contextualises the weaponisation of public health laws during the COVID-19 pandemic by the Trump Administration within a longer history of the United States waging war, violence and torture on migrants in its southern borderlands. The use of Title 42 to refuse asylum represents the rule, not the exception, within a violent border regime that for a century continues to brutalise migrants.

Olga Jubany and Alèxia Rué explore the connection and its omission between State violence and torture against migrants, focusing on the case of the Spanish State's failure to protect the rights of migrants victims of torture, as well as the physical aggression at borders, by which migrants are subjected to different forms of violence by the migration control apparatus.

Eleni Takou analyses the intensification and the legalisation of pushbacks and inhuman treatment in Greece over the past years and, es-

pecially after the *EU-Turkey Statement*, focusing on the Evros region. Takou highlights that throughout the last decades the process of deterrence and securitisation of EU borders has gone hand in hand with a decades-long pattern of routine and systematic pushbacks perpetuated by the Greek authorities against migrants and asylum seekers.

Karolína Augustová examines State violence against migrants in the Balkans, focusing on the Bosnian-Croatian border. Augustová explores whether and how refugees' past experiences of torture at home interconnect with extreme violence at borders and impact migration journeys, and suggests that racialisation of people make torture a fluid practice that migrates across globalised borders, despite their institutional format remaining unchanged.

Alessandra Algostino analyses readmission agreements, externalisation of borders and closure of ports focusing on the rejection of people coming from Libya. Algostino highlights that these practices produce a delocalisation of State torture and that the closing of harbours for migrants and the criminalisation of the NGOs are crimes against humanity, comparable to the infringement of the prohibition of torture and inhuman or degrading treatments.

Nouria Ouali examines the experience of undocumented women and children in detention centres in Belgium, since the introduction, in the late 1980s, of the new migration policies which notably consisted in the confinement in detention centres and deportation. Ouali reveals the systemic violence practised against these migrants and the repeated violation of their fundamental rights (condemned by eight judgments of the European Court of Human Rights); the author concludes that regarding, both, the norm of intentionality of migration policies and the detrimental effects on the mental and physical health of children and women migrants as powerful as those resulting from torture, the re-labelling and recognising these inhuman treatments as typical forms of torture of detention centres established oneself.

Diego Biancolin focuses on the degrading treatment of African asylum seekers in Israel, starting from an outline of Israel's employment of torture against political dissidents and from an analysis of administrative detention as a form of torture. Biancolin concludes that Israeli asylum policy towards Africans – among rejection, harsh conditions during their stay and deportation – can be qualified as a form of (mainly psychological) torture.

Muhmmad Ridwan Mostafa examines State violence against the Rohingya refugees, most of them have taken shelter in Cox's Bazar, Bangladesh, where they face an uncertain terminus and no manifest hope of returning to Myanmar. Mostafa underlines the causes of the Rohingya persecution and explores geopolitics and economic issues from diverse outlooks in Northern Rakhine and focuses on the Tatmadaw's brutalities during Operation Clearance in the Rakhine State against the Rohingya refugees.

Finally, Geraci and Mazzetti examine psychopathological issues related to "forced migrants" and the consequences of intentional violence on their mental health, focusing on psychopathological reactions in traumatised persons, on the effect of re-traumatisation they suffer in transit countries, and on the role of post-migration living difficulties (PMLD).

Last, but not least, the role of migrants and the perspectives. Their march from Africa, from the Middle East, from Central America, towards Europe, towards North America, is the march of integration into the world labour market, which is fuelled by deep structural causes that push millions of people to necessarily take the path of migration, by human needs for social emancipation and to have a decent life.

The radicality and depth of these objective causes at the basis of emigration have subsumed in the subjective act of emigration, despite the walls, barbed wire, and torture centres. They are synthesised in a migratory project that is simply a project for a dignified life, for the satisfaction of human needs. This humanity on the road – Sebastião Salgado calls it this way – has known, directly or indirectly, individually or collectively, historical colonialism, neocolonialism, racism, the *apparent death* given by torture, yet, out of historical necessity, it advances *real life*, which is embodied in daily resistance, in firmness for a decent life, in the struggle for a normal life, which does not accept to be enslaved either 'there' or 'here'. Against dehumanisation, *humanisation* through the transformation of the system of social relationships.

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Torture and Racism
A Brief Insight into an Age-Old and Intimate Relationship

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Abstract   At the basis of the development of capitalism, fed from the beginning with low-cost and high-productivity labour, there are two elements that operate in symbiosis: racism and torture. One feeds on the other, because both are an expression of the same hierarchical violence, created and applied with the aim to subjugate, control and devalue the workforce. This essay aims to explore the historical and intimate link between torture and racism, also putting into play an important analytical category: political economy.

Keywords   Torture. Racism. Violence. Exploitation. Social classes.

Summary   1 Introduction. – 2 Modern Racism is Nothing but (Systematic) Violence. – 3 Torture, the Ultimate Truth of Racism. – 4 The Bodies of Those Tortured (in Modernity) Are Racialised Bodies. – 5 Conclusions.

"The great truth of our time is that our continent is giving way to barbarism because private ownership of the means of production is being maintained by violence. Merely to recognize this truth is not sufficient, but should it not be recognized, no other truth of importance can be discovered. Of what use is to write something courageous which shows that the condition into which we are falling is barbarous (which is true) if it is not clear why we are falling into this condition? We must say that torture is used in order to preserve property relations. To be sure, when we say this, we lose a great many friends who are against torture only because they think property relations can be upheld without torture, which is untrue" (Brecht 1966, 149-50)

"The political police used torture systematically, it being its main weapon of 'investigation'. Isolations, beatings, sleep torture and statue torture were the most common practices, according to class criteria, reserving particular violence to the workers and peasants" (Inscription at the entrance of the Resistance Museum in Lisbon)

1 Introduction

This essay aims to explore the historical and structural link between torture and racism, also putting into play an important analytical category: political economy. The concept of torture used is not limited to the various legal formulations; torture is here understood as a social phenomenon and, as a consequence, it is considered as systematic violence, both physical and psychological, exerted by States in order to achieve their aims (Cohen, Corrado 2005; Rejali 2003). This perspective also reveals the specific approach taken: despite the fact that it has been stated in literature that torture serves "several purposes" (Skoll 2010, 83) and that, indeed, there are several types of torture – interrogation torture, warning/deterrent torture, dehumanising torture (Tindale 1996), otherwise known as "terrorist torture" (Hajjar 2013, 23) – in this work the idea is shared that torture does not concern the need of States to extract information from the throats of the tortured – as correctly stated by Elaine Scarry: "confession is not the goal" (1985, 29) – but which, on the contrary, always has as its ultimate objective the *dehumanisation* of the victims and the social groups to which they belong, the control and devaluation of their workforce, and the increase in economic productivity. It is on this very ground that the intimate and indissoluble union between torture and racism takes place.

2 Modern Racism is Nothing but (Systematic) Violence

It is not easy to find your way through the jungle of definitions of *racism* and *torture*. Theoretical stratifications, disciplinary boundaries and ideological orientations make the ground slippery and uneasy. Yet, without prior clarity on this plan, it is impossible to move in the given direction.

Our review can only start with the concept of racism. Pierre-André Taguieff (1998), French sociologist, philosopher and historian, defines as *narrow-modernist* the body of theories – elaborated between the eighteenth and nineteenth centuries – that consider racism as a set of doctrines, ideologies and behaviours that legitimise the hierarchies between human groups and individuals on the basis of the belief that physical and genetic characteristics determine psychological, intellectual and moral traits. The same opinion is shared by anthropologist Claude Lévy-Strauss, according to whom *ideal-typical racism* is "a doctrine that claims to see, in the intellectual and moral characters attributed to a set of individuals however defined, the necessary effect of a common genetic heritage" (Lévy-Strauss, Eribon 1990, 207).[1]

In the early 1980s a new definition of racism in the social sciences emerged. This considers the classic version (based on the colour of the skin, the shape of the skull, the body etc.) to be outdated, as it would no longer be able to describe the social phenomenon after the end of historical colonialism. In this period, indeed, the 'new racism' would no longer seek its foundation in genetics. To justify social hierarchies, it relies on other categories, such as 'culture' and 'nation'.

The first to identify the key elements of the historical *mutation* of racism was Martin Barker in his book *The New Racism. Conservatives and the Ideology of the Tribe* (1982). He was followed by Pierre-André Taguieff and Étienne Balibar. The former identifies, in his book *La force du préjugé. Essai sur le racisme et ses doubles* (1988), the existence of two types of racism: the 'traditional' one, based essentially on genetics and aiming at the inferiorisation of groups and individuals, and the 'differentialist' one, i.e., *neo-racism*, which is not limited to inferiority, it aims at the destruction of the victims.

Balibar shares Taguieff's idea and in his important work (written with Immanuel Wallerstein), *Race, Nation, Classe. Les identités ambiguës* (1988), states that *neo-racism*, that of the era of decolonisation, shall be qualified as "racism without races". This qualification must be understood in the twofold meaning that Balibar attributes to it: the first, dictated by the teaching of Lévy-Strauss (1971), considers culture as an element that can function as 'nature' – "La cul-

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1 All translations in the text are by the Author, unless otherwise noted.

ture peut elle aussi fonctionner comme une nature" (Balibar 1988, 22) – and the second is intended to highlight the fact that *cultural difference* is now in the foreground of the racist discourse, pushing the biological-genetic aspect to the background. Balibar emphasises the fact that *neo-racism* can only partially be called culturalist and that nature does not disappear from its horizon at all. Balibar, in fact, defines anti-Semitism as a typical example of *differentialist racism*.

Michel Wieviorka (1991) later explained how the cultural and biological form of racism have always gone hand in hand, considering the existence of biological races irrelevant in the study of the phenomenon. On this point, Wieviorka draws on the reflection of sociologist Colette Guillamin (1972), who had widely explained how the real sociological problem with races lies in the fact that *imaginary races* and *real races* play the same role in the social process and, consequently, have an identical social function.

All these definitions, traditional and new – beyond the specific differences – are united by the fact that racism is conceived as a *doctrine*, an *ideology*, both when it is considered as the result of the relationship with otherness and when it is thought of as the product of a particular social and political system (such as colonialism). And that's where the *problem* lies.

Thinking of racism as a *doctrine* is typical of those who only know racism as an experience lived by others; from this position, indeed, it is possible to grasp only the justifying and legitimising (i.e., ideological) dimension of racism. It understands the words surrounding the situation, but does not feel the shock of the phenomenon. Those who suffer racism perceive violence first and foremost, both physical and symbolic. Such violence is often mixed with (justifying) words, but very often – at least if the history of racism is taken into account – these words belong to unknown languages. Thus, the *ideological* aspect of racism tends to be moved to the background, as an element surrounding violence.

Therefore, if there is a dualism in the definition of racism, this does not appear to be based so much on the difference between *biological* and *cultural* racism, but rather on the position taken by the person analysing it:[2] standing behind colonial armies, racists, one will perceive racism above all through the words that justify it; standing before them, alongside the colonised, the victims, one will feel, first of all, violence. Racism could be perceived in its operational dimension, recognising it above all as *racism-operation*.

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[2] This is not only a theoretical clarification of the definition of racism, but also an important methodological question, with which we need to deal every time we analyse this social phenomenon.

Almost all scholars agree that *modern racism* is born with colonialism, which is, in turn, the basis of the genesis and reproduction of capitalism. As Karl Marx pointed out, capitalism and colonialism were born on the same day:

> The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the indigenous population of that continent, the beginnings of the conquest and plunder of India, and the conversion of Africa into a preserve for the commercial hunting of blackskins, are all things which characterise the down of the era of capitalist production. These idyllic proceedings are the chief moments of primitive accumulation. (1976, 915)

Several scholars have shown that the concept of race was almost unknown before colonialism. Authors such as Hosea Jaffe (1985), Alfred W. Crosby (1986), David E. Stannard (1992), Tzvetan Todorov (1999) have explained how capitalist colonialism gave birth to and developed *race theory*, the psychology of racial prejudice linked to genetic factors and the practice of racism at every level. Immanuel Wallerstein confirms this, adding that this sort of racism has nothing to do with foreigners or xenophobia, because it is not produced by a cultural feeling or attitude, but rather by the structural necessity of capitalism to create hierarchies everywhere:

> What we mean by racism has little to do with the xenophobia that existed in various prior historical systems. Xenophobia was literally fear of the stranger. Racism within historical capitalism had nothing to do with strangers. Quite the contrary. Racism was the mode by which various segments of the work force within the same economic structure were constrained to relate to each other. (1983, 78)

The construction of races according to a hierarchical order, which emphasises the superiority of whites over all others, was consolidated with the spread of slavery. Without slavery, as Marx explained, one cannot understand capitalism, whose origin lies as much in wage labour as in the slave labour of colonised populations:

> Without slavery there would be no cotton, without cotton there would be no modern industry. It is slavery which has given values to the colonies, it is the colonies which have created world trade. (Marx, Engels 1934, 101)

To rob the lands and resources of the colonies as well as to enslave the local labour force, ideology alone was not enough. The cultural and psychological conviction of colonisers about the inferiority of the

colonised could not be enough to exploit them into camps and mines, to reduce them to sub-humans. Such result is achieved by violence. Jean-Paul Sartre was one of the first to grasp this profound truth of racism. He explains that racism is not – and never can be – a simple *ideology*, because it is always, in all circumstances, *violence*. However, it is not 'simple' violence, but rather complex violence, capable of carrying within its DNA its own justification.

> Racism has to become a practice: it is not contemplation awakening the significations engraved on things; it is in *itself* self-justifying violence: violence presenting itself as induced violence, counter-violence and legitimate defence. (Sartre 2004, 720; emphasis in the original)

Sartre's precise and vigorous definition changes the lenses through which we analyse and measure modern racism. If racism is understood as violence, its primary source is inevitably to be found in the State. The monopoly on the legitimate use of physical (Weber 1946, 78) and symbolic violence (Bourdieu 1993; 2014), as we know, belongs to the State. This does not eliminate the role of other actors in the field, but none of them, in the end, would be able to attach a structural, extensive and lasting character to the phenomenon without State intervention. After all, in the colonies, occupation, land confiscation, the expulsion of labourers, slavery, forced labour, political-administrative institutions, health policies, education… up to repression (and torture) were all operations which were financially supported, legally authorised and concretely carried out by the colonising States. Sartre underlines:

> Racism is inscribed in the events themselves, in the institutions, in the nature of the exchanges and the production. The political and social statuses reinforce one another: since the natives are sub-human, the Declaration of Human Rights does not apply to them: conversely, since they have no rights, they are abandoned without protection to the inhuman forces of nature, to the 'iron laws' of economics. (Sartre 2001, 21)

The colonial system – Sartre continues – is complex and "depends on overexploitation" (Sartre 1963, 8). Its survival is guaranteed by the dehumanisation of the exploited. Racism represents the main element, the hidden secret for achieving this goal, because it is aimed at structurally and violently oppressing and, at the same time, breaking and humiliating the colonised/exploited, destroying their courage, will and intelligence. In its essence lies a dehumanising violence that wants to keep its victim between life and death, it wants to *cancel* it but never completely (hence also its ambiguous relationship with

death), because the victim must always continue to serve and work, to obey orders, but like a *beast*, like a *zombie*. From this perspective, i.e., from the perspective of the colonised/racialised, abstract categorisations of racism – of the *biological* or *cultural* type – appear somewhat irrelevant, if not even misleading:

> The activity of racism is a *praxis* illuminated by a 'theory' ('biological', 'social' or empirical racism, it does not matter which) aiming to keep the masses in a state of molecular aggregation, and to use every possible means to increase the 'sub-humanity' of the natives. (Sartre 2004, 721)

Racism was therefore an indispensable mechanism for maximising profits in the colonies, but it also played a central role in the hierarchy and division of the working class in Europe and elsewhere. As Cedric J. Robinson (2000) pointed out, the racialisation in Europe – starting from the sixteenth century – of Irish, Slav, Roma, Polish, and Italian immigrants, was a process parallel to the colonial one, if not even earlier. It can be affirmed, following Satnam Virdee, that the essential function of modern racism is to set in motion, everywhere, a systematic and violent "process of differentiation and hierarchical reordering of the global proletariat" (Virdee 2019, 22).

3 Torture, the Ultimate Truth of Racism

Michel de Certeau (2006), paraphrasing anthropologist Pierre Clastres – "In primitive societies, torture is the essence of the initiation ritual" (1989, 182) – states that torture is the *initiation* par excellence to the "reality of social practices" (de Certeau 2006, 200). Indeed, several historical, anthropological and sociological studies have shown that torture is not a recent phenomenon. Executions, torture and mutilation are phenomena that have characterised human societies since the Iron Age, characterised by stratifications around forms of patrimonial governance. The domination relations resulting from stratification have ended up transforming the moral boundaries delineated along ethnic/religious lines into the boundaries of patrimonial stratification. Thus, the violent punishment of groups in the lower layers by those in the upper layers was represented as self-defence of the dominant group, thus assuming a positive moral value (Collins 1974, 421). This is where the lasting public feature of mutilation, torture and executions originated: by witnessing the violence, the dominated groups learned, in a traumatic way, their place in the social hierarchy.

Subsequently, torture has gradually stabilised in ancient societies until it became a structural part of legal systems:

> For centuries law and torture have represented a mismatched yet faithful and affectionate couple. Torture has long been a part of criminal procedural law, and legal libraries are full of scholarly discussions on how and when torture should be applied in the judicial process. For several centuries torture has been a subject of teaching and, yes, of study and research in the faculties of Law. Several great jurists have been torture theorists and in some cases even torturers themselves. (La Torre, Lalatta Costerbosa 2013)

In ancient Greece, torture was the means through which evidence was obtained during a trial, a kind of truth test, which could only be used against certain social categories: slaves and foreigners. Torture, indeed, was not allowed against free citizens. Lisa Hajjar, in her book *Torture. A Sociology of Violence and Human Rights* (2013), lists the reasons behind this particular treatment of slaves (and foreigners):

> The rationales for slave torture were premised on ideas that (a) a slave's servile status made it impossible for him or her to make spontaneously truthful statements because (b) fear of being punished by the owner would incline the slave to lie, and therefore (c) only through pain would slaves speak truth. Tortured statements from slaves were evidence, not confessions (admissions of one's own criminal behavior). (Hajjar 2013, 16-17)

The situation in ancient Rome was very similar. Roman law, from the beginning, considered the torture of slaves lawful. With the consolidation of the empire and the overall division of society into *honestiores* (the ruling class) and *humiliores* (all the others), the base of the torturable population also expanded: *humiliores* could be subjected to trial torture and those convicted could suffer punishments that were once reserved for slaves only (Hajjar 2013). Edward Peters (1996) highlights that, as time went by, the torture of *honestiores* also became admissible, but only with reference to particular types of serious crimes, such as treason.

In ancient Greece and in the Roman Empire, the torturable population represented the majority of the entire population, because this was essentially "slaves from Greece, Rome, the Balkans, and the northern Mediterranean" (Jaffe 2010, 36). The social structure and slave mode of production – a typically European characteristic (Jaffe 2010) – rested on the overexploitation and "often tyrannical abuse of slaves" (Jaffe 2010, 36). In such a system, torture had a triple function: (1) officially mark the lower *status* of slaves and *humiliores*, i.e., those on whom the entire production system rested; (2) exploit the pedagogical power of torture to teach everyone submission to authority; (3) divide society into two distinct social groups: the *torturable* and the *non-torturable*.

In Piero Fiorelli's historical essay, *La tortura giudiziaria nel diritto comune* (1953), the close link between torture and social class was effectively highlighted:

> the serious social inequalities that were preserved in that time led to the substitution of ordeals with means of proofs that differed from class to class. Testimony was the key piece of evidence. But the free man had to validate it with his own oath and with other people's guarantee; the slave was not believed if he had not confirmed it among the spasms of torture. Slaves were things. As they were things, one could not logically admit that they recognised the innate power of truth and the sanctity of the oath. As they were things, one could not test their truthfulness except with evidence of material suffering. (Fiorelli 1953, 13)

It can be affirmed, therefore, that the tortured people of antiquity belonged – in the vast majority of cases – to the poorest and most exploited social classes, whose members were not recognised as human qualities, since they were considered as objects, *reified* beings. Torture played the role of *social demarcator* in this context: "slave economies have always involved deliberate physical torment, and it is difficult to imagine organising slavery in a way in which such pain would be an incidental feature" (Rejali 2009, 38).

In the early Middle Ages slaves and *humiliores* – including those in the barbarian kingdoms (Levack 2015) – continued to retain the status of *torturable class*, but the private conception of crimes and the criminal trial, the contamination of law with that of other northern populations and the segmentation of power and property led to a partial 'silence' of torture (La Torre, Lalatta Costerbosa 2013). It was in the late Middle Ages, indeed, that judicial torture returned to the scene in order to continue to strike with greater intensity the same social classes, but selecting within these specific subjects: *women*. It is at this moment that the history of torture intertwines with that of witchcraft. From the fifteenth to the eighteenth century, women became the privileged target of torture, through which a fully-fledged war was waged against them (Sallmann 1991; Ginzburg 1973; Vivan 1972). Torture, indeed, transformed the *witch hunt* into a mass social phenomenon (Levack 2015). The tortured were women from the poorest social classes (Federici 2021) and not infrequently, they were elderly.

> The weaker class, that of elderly, strange, widowed, single and poor women, is usually the scapegoat of social panic, fed by the political authority for its own security, to explain and neutralise natural disasters and epidemics, but also the crisis of the poorer classes in the face of the birth of agricultural capitalism. (La Torre, Lalatta Costerbosa 2013)

The *witch hunt* took place in a particular context, full of monumental social changes. The unprecedented spread of poverty was at the root of the radical transformation of both rural and urban life. The three types of rising capitalism – agricultural, commercial and industrial – demanded the creation of a cheap labour market, which in turn required the construction of a strongly hierarchical social system (Geremek 1986). The *witch hunt* was one of the answers to the growing needs of the new production system: it aimed to devalue the female labour force, the most requested by the 'free' market together with that of children, and at the same time to impose a gender hierarchy within the nascent class of 'free' workers. The link between torture and witchcraft hides, in its countless folds, the link between torture and capital.

It should not be forgotten that the strong return of torture as an instrument of control of the poor and exploited classes in Europe occurs at the same time as the colonisation of the Americas. Luciano Parinetto, a profound connoisseur of the phenomenon of witchcraft in the West, was able to shed light on the close relationship between witch hunting, the overexploitation of colonised populations and the capitalist system of production:

> The great persecutions of witches in the West are not the horrible legacy of 'dark' twisted Middle Ages, polluting the light of the Renaissance and the dawn of the modern age, but, instead, a conscious application of political methods of extermination, in view of domination, successfully experimented by power during the bloody events of subjugation of the Amerindian peoples, by the first colonisers of America, and exported to old Europe, always in view of the imposition of domination. The original capital, that is, bewitches the Old and the New World, not only to dominate/annihilate any attempt of opposition or rebellion, but by finding in the badly paid (or even forced) work of the Indians (survivors of a huge carnage) the very scheme through which it will start the masses of the wretched, the beggars, the different of the Old World on the path of the so-called 'free market of free labour', which are the very basis of valorisation. So the witch [...] unexpectedly becomes one of the original figures of the so-called 'free work of capital'! (Parinetto 1997, 8)

In the Americas, white slave traders classified African slaves as *animal race* through torture. It branded, atrophied the bodies (and souls) of the black, made them servile, submissive, bent, which was a confirmation of their position of inferiority. At the same time, torture was the most important 'technology' to increase capitalist production. Sven Beckert and Seth Rockman's recent book, *Slavery's Capitalism. A New History of American Economic Development* (2016), demolishes in a documented and convincing way the (rather widespread) idea

that torture is an inefficient economic tool. One cannot really know the history of the development of capitalism in the United States, as well as in the entire West, without taking due account of the central role of torture, not only as an instrument of oppression and hierarchical division of workers (*slaves* and *non-slaves*), but also as an effective technique for increasing productivity:

> One of the most astounding productivity improvements during the nineteenth century had nothing to do with machinery but rather with the human capacity to perform agricultural labor with one's hands. According to Edward Baptist, the daily amount of cotton that enslaved men or women picked increased 400 percent between the 1810s and the 1850s, owing to advances in the disciplinary technologies brought to bear on plantation management. Baptist proposes 'torture' as the most apt explanation for the new efficiencies of field labor. The violence of the lash, in the field and in the weighing house, pushed workers to ever-greater feats of picking. Most notably, daily quotas were not determined by customary measurements ("the task") but were set individually, written on slate boards where they could be adjusted upward based on the previous day's intake. Baptist considers the bodily alienation besetting a novice picker attempting to make his two hands work independently of one another as he moved down a row, and then turns to the largest macroeconomic questions of the West's economic takeoff. Access to slave-grown cotton, not simply coal reserves, provided the bases for the so-called Great Divergence, thereby making the violence of the plantation central to economic modernity itself. And in this story, no technology was more important than the whip. (Beckert, Rockman 2016, 15)

Thinking of torture as a *technology* to discipline labour and increase productivity, enables a parallel with what Marx wrote, where, taking the logic of capitalist exploitation to its extreme consequences, he describes the condition of the factory worker and his relationship with the machine as a form of torture:

> Factory work exhausts the nervous system to the uttermost; at the same time, it does away with the many-sided play of the muscles, and confiscates every atom of freedom, both in bodily and in intellectual activity. Even the lightening of the labour becomes an instrument of torture, since the machine does not free the worker from the work, but rather deprives the work itself of all content. (Marx 1976, 548)

At the basis of the development of capitalism in the West, fed from the beginning with low-cost and high-productivity labour, there are

two elements that operate (almost) in symbiosis: racism and torture. One feeds on the other, because both are an expression of the same hierarchical violence, created and applied with the aim to subjugate, control and devalue the workforce, besides increasing productivity.

Torture is the most extreme and abominable form of violence; in this sense, if you think of racism as violence, then it can only be the extreme truth of racism. Without systemic racial hatred, torture as a mass social phenomenon cannot be achieved. Torture and racism share a common thread: reduce humans into sub-humans. Both have an intimate connection with the inhuman and entertain an ambiguous relationship with death.

4 The Bodies of Those Tortured (in Modernity) Are Racialised Bodies

Henri Alleg, author of *La question* (1958), during an interview in 2014, explained his approach to torture: "What we should concentrate on is not the moral question, i.e., should torture be used or not be used. The real question is: why are people being brought to use torture?" (Célérier 2014, 157). This question has the merit of subtracting torture from abstract or moralistic analysis. Alleg, indeed, does not consider it an accident of history, expression of the innate wickedness of human beings, or as an extreme manifestation of the deviant behaviours of individuals; on the contrary, it attributes to it the character of a historical-social phenomenon. Claiming the existence of a drive inducing some people to use torture means to assume that in modernity there are dynamics (objective and subjective) or forces capable of creating the conditions for the realisation of torture and that, consequently, it plays some function in the reproduction of this model of society. If these dynamics or forces are real, the effort to identify them can only start from the analysis of the object of torture, i.e., the tortured, by those on whom all its violence is discharged.

We have to break into the torture chamber to get to know the victims. Tears, tiredness, bruises, fractured limbs, burnt skin, dripping blood, broken teeth and all the other signs of violence thrown at them shall not distract us; knowing the tortured people means, first and foremost, knowing their social history, who they were before they were tortured. To do this, it is not enough to see the torture reports (when they exist), which record their nationality, gender and age at most.

One could object by pointing out that the social history of the victims does not count when they enter the *torture room*. In there, the victims are stripped of everything, of every identity, because the main target is their bodies and, as we know, bodies are all alike in their biological substance. There, power penetrates directly in-

to the bodies, becoming what Michel Foucault (2008) called biopolitics. This is understood as a practice of exercising power (developed in the West since the seventeenth century) towards human beings as a *population*, which regulates and disciplines both the *body-organism* of individuals and the *body-species* of the population. The social history of bodies is an *omissis* in the Foucauldian biopolitics; it is no coincidence, indeed, that there is no mention of the *body-class*. The body of a farmhand is not considered dissimilar to that of a landowner. In *Discipline and Punish. The Birth of the Prison* (2020), for instance, where the metamorphosis of punitive systems is analysed, Foucault opens his reflection by describing in detail the torment of Damien, condemned "to make the *amende honorable* before the main door of the Church of Paris" (Foucault 2020). He goes on several pages to illustrate how a condemned man in 1757 was publicly tortured and then quartered, piece by piece, with the instruments of the time, until his death. He informs us of the role and activities of the technicians around the condemned man, who are socially qualified: you can meet the executioner Samson, Chancellor Le Breton, confessors, helpers, and other *technical* figures. Damien-the *tortured* man, on the other hand, is not socially qualified, nothing is known about his job or social status; the only thing we know is that he was a parricide. Damien's slowly ripped body could belong to anyone, a poor person or a rich one, a carpenter or a banker. Foucault does not fail, however, a few pages later, to inform readers of the fact that, in modernity,

> it is largely as a force of production that the body is invested with relations of power and domination; but, on the other hand, its constitution as labour power is possible only if it is caught up in a system of subjection (in which need is also a political instrument meticulously prepared, calculated and used); the body becomes a useful force only if it is both a productive body and a subjected body. (Foucault 2020)

This statement is important because it puts the sphere of production in direct relation with that of the repressive/punitive system, but it seems to be more of a surface annotation than a central instrument of Foucault's analysis, in which the dimension of political economy is almost non-existent. Nor does his judgement change with the lectures given at the Collège de France between 1978-79 and later published in *The Birth of Biopolitics* (Foucault 2008), where he deploys liberalism to explain biopolitics. The liberalism of which Foucault tells us essentially refers to the "governmental regime" and "regime of truth". There are no specific references to the production system, to its laws of profit and to the ways in which this system intervenes in the management of the life (and bodies) of the subjects, that is, of

those who have to sell their labour force to the market in order to live,[3] except for a few, quick and superficial references to a (metaphysical) market:

> [I]t seems to me that the analysis of biopolitics can only get under way when we have understood the general regime that we can call the question of truth, of economic truth in the first place, within governmental reason. Consequently, it seems to me that it is only when we understand what is at stake in this regime of liberalism opposed to *raison d'État* – or rather, fundamentally modifying [it] without, perhaps, questioning its bases – only when we know what this governmental regime called liberalism was, we will be able to grasp what biopolitics is. (Foucault 2008, 21-2)

The same can be said of the concept of biopolitics of Agamben (2005), who, correcting Foucault, thinks that sovereignty is *tout court* biopolitics, having the sovereign the power to impose the *state of exception* and to decide on the life and death of individuals and populations. For the Italian philosopher, power is always *biopower* because it is able to inscribe its action directly in the body, that is in the *bare life*. To mention liberalism, capital or the market in the vineyard of texts – as Agamben does in several of his books – is not the same as to adopt these categories as instruments of analysis, nor to frame the bodies within a social history. The political element dominates his analysis.

Both these concepts (of *biopolitics*), despite their relative diversity, refer to a policy without the *polis* in flesh and blood (because the *polis* to which they refer is essentially devoid of roots or social articulations) and, consequently, do not allow an adequate knowledge of the tortured, thus preventing the identification of an answer to Alleg's question: "why are people being brought to use torture?". In this sense, the most adequate seems to be the biopolitics developed by Karl Marx, especially in his most important work, *Capital* (1867). Marx considers bodies inside their social history because every single body has a *social history*. According to him, so as to understand the body (and biopolitics), it is utmost to begin with the concept of *labour*:

> Labour is, in the first place, a process in which both man and Nature participate, and in which man of his own accord starts, regulates, and controls the material re-actions between himself and Nature. He opposes himself to Nature as one of her own forces, setting in motion arms and legs, head and hands, the natural forces of his body, in order to appropriate Nature's productions in a

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3 Foucault mentions, at most, the consumers of the goods, thus reducing liberalism to the sphere of circulation, eliminating production from the analytical horizon.

form adapted to his own wants. By thus acting on the external world and changing it, he at the same time changes his own nature. (Marx 1976, 283)

In the system of capitalistic production, *labour* is always the use of labour-power and *a worker* is nothing but labour-power in action:

> The use of labour-power is labour itself. The purchaser of labour-power consumes it by setting the seller of it to work. By working, the latter becomes in actuality what previously he only was potentially, namely labour-power in action, a worker. (Marx 1976, 283)

According to Marx, the difference with the past should be detected in the process of selling, for a specific period of *time*, of the workers' psycho-physical energy (i.e., labour-power) and its acquisition by the capitalist (owner of the means of production):

> He who was previously the money-owner now strides out in front as a capitalist; the possessor of labour-power follows as his worker. The one smirks self-importantly and is intent on business; the other is timid and holds back, like someone who has brought his own hide to market and now has nothing else to expect but – a tanning. (Marx 1976, 280)

In the framework of the capitalist system, those who are obliged to sell their own labour-power for living, that have nothing to exchange at the market apart for their own psycho-physical energy, that experience absolute poverty, are confined to the sole dimension of the immediate corporeality:

> Hence every limb of the body is capital, since each of them not only has to be developed through activity, labour, but also nourished, reproduced, in order to be active as an organ. The arm, and especially the hand, are then capital. (Marx 1993, 257-8)

This corporeality is subject to manipulation of the capital and all its aspects are subordinate to trends and processes of the latter (Finelli, Toto 2012). Building on this theory of *corporeality*, Marx "presents another biopolitics" (Bidet 2012, 58) which does not exclude the role of the State, of the technicians, of the power and law from the analysis, as it completes the picture by including other elements that can shed light on the hierarchies imposed by the capital, the signs that the latter imprints on the bodies. Putting Marxian biopolitics into play – within which bodies are not simply bodies but *bodies-at-work* (Bidet 2012) – one can also construct a particular point of view on torture: it can now be observed as a social phenomenon placed with-

in the social dynamics of the market, because the bodies of the tortured – both before and after the act of torture – are objectively immersed in such dynamics.

The bodies of the tortured are not, therefore, generic bodies; they are the bodies of those placed at the bottom of the social organisation; they are the bodies of those on which the systems of production are based. In the torture chamber, of any historical and geographical dimension, we find mainly coloured people, women and workers, in other words the historically racialised social categories (Gjergji 2019).

What emerges from the ravines of history – from ancient slavery to modern capitalism – sheds light on the social and economic reasons for torture, which States make massive use of in certain historical circumstances: the greater the need for productivity and control over the workforce, the greater the use of torture. Indeed, mass torture has historically marked watershed moments or serious crisis of production systems, while, in phases of relative stability, it has served to prop them up (Gjergji 2019). The stable element in its historical and geographical horizon, i.e., the social origin of its victims, is a clear confirmation of this.

The numerous historical testimonies, as well as the most recent ones about what happened over the last decades in Latin America, Greece, Portugal, Iraq, Guantánamo, Afghanistan, Syria, Libya, Turkey (etc.), or the documented reports of antiracist movements – such as, for example, the *Black Lives Matter* movement – and several other associations (Schenwar, Macaré, Price 2016) are an irrefutable proof of this. In the context of international migration, torture is now a stable element (Perocco 2019). Emigrants/immigrants meet it frequently both during the migratory route and in the countries of arrival, proving that the association between torture and racism is stronger than ever.

5 Conclusions

Elaine Scarry, in her book *The Body of Pain. The Making and Unmaking of the World* (1985), states that torture has the power to silence the tortured, to cancel their voice. The experience of violence is such that words are inadequate to describe pain, they are never up to the trauma. Stories of torture are inhabited by the impossibility of telling (Laub 1992). The only possibility that the language has to explain torture is when it is expressed within a community (De Saussure 1967). The failure in communication, indeed, is not in the lack of voice of the tortured person, but in the inability of the listener to understand. To understand, in this case, means to recognise the tortured in their entirety, without reducing them to mere bodies, with-

out history, without identity and belonging, that is to say in bodies without a *voice*. By doing so you can find an answer to Alleg's question: "why are people being brought to use torture?". The reasons for the drive to torture are structurally inscribed in social and economic systems based on hierarchies and exploitation. Torturers are generated by the objective needs of such systems, and not by generic sadism.

The scars that torture leaves on tortured people today are nothing more than the continuation, or anticipation, of the scars that the market, where they are forced to sell their workforce, has already left and will continue to leave. With the difference that the marks left by torture manifest themselves in a more intense, more ferocious version. Torturers are the horror version of those tanners of workers' own hide, about which Karl Marx speaks when he illustrates his biopolitics (Marx 1976), because the tortured belong, in the vast majority of cases, to the ranks of those who are forced to sell their skin. The "banality of evil" (Arendt 2006), or rather, *the banal truth of torture* is all here; it is already present – with varying forms and doses depending on the case – in the dynamics of the current social relationship of production. Crossed and corroded by the field of magnetic forces that social hierarchy and racist hatred create, torturers do not need great training or talent to become such. It is the molecular hierarchisation of relationships, which manifests itself on every level of existence, that socialises them to violence, even before the arrival of its professionals and bureaucrats, defined by Sartre as "dreadful workers" (Sartre 2001, 33). If it were not so, the always dense ranks of torturers, past and present, could not be explained. Torture is, *first and foremost*, the torturers' hatred of the tortured:

> [B]ehind these wild-eyed, colourless surgeons, one senses a lack of flexibility which goes beyond them and beyond their leaders themselves. We would be fortunate indeed if these crimes were the acts of a handful of violent individuals: in truth, torture creates torturers. [...] In this business the individual does not count; a kind of stray anonymous hatred, a radical hatred of man, takes hold of both torturers and victims, degrading them together and each by the other. Torture is this hatred, set up as a system, and creating its own instruments. (Sartre 2001, 34)

Torture is not that unspeakable mystery that makes us question the humanity of torturers if we perceive it as the product of a particular social shaping derived from relationships/interactions based on the hierarchical principle and violence. In this sense, torture is not an *anti-social* fact, but rather a fact determined by social relations.

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Torturing Environments and Migration

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Abstract   The concept of Torturing Environments allows a better understanding of migration detention spaces and the impacts they have on people on the move. This chapter analyses the conditions and impacts derived from them, in spaces located in different border areas: Mexico (N=57), Greece (N=160) and Spain (N=110). The results indicate that the spaces analysed could be considered as torturing environments which generate tear and wear on people on the move. These spaces do not represent isolated cases but are examples of how migration policies use detention as part of a deterrence policy.

Keywords   Torture. Borders. Crimes Against Humanity. Readmission agreements. Principle of non-refoulement.

Summary   1 Introduction. Limits and Difficulties in the Conceptualisation of Torture. – 2 Torturing Environments as a New Tool for Analysis. – 3 Measuring Torture. The Torturing Environment Scale. – 4 Torturing Environments in the Context of Migration. – 4.1 Case Studies. Migration Stations in Mexico, Moria Camp in Greece, Reception Centres on the Spanish Southern Border. – 4.1.1 Mexico and Migrant Detention Centres as Torturing Environments. – 4.1.2 Lesbos. The Camp of Moria. Architecture of Torture in Europe. – 4.1.3 Spain's Southern Border. The Impacts of Reception. – 4.2 Migration Detention Spaces as Torturing Environments. – 5 Conclusions. – 6 Recommendations.

Edizioni
Ca'Foscari

1 Introduction. Limits and Difficulties in the Conceptualisation of Torture

There are different approaches or frameworks from which torture and ill-treatment can be understood. In the legal sphere, the definition of the 1984 *United Nations Convention Against Torture* is the legal reference (United Nations 1984). Article 1 of the *Convention* defines torture as

> any act by which severe pain or suffering is intentionally inflicted on a person for such purposes as obtaining from him on a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, or with his consent or acquiescence. Pain or suffering arising only from inherent or incidental to lawful sanctions shall not be considered torture.

This definition revolves around the acts that the perpetrator performs on the victim and presents considerable operational problems, the two most important of which are the definition of the severity of the suffering and the motivational criterion. It is a concrete definition in some respects, but deliberately ambiguous in others, due to the belief that too narrow and operational a definition would allow governments to practice torture that easily circumvents the criminal aspects. At the same time, this definitional ambiguity serves as a political logic.

In 1969, the European Commission of Human Rights, a special tribunal assessing the admissibility of cases of 'torture' or 'ill-treatment' to the European Court of Human Rights (ECHR), established in different judgments a progressive approach, the first historical precedent setting jurisprudence, defining three diverse levels of ill-treatment:

Level 1 Degrading treatment: treatment that manifestly humiliates a person or compels him or her to act against his or her will or conscience.

Level 2 Cruel or inhuman treatment: treatment that deliberately causes severe mental or physical suffering that is unjustifiable in that particular situation.[1]

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1 The concept of "unjustifiable in the particular situation" disappeared from future definitions and is not currently applied in international law, although it was at the heart of the debate in the United States in the context of the so-called 'war on terror', where,

Level 3 Torture: inhumane treatment that is intended to extract information or confessions or to inflict punishment and is generally an aggravated form of inhumane treatment.

With this definition, the Court established that the key point in level 1 (degrading treatment) is dignity, and the act does not necessarily have to be intentional. Levels 2 and 3, on the other hand, are indistinguishable with the only difference being that 3 (torture) is an "aggravated" form of 2 (inhuman treatment).

However, this distinction was diluted in 1984 when the UN finally adopted the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which does not make explicit the distinction between 'torture' and 'ill-treatment' (see Art. 1, above). Article 16 of the *Convention* equates torture and Cruel, Inhuman or Degrading Treatment (CIDT) by stating that any State party is obliged to prevent both. However, the degree of the obligation of signatory States is not the same for both. Although the *Convention* unequivocally proscribes, in international law, both torture and CIDT (even in times of emergency or war), the obligation to prosecute and prosecute torture and bring offenders to justice (Arts 4-9), the principle of non-refoulment (Art. 3) and the prohibition on the use in legal proceedings of evidence extracted by torture (Art. 15) apply only to torture and not to CIDT. This highlights the importance of making a clear legal distinction between torture and other forms of CIDT in the application of the *Convention*.

2 Torturing Environments as a New Tool for Analysis

An alternative approach to the one developed in the previous point is the concept of 'torturing environments'. This refers to those spaces in which conditions are created that would meet the legal definition of torture (Pérez-Sales 2016). It is composed of a set of contextual elements, conditions and practices that diminish or override the victim's will and control over one's life and compromise the self. This environment will constitute CIDT or Torture when it has been generated to achieve any of the objectives specified in international law and those exemplified by the *Convention against Torture*: obtaining information,

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in order to defend the legalisation of torture under certain circumstances, some experts appealed to the principles of 'necessity' and 'proportionality'. Today, the absolute prohibition of torture is a norm of *jus cogens*, which means that even when a State is not a party to one of the various treaties that specifically prohibit torture and other forms of ill-treatment, it must not resort to such practices or tolerate their use by anyone on its territory. This means that there are no exceptions, neither in times of peace nor in war, nor in any kind of emergency, not even when terrorist acts are committed.

confession, punishment, intimidation or coercion and discrimination.

To exemplify this view: if a person receives little food and is in poor conditions, is subjected to living conditions without privacy, without access to information, is separated from their children, is subjected to conditions of noise, temperature or humidity that prevent restful sleep and is subjected to treatment that is violent and humiliating, hardly any of these conditions in isolation will be considered as an element of torture per se by a legal actor. They will be considered, taken one by one, to be incidental elements of a prison environment and at the very least they can be considered as forms of CIDT. The reality is that we could speak of an environment of torture when the cumulative and combined effect of all these conditions creates an environment that causes severe physical and psychological suffering, in which one of the purposes required by the *Convention* definition can be demonstrated, as well as intentionality, without this being a necessary condition for recognising a situation of inhuman or degrading treatment when there is direct State responsibility for the existence of those conditions (IACHR 2009).

To use a definition for epidemiological purposes, any element of everyday life can be part of a torturing environment if it has been used as a means of provoking or aggravating physical or psychological suffering, and/or if it is used specifically for the purposes referred to as torture.

This approach is useful for the analysis of torture because the impact of torture is not related to a single technique but to the cumulative effect of a combination of techniques that if used alone would not produce the same effects on the integrity of the person, and it is also of particular relevance when the idea of torture is still falsely anchored to the idea of the production of extreme physical pain. The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment himself, in his March 2020 report (United Nations 2020) urges the use of this conceptualisation as a way of ensuring that situations of torture are identified and responded to holistically, rather than as a series of isolated techniques and circumstances, each of which may or may not amount to torture.

3 Measuring Torture. The Torturing Environment Scale

Linked to the more classical definitions, torture has traditionally been measured by using lists of torture methods in interviews with victims, where torture is assessed by adding up the number of methods a person has been subjected to as if they were all equivalent. This assessment of torture only considers the number and type of acts of torture. A tool closer to the victims' experience should also consider key variables relating to the torture's environment and the individual's subjective experience. By this we mean, for example

(a) the patterns and type of relationship imposed between the person who tortures and the one who is tortured; (b) the circumstances surrounding what we call the torturing system (political persecution, ethnic cleansing, police abuse etc.); (c) whether or not the techniques aim to attack the identity of the person; and (d) the severity of each experience both from an objective point of view and from a personal subjective experience point of view.

In this sense, the idea of torturing environments, and the possibility of measuring them, is a major step forward in the contemporary conceptualisation of torture. It provides us with a multifaceted and comprehensive way of addressing the problem of determining the existence of torture in general (and psychological torture in particular) and the conditions that encourage it. It is under this conceptual model that the construction and development of the Torturing Environment Scale (TES) are driven (Pérez-Sales et al. 2021).

The TES aims to fill the current gap with a tool that helps to visualise the combined effects of torture methods. The model is based on a new paradigm that seeks to identify the human function under attack and to group torture methods, accordingly, using a teleological approach, i.e., organised according to a finite number of possible targets and their intended impact on the individual. It does not attempt to compare experiences of torture with each other or to measure the severity of suffering because each victim's experience is unique and impossible to measure. The scale provides an overview of factors indicating the risk of torture. It can be used either to provide an individual profile (e.g., in a forensic assessment) or a profile of a particular environment (e.g., for monitoring visits to centres).

The scale was elaborated based on the testimony of people subjected to torture from different places and historical moments. A content analysis was conducted to identify the core elements that they reported as having caused physical or psychological suffering and personal breakdown. We also analysed testimonies of perpetrators in which they explained their conception of torture and how they sought to bring the person to the limit of tolerance and breakage. Finally, we worked with documentation from centre monitoring organisations and visit reports. This work resulted in a scale composed of fifty-four indicators of torture, six legal indicators and twelve elements of medical and psychological corroboration. Currently, after years of application, a second revised version of the scale is being elaborated in which, as a lesson learned from its systematic application, the coercive interrogation scale is removed, and greater emphasis is placed on aspects linked to dignity and control.[2]

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[2] Virtual access to the scale, associated materials and updates to the scale could be done through the GAC research web: `http://www.psicosocial.net/investigacion`.

4 Torturing Environments in the Context of Migration

Migration processes are often accompanied by episodes of ill-treatment and torture. In some cases, this is the reason for people to flee their country of origin, while in others it is one of the worst situations to which people fall victim during their migratory journey.

As the Special Rapporteur on Torture has pointed out in his latest thematic report on migration (United Nations 2018), borders have become sites of serious human rights violations. Mass deportations and detention in specific places for migrants take place in these spaces.

These immigration detention environments are places of exceptionality, where people are dehumanised, as they are treated differently from other human beings. Depending on the conditions in which they are held and the treatment they receive, these people are subjected to an elevated level of physical and psychological suffering that meets the second assumption of the UN *Convention*'s definition of torture.

Finally, when people arrive in supposedly safe countries, in many cases there is no guarantee of a rehabilitation process adequate to the impacts of previous experiences of ill-treatment and torture, nor is access to the range of basic human rights (such as the right to health, housing, education, rehabilitation etc.) or protection against further abuses guaranteed. In this way, migrants are increasingly exposed to detention and even to the possibility of being returned to the situations of torture from which they escaped in the first place.

4.1 Case Studies. *Estaciones Migratorias* in Mexico, Moria Camp in Greece, Reception Centres on the Spanish Southern Border

The research team of the Grupo de Acción Comunitaria (GAC) has spent years assessing the reception conditions in different places where migrants are held and the impact they have on people. This work has been conducted from the perspective of torturing environments, through the application of the TES.

A line of work began in 2017 in the *estaciones migratorias* (Eng: migration stations) in Mexico (Manek, Tobasura Morales 2022; Manek, Galán-Santamarina, Pérez-Sales 2022), and extended in 2020 to the refugee camp of Moria on the Greek island of Lesbos (GAC 2021; Pérez-Sales et al. 2022) and in 2021, taking the research to the reception facilities of the Spanish Southern Border (GAC 2022).

4.1.1 Mexico and Migrant Detention Centres as Torturing Environments

4.1.1.1 Context

The current migration control policy in Mexico is based on systematic detention practices in detention centres officially known as 'Estaciones Migratorias' or 'Estancias Provisionales', which are managed by the Instituto Nacional de Migración (INM). The purpose of these centres is to temporarily hold foreigners who cannot prove that they have a regular migratory situation in the country until their situation is resolved. There are currently approximately 32 *estaciones migratorias* throughout the country. In the last five years before the pandemic, the increase in immigration detention and detention operations has responded to various pressures exerted by the United States, which at different times has demanded greater control of Mexico's southern border. 42.33% of the detentions were conducted in Chiapas and Tabasco, while 38% took place in the States that make up the country's northern border. To get an approximation of the scope of these practices in Mexico, before the pandemic, a total of 186,750 arrests were made in 2019, of which 134,751 were of children and adolescents. Finally, of these detainees, 141,223 were deported.

The conditions of immigration detention centres in Mexico, as well as the treatment of the people inside them, have been the subject of concern in recent years by various bodies of the United Nations system, civil society, and the National Human Rights Commission itself as a national institution.

4.1.1.2 Methodology and Objectives

From 2018 to 2022, the research team of the Grupo de Acción Comunitaria (GAC) together with the Grupo Impulsor Contra la Detención Migratoria y la Tortura (GIDMT), developed an investigation into the conditions of detention for migrants in Mexico by exploring the environment of the so-called *estaciones migratorias* and how migration detention affects the mental health and social life of detainees. To this end, semi-structured interviews were conducted with 57 migrants who were or had been detained in a migrant detention centre. Of these 57 people, 45 were men and 12 were women. In these interviews, the TES adapted to Mexican immigration detention contexts was used, as well as a scale of intencionality of acts conducted by personnel inside detention centres.

4.1.1.3 Results

The results of the investigation can be seen in detail in **[tabs 1-2]**. In summary, it is worth noting that the main contextual manipulation referred to by the persons interviewed were the inhuman conditions of detention according to international standards, where almost all of them stated that they had been in cells where the minimum conditions about the size of the cell were not met, there were situations of overcrowding, there was no place to sleep or there was a lack of hygiene inside the cells. Likewise, the persons stated that they were systematically or eventually subjected to the manipulation of environmental conditions, such as extreme temperatures in the cell or the presence of humidity. On the other hand, a large number reported having suffered alterations in their basic physiological functions, being forced to experience hunger, thirst, or being limited in their ability to urinate or defecate. Likewise, they reported having suffered sleep dysregulation, through the impossibility of sleeping due to noise and changes in schedules, among others.

Detainees reported having suffered manipulation of expectations and hope to provoke extreme fear or terror – for example, through the induction of feelings of complete helplessness, the denial of information or the production of absurd or terrifying environments, including prolonged periods of silence and/or waiting. They also reported being exposed to threats against their person, such as threats of isolation, torture, or death, as well as threats against partners or family members in detention. Physical violence was also reported in the form of beatings, including punches, kicks, and slaps.

Table 1   Main violations reported in Mexico's migrant holding centres (N=57)

Attacks on basic human functions	
Inhumane conditions of detention by international standards: overcrowding and lack of privacy	93%
Impairment of basic physiological functions: difficulties in accessing water, hunger, difficulties in urination, defecation, and toileting	80.7%
Manipulation of environmental conditions: suffering due to temperature or humidity conditions, litter, and unsanitary surroundings	82.4%
Sleep dysregulation: inability to get restorative sleep	66.7%
Actions generating fear or perceived loss of control	
Threats against the person	66.7%
Threats against partners, family members, relatives, or friends	42.1%
Situations of perceived imminent death	
Forced witness to violence, torture, or death of others	21.1%
Use of situations that evoke unbearable fear	15.8%
Manipulation of the sense of the passage of time	54.4%

Sensory deprivation and/or sensory disorientation	
Actions causing physical pain and attacks on sexual integrity	
Hits	42.1%
Battles against oneself. Externally forced physical pain	38.6
Strenuous exercise	8.8%
Humiliation related to sexual identity	
Sexual harassment	10.5%
Actions that produce hopelessness and helplessness	
Manipulation of expectations and hopes to provoke extreme fear or terror	82.5%
Distress associated with a lack of information regarding administrative or legal status and/or station rules or regulations	68.4%

Regarding the emotional impact of detention on respondents, they frequently reported feelings of humiliation or shame, sadness, mistrust, fear, anguish, and hopelessness, as well as tiredness. Also, about a quarter of the respondents reported frequent feelings of rage or anger, guilt, or nightmares. Finally, among the most severe impacts, eight people reported having thoughts of suicide. Specifically, five people experienced it sometimes and three people experienced it constantly. One person reported a suicide attempt.

Table 2 Impacts on the mental health of people who were or had been detained in migrant holding centres (N=57)

Mental health impacts	Moderately	Extremely
Fatigue	22.8%	64.9%
Sadness	33.3%	49.1%
Nightmares, intrusive thoughts, or images	37.5%	25%
Mistrust	38.6%	43.9%
Rage or anger towards self or others	31.6%	24.6%
Blame	30.4%	23.2%
Fear	24.6%	52,6%
Anguish and despair	24.6%	52.6%
Despair	17.5%	43.9%
Thoughts of suicide	8.8%	5.2%
Humiliation or embarrassment	38.6%	33.3%

The results of the research indicate that the Mexican immigration detention system in migrant detention centres creates torturing environments. They highlight that in Mexican immigration detention centres there are multiple attacks on basic human functions, physical aggression, actions that generate fear and loss of control, as well as elements that provoke hopelessness and helplessness. All these

elements have multiple impacts on the health of detainees, including serious impacts such as feelings of hopelessness and thoughts of suicide.

These data have been systematically denounced by different international bodies and civil society organisations, without substantial improvements or changes. It can be concluded that immigration detention in Mexico is part of a harmful policy of deterrence that perpetuates inequality and the creation of feelings of fear and powerlessness caused by detention and deportation.

4.1.2 Lesbos. The Camp of Moria. Architecture of Torture in Europe

4.1.2.1 Context

The Moria camp has been active on the island of Lesbos from 2015 until September 2020, when the fires that destroyed it took place. At the end of its days, it eventually became the largest refugee camp in Europe.

The Greek government, in collaboration with the European Union (EU), created the Moria Camp for the management of people arriving from Turkey in the context of the so-called 'refugee crisis' of 2015. During the entire time that the camp was in operation, it received complaints about the living conditions and violence experienced by the people housed there.

In February 2020, the Turkish government threatened to break the agreement with the EU by opening its borders to refugees from Syria in a geopolitical pressure measure, prompting the Greek government to suspend until further notice the possibility of applying for international protection on its territory, thereby blocking large numbers of migrants at the borders and pushing back those trying to enter via the Aegean Sea. Following the tension generated by this situation, Greek camps once again became overcrowded; as Amnesty International noted, the Moria camp, with a capacity of 3,000, held 20,000 people in March 2020 (of whom between 6,000 and 7,000 were under the age of 18).

4.1.2.2 Methodology and Objectives

In 2020, the GAC undertook research to gather information about the conditions in the Moria refugee camp in Lesbos until the fire that destroyed it in September of the same year. Thus, this research presents the data collected in the last period of the camp, which helps to understand how the camp was considered a torturing environment and the circumstances that may have led to the fires.

The study analyses the living conditions of refugees in the camp of Moria (Lesbos) in a sample of a total of 160 people, of whom 80 were women and 80 were men. Semi-structured interviews based on the TES were used together with three supporting instruments: the WASSS scale (WHO, UNHCR 2012), a legal safeguards scale and a camp-specific violence scale.

4.1.2.3   Results

The results of the research can be seen in detail in **[tabs 3-4]**. The data show a context where there are multiple attacks on basic human functions: all the people interviewed reported having been hungry at some point, difficulties in accessing water for drinking, difficulties in urination or defecation, as well as in toileting or showering and having suffered from the temperature or humidity conditions, and almost all of them reported situations of overcrowding and a lack of privacy, impossibility to rest, as well as difficulties in receiving medical attention.

Many elements in the camp generate an environment of insecurity and constant fear. Testimonies were collected of serious threats against them or their families, sometimes including beatings. It is particularly alarming that 41% of women and 8% of men report situations of sexual abuse. A high number of respondents had witnessed violence against other people. These elements give an approximation of the intimidating and violent environment in the camp.

In the same vein, numerous factors prevent a sense of control over one's own life. In this sense, more than half of them were not clear about the norms or rules of the camp because they changed or were not explained, nor did they feel it was possible to establish routines, despite living in the camp for years. Almost all the people had no information about their administrative or legal situation, thus generating situations of legal and/or administrative defencelessness. This situation also favours the appearance of false news and misinformation in the camp. Finally, one-third of the people living in the camp perceived it as an environment of complete submission, giving rise to feelings of humiliation, indignity and/or shame.

Table 3 Conditions and violence reported in the Moria camp in Greece (N=160)

Attacks on basic human functions	
Inhumane conditions of detention by international standards: overcrowding and lack of privacy	89%
Difficulties in access to water	100%
Difficulties in accessing food	100%
Difficulties in urination or defecation, as well as in toileting or showering	100%
Rubbish and unhealthy surroundings	90%
Suffering from temperature or humidity conditions	100%
Sleep dysregulation: inability to get restorative sleep	97%
Difficulties in receiving medical care	90%
Actions generating fear or perceived loss of control	
Manipulation of expectations and hopes to provoke extreme fear or terror	82.5%
Threats against the person or partners, family members, relatives or friends	65%
Theft	90%
Distress associated with lack of information	68.4%
Inability to establish routines	60%
Forced witness to violence, torture, or death of others	78%
Use of situations that evoke unbearable fear	15.8%
Actions causing physical pain and attacks on sexual integrity	
Beatings	36%
Domestic violence	17%
Sexual abuse	41% women 8% men
Rape	12% women 5% male
Sexual exploitation	5%
Actions that produce hopelessness and helplessness	
Lack of information on the administrative or legal situation	
Lack of information on norms or rules of the field	64%
False information or misinformation	75%
Legal or administrative defencelessness	33%
Attacks on identity and the need to belong	
Full submission environment	31%
Living under rules of radical religious obedience	10%
Guilt-producing actions	27%
Humiliation, indignity or shame	20%
Cultural isolation	
Actions of racism, xenophobia or homophobia	42%

All these elements described above generated extremely elevated levels of physical and emotional suffering. Almost all of the people interviewed reported moderate or extreme fear, as well as frequent or very frequent emotions of hopelessness. One-third reported repeated and continuous suicidal ideation. Suicidal ideation is the tip of the iceberg of an extremely complex emotional distress made up of emotions of fear, anger, apathy, and hopelessness, which are present in almost everyone.

Table 4 Impacts on the mental health of people living in the Moria camp (N=160)

Mental health impacts	Moderately	Extremely
Fear	62.5%	31.9%
Rage	64.4%	31.3%
Loss of interest	62.5%	35.0%
Despair	62.5%	30.6%
Suicidal thoughts	66.9%	29.4%
Inability to carry out daily activities	64.4%	35.0%

Through the data provided in this report, it can be affirmed that the Moria Camp, which has been operating on the island of Lesbos between 2015 and 2020 on the site of a previously existing reception centre for migrants, was a space that, from a medical-psychological analysis, constituted a torturing environment. The indirect deprivation of sleep, the lack of minimum and adequate food, the communicative isolation, and the exposure to extreme temperatures without the possibility to protect oneself from them added to the constant humiliations, threats, and exercises of violence by public officials, generate a combined effect that is what allows us to define the camp as an environment of torture.

The population that has gone through Moria has been the victim of strong impacts on their own identity, seeing their human capacity to trust others broken, radically changing their vision of the world. In this sense, the perception that there are people who not only allow this to happen but are direct perpetrators of violence is one of the greatest impacts on the victims.

These data have been denounced by international organisations for more than five years, without any effective action being taken to guarantee the rights of the people living in the camp. European governments and authorities have allowed these people to remain for months, and even years, locked up in openly abusive conditions. At the same time, Moria is not an isolated case, but an example of the EU's migration policy on its territory.

4.1.3   Spain's Southern Border. The Impacts of Reception

4.1.3.1   Context

Migration is currently a global priority and Spain's southern border, due to its geographical position as a southern land and sea border with Africa, is a strategic enclave for the European Union in the framework of European migration control policies. People arriving across this border have in many cases experienced serious violations of their rights (discrimination, persecution, slavery or labour exploitation, sexual exploitation, detention without fair procedures, ill-treatment, or torture) both in their countries of origin and throughout their migratory journey. Therefore, upon arrival in Europe, they present severe psychological suffering and situations of vulnerability, which means that reception in the territory takes on great importance for reparation and rehabilitation, entailing a great ethical and legal responsibility.

In Spain, there are different border realities throughout the territory, as there are significant differences between the peninsular borders and those outside the European continent: the Canary Islands and the autonomous cities of Melilla and Ceuta. All of them are in North Africa and are commonly known as the Southern Border. Over the last few years, these territories have experienced migratory movements described as exceptional events, which have been described as 'migratory crises', even though these flows at this point have always remained constant. As a result, reception is often presented as a purely humanitarian response of an emergency nature.

The lack of foresight, coordination and institutional organisation leads to a sense of overcrowding, insecurity, and loss of control among the host population and leads to the dehumanisation of migrants, whose rights are repeatedly violated.

4.1.3.2   Methodology and Objectives

Within this framework, in 2021, the GAC began a research project to evaluate the reception conditions of the Spanish Southern Border, in the city of Melilla and the Canary Islands, focusing on the impact they have on migrants, from a psychosocial and cross-cultural perspective. To this end, a total of 110 people accommodated in different facilities of the Spanish Southern Border were interviewed, of which only two were women, as well as a group of key agents who conducted their activity in these territories. Semi-structured interviews based on the TES were used together with scales and quantitative measures and in-depth interviews.

4.1.3.3   Results

Through the results of the research, shown in **[tabs 5-6]**, it can be observed that the conditions of the accommodation points for migrants are in many areas insufficient, including insufficient drinking water or access to it, insufficient or inadequate food, overcrowding and lack of privacy, poor access to personal hygiene and lack of hygiene in the environment, difficulties in resting, fear derived from the insecurity in the centres. There are also situations of dehumanisation by different institutions, separation of members of the same family unit, and difficulties in communicating with the outside world.

A lack of adequate legal safeguards (framework of exceptionality with arbitrariness in the application of operating rules, regulations and procedures, insufficient legal representation and lack of information and conditions for processing applications for International Protection) is also detected.

Table 4   Conditions reported in reception facilities at the southern Spanish border (N=110)

Attacks on basic human functions	Melilla	Canary Islands
Inhumane conditions of detention by international standards: overcrowding and lack of privacy	90.6%	69.1%
Difficulties in access to water	94.3%	33.9%
Difficulties in accessing food	81.1%	77.2%
Difficulties in urination or defecation, as well as in toileting or showering	96.2%	71.9%
Rubbish and unhealthy surroundings	84.9%	41.1%
Suffering from temperature or humidity conditions	92.5%	77.8%
Sleep dysregulation: inability to get restorative sleep	86.8%	58.5%
Difficulties in receiving medical care	71.8%	71.1%
Actions generating fear or perceived loss of control		
Perception of insecurity	92.5%	53.7%
Actions that produce hopelessness and helplessness		
Lack of legal accompaniment and information regarding the administrative or legal status	50.9%	48.6%
Lack of information on norms or rules of the field	90.6%	51.9%
Attacks on identity and the need to belong		
Difficulties in communicating with family and friendship network	96.2%	67.9%

All of the above generates an environment of abuse that leads to physical impacts and significant psychological suffering, with frequent reactions of apathy and demotivation, anger, hopelessness, fear and in at least one in four people self-harm or suicidal ideation, as well as deterioration in individual and collective identity.

Table 6   Impacts on the mental health of the people hosted in the facilities of the southern Spanish border (N=110)

Mental health impacts	On a regular or continuous basis	
	Melilla	**Canary Islands**
Fear	13.2%	19.3%
Rage	9.5%	5.4%
Loss of interest	15.1%	18.2%
Hopelessness – Suicidal ideation	20.7%	18.5%
Inability to carry out daily activities	15.1%	25.9%
The perception that conditions have a negative influence on their mood	32.1%	59.1%

Based on the results of this research, there is a situation of inhuman, cruel, or degrading treatment in the reception facilities analysed in Melilla and the Canary Islands that goes beyond a specific critical situation and is endemic. The conditions of the reception centres for migrants are insufficient in many areas, including insufficient access to drinking water or poor conditions, insufficient or inadequate food, overcrowding and lack of privacy, poor access to personal hygiene and lack of hygiene in the environment, difficulties in resting, fear derived from the insecurity in the centres. There are also situations of dehumanisation by different institutions, separation of members of the same family unit, and difficulties in communicating with the outside world. An absence of adequate legal safeguards is also detected (a framework of exceptionality with arbitrariness in the application of operating rules, regulations and procedures, insufficient legal representation and a lack of information and conditions for processing applications for International Protection). All these factors are key aspects because of their implications in terms of dignity and impact on the quality of life and the level of physical and psychological suffering.

This study points to the need to change a culture based on emergency management with pragmatic and utilitarian criteria that prioritise logistics over a humane and caring approach, to management based on the idea of reception that changes the current limbo of the border for the creation of safe spaces, free of fear and anguish, in which migrants in general and victims of ill-treatment and torture and other forms of human rights violations specifically, receive dignified and humane treatment.

4.2   Migration Detention Spaces as Torturing Environments

In all the studies, although with substantial differences, especially in the last one, it is concluded that the conditions of these spaces of migratory detention provoke a psychic breakdown. There is wear and tear derived from attacks on basic human functions (poor nutrition, poor access to water or chronic sleep deprivation) and conditions are identified that attack the capacity for control[3] (absence of rules, lack of information, lack of access to rights, legal defencelessness) or security (overcrowding, robbery or aggression), which generates feelings of helplessness, fear or anguish associated with serious physical and psychological suffering.

Reception conditions in these contexts undermine people's dignity, due to the perception of not being treated with respect for their identity (not being listened to, considering that the conditions are not acceptable for a human being, not feeling that their cultural values are respected etc.) or collective identity (preventing communication with loved ones, situations of discrimination or violence based on the group to which they belong etc.).

In addition, migrants will more often than not suffer from the most negative aspects of the social determinants of health in host countries: exposure to a strict legal and bureaucratic framework, overcrowded and unsanitary housing conditions, lack of employment or educational opportunities, racism or discrimination, caused by interaction with people, the difficulty of access to institutions or internalisation of fear (Walsemann et al. 2017; Pérez-Sales 2018).

Finally, about the intentionality or motivation of the generation of these environments, this is necessary for the qualification of torture or ill-treatment, not being a necessary condition to recognise a situation of inhuman or degrading treatment when there is a direct responsibility of the State in the existence of these conditions, which would be subject to debate. However, beyond the specific context, parallelism has been found in studies conducted in different countries and borders using the same methodology and theoretical framework, which suggests the existence of a purpose of migration policies of a deterrent nature (UNHCR 2014; Edwards 2019; Akkerman 2021).

It is this combination of elements described above that together gives rise to *Torturing Environments* in migration contexts [fig. 1].

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3   The sense of loss of control over one's own life is a clear risk factor for developing both physical and emotional distress and is therefore an important determinant of the health of people affected by this context (Marmot 2004).

Wear and tear caused by the environment
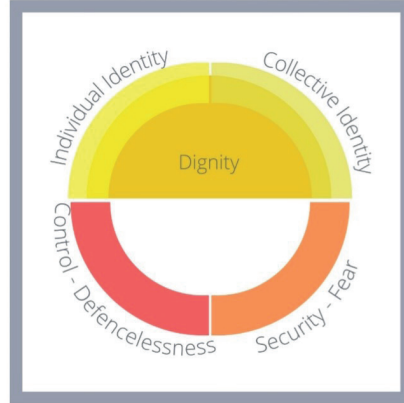
5   Conclusions

The concept of a Torturing Environment reflects the reality of those spaces (prisons, detention centres for migrants etc.) which by their nature intentionally provoke severe physical and/or psychological suffering with attacks on the basic and higher functions of human beings by State actors or those with delegated functions of the State.

It is necessary, in this sense, to consider that the concept of Torturing Environments goes beyond the classic conceptualisation of torture as the infliction of physical pain to break a person's will, to consider, from a holistic and integral vision of the human being, all the elements of psychological torture that contemporary science shows to be essential elements for the understanding of torture in the twenty-first century. In this sense, there is both medical (Pérez-Sales et al. 2021) and legal evidence[4] that support and give substance to this

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4   It should be recalled that the *Convention against Torture* speaks of "severe physical or mental suffering" in its Art. 1, but, in addition, European jurisprudence takes up the long legacy in this area of the Human Rights Committee (Miguel Angel Estrella v. Uruguay case as the first resolution in this regard: Communication No. 74/1980, UN Doc. CCPR / C / OP / 2 at 93 (1990)) or the Inter-American Court of Human Rights, incorporating the concept of 'psychological torture' in its judgments (see Gäfgen v. Germany, application no. 22978/05, 1 June 2010, among others). In the same vein, a very interesting report by the UN Special Rapporteur on Torture (United Nations 2020, 6-7) has further elaborated on this debate, stating: "21. First, the distinction between psychological and physical methods of torture should not obscure the fact that, as a matter of law, 'torture' is a unified concept. All methods of torture are subject to the same pro-

notion. Thus, the environment of torture integrates physical and psychological elements, but also the legal defencelessness that would contribute powerfully with its arbitrariness to scenarios or environments of torture.

The different spaces analysed are located in different border frameworks and contexts, supporting the hypothesis that none of them is an isolated case, but rather examples of how migration policies use detention as part of a policy of harmful deterrence that perpetuates inequality through the means of the detention environment and the creation of feelings of fear and powerlessness caused by detention and deportation.

The central purpose, in the case of centres for migrants or refugees, is to apply policies of a dissuasive nature that generate in people fleeing contexts of poverty or violence the dilemma of having to choose between the situation they are fleeing or the suffering caused by the receiving society as an instrument of control.

Torture is a norm of *jus cogens* and has been outlawed by international law. The European Court of Human Rights makes it explicit in several rulings that this prohibition cannot be circumvented by arguments about budgetary problems or based on a massive influx of migrants, reasoning that this has been frequently reiterated by different governments to justify the state of reception camps or centres, and detention centres.

Furthermore, there are numerous decisions of the European Court that establish violations of Article 3 of the *European Convention on Human Rights* due to the material conditions (specifically, overcrowding, together with lack of light and ventilation or lack of privacy) of persons when they are in State custody, with restriction of movement, as in this case. The fact that these resolutions refer to situations of 'detention' (although all the cases indeed allude to situations of 'administrative' detention pending expulsion) does not make it possible to ignore the prohibition they establish of confining migrants, many of whom have requested international protection, in degrading conditions such as those that have been identified in the Moria camp, the migration stations or the southern Spanish border.

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hibition and give rise to the same legal obligations, irrespective of whether the pain or suffering inflicted is of a 'physical' or 'mental' nature, or a combination of both. Thus, the purpose of the distinction between 'psychological' and 'physical' methods of torture is not to suggest any difference in terms of legal implications or wrongfulness, but to clarify to what extent the generic prohibition of torture covers methods not using the conduit or effect of severe physical pain or suffering".

6 Recommendations

This raises, for the first time, the need to consider torture settings within the international legal and human rights framework. Torturing environments must be debated within the framework of the international institutions of the United Nations System, creating a framework of enforceability that complements that which is currently contained in Article 1 of the *United Nations Convention against Torture*, adapting it, through interpretation by the corresponding bodies, to the new realities, in line with the observations of the Special Rapporteur on Torture regarding the existence of torturing environments in spaces for migrant detention.

It is also necessary to promote awareness among regional and State legal operators of the minimum conditions of detention in the legislative framework and of the various situations in which torturing environments can occur and their typical and jurisprudential adaptation to the new social, administrative, and penal realities in which they occur.

An explicit mention of the existence of torturing environments should also be included in the mechanisms for the prevention of torture, in the framework of the monitoring and inspection of places of deprivation of liberty, and, in particular, of the United Nations Subcommittee for the Prevention of Torture, the Committee for the Prevention of Torture of the Council of Europe and the National Mechanisms for the Prevention of Torture, urging the incorporation of guidelines for the detection of torturing environments in the visits carried out.

In the context of migration as a measure to guarantee the rights of the migrant population and applicants for international protection, governments involved in the reception of this population should be urged to adopt effective measures to ensure respect for their human rights. About the spaces for migrant detention this implies:

- Establish systems for assessing and monitoring the conditions of refugee camps and other spaces and facilities within the reception system that ensure essential quality standards and respect for human rights.
- The closure of camps and facilities that do not comply with the minimum guarantees set out in humanitarian action consensus documents (Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response, IASC Guidelines and others), international regulations and those set out in Directive 2013/33/EU adopting standards for the reception of applicants for international protection, ensuring the dignified relocation of their inhabitants immediately.
- Guarantee the existence and transfer of the necessary resources to provide dignified living conditions for migrants during the

administrative processing of their respective regularisation or international protection processes.
- Ensure the adequacy of reception systems and conditions to the different social needs of people, sensitive to gender, sexual, religious, and cultural diversity.

In short, we point out the need to implement migration policies based on an idea of reception that changes the current limbo that borders represent, that guarantees the creation of safe spaces, free of fear and anguish, in which migrants receive dignified and humane treatment.

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The Border is the Violence
War, Empire and Migrants in the Making of the US-Mexico Border

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Abstract   This text contextualises the weaponisation of public health laws during the COVID-19 pandemic by the Donald Trump administration within a longer history of the United States waging war, violence and torture on migrants in its southern borderlands. The use of Title 42 to refuse asylum requests – requests legally mandated by US and international laws – represents the rule, not the exception, within a violent border regime that continues to brutalise migrants.

Keywords   Border. Violence. COVID-19. Public health. Migration. Migrants. War. Title 42.

Summary   1 Introduction. – 2 A Line in the Sand. – 3 Revolution at the Border. – 4 Cold Wars, Drug Wars, and Terror Wars. A Singular War Against the Poor. – 5 Do not Come. Title 42 and Public Health in the Time of COVID-19. – 6 Conclusions. No Human Is Illegal.

Nos han hecho la guerra patrullando fronteras
(Los Tigres del Norte 2002)[1]

1 Introduction

In our current moment of emergency, a 'hauntological' reading of United States' history reveals a series of spectres that still haunt this ongoing settler colonial project (Derrida 1993). These spectres remind a country that mythologises itself as an 'end of history' universal model for humanity that violence, conquest, exploitation, and dispossession made (and make) it possible. Written into the very document that declared US independence as enemies, "the inhabitants of our frontiers, the merciless Indian savages" (United States Declaration of Independence, 1776) and black slave 'domestic insurrections' testify to the conditions of nation-State possibility that began prior to and during what historian Gerald Horne (2014) refers to as the 'Counter-Revolution of 1776': the genocidal structures and practices of indigenous territorial dispossession and black subjugation. Nineteenth-century Mexican and Chinese 'nomadic proletarians' recall histories of imperial expansion and capitalist exploitation justified by scientific racist ideologies, sustained by military violence, pogroms and lynching (Nail 2019). Similarly, in our time, Central American refugees form part of what we can call the harvest of US settler empire as they flee the consequences of US-supported death squad regimes and so-called free trade treaties (González 2011; Rana 2010).

These spectres haunt because they reveal the contingency of an violent settler colonial project that produces the very anxieties and disorders it seeks to control and subjugate (Kaplan [2002] 2005, 10-15). Most intensely, through resistance and sheer survival, they remind the US that it too is subject to limits, to consequences, to history. The past is never past and sometimes the chickens come home to roost, as Malcolm X once remarked. The 'freedom dreams' and repertories of popular protest that harness memory, indignation, and rage to fuel quotidian resistance and outright rebellion in the present also suggest radical alternatives for the future (Kelley 2003). Even when such instances fail splendidly, to paraphrase W.E.B. Du Bois, they generate critical diagnoses of power that point out locations of State weaknesses and contradictions while poking holes in legitimising foundational myths (Du Bois [1935] 1998, 708).

The US-Mexico border is one such location; the frontier one such myth. A frontier that conceptually once served to signify the promise of endless growth and white settler freedom – a "proxy of liberation" as historian Greg Grandin (2019, 3) argues – has *again* become

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1 "They've waged war on us by patrolling borders" (Author's transl.).

in a recent era of border militarisation a "monster, growing, feeding on itself" in need of securing, control, and containment (Brinkley 1986a).[2] This 'monster,' Donald Trump announced in July 2015, necessitated the building of walls to keep out Mexican migrants responsible for introducing both illicit drugs and "tremendous infectious disease" into the US (Neate, Tuckman 2015). A year later, he added yet another element to the list of dangers that migrants allegedly trafficked into the country: subversive, 'un-American' ideologies that required "extreme vetting" and "ideological tests" (Lind 2016). The coupling of migrants with crime and contagion – epidemiological and ideological – would not only structure Trump's immigration policies during his presidency but also his response to the COVID-19 pandemic. Specifically, the issuance of Title 42 in March 2020 by the Center for Disease Control and Prevention (CDC) justified the expulsion of people who had crossed the US-Mexico border seeking asylum in accordance with US and international law on the grounds of a public health emergency.

To understand the weaponisation of public health law in the form of Title 42, we must go back in history to delineate how various forms of war-making created the physical, legal, and medicalisation infrastructures of the US-Mexico border – forms that enabled the creation of infrastructures that then systematised the practices of violence and torture of migrants. Violence at the border represents a structural rule, not an exception; the border is the violence. Based mostly on secondary literature, this article is an exercise of historical interpretation in selectively charting the long history of the US-Mexico border. Building on historian Ellen Wu's suggestion on "centering war in US immigration policy", it argues for placing myriad forms of war-making and war-making technologies at the centre of historical analysis of US borders, empire, and the creation of migrants (Wu 2019). Medicalisation and the association of migrants with contagion – criminal, racial, ideological and/or epidemiological – constitutes one such key technology. Title 42 represents its most recent iteration, a chapter in the longer history of border-making and border-maintenance made possible by imperial violence. Social wars make States, to riff off Michel Foucault and Charles Tilly, and the long war against migrants has played a key role in US State formation (Foucault 2013, 22; Tilly 1985).

This article thus explores how migrants are made historically and the role that borders play in that process from the US-Mexico borderlands in order to contextualise current State responses to the

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2 My historical reading of the frontier/border – endless imperial expansion serving as a 'fix' for domestic contradictions and conflict – is heavily influenced by Grandin and Aziz Rana's conception of 'settler empire' that argues for grounding white settler liberty and 'self-rule' in imperial conquest and the subjugation/control of subaltern populations (Rana 2010).

COVID-19 pandemic. This is partly a story of violence, particularly since borders are made and remade through US settler colonialism, imperial expansion and quotidian borderlands policing. As a relational, State-imposed category that uses racial difference to define US citizenship and national identity, and structure labour exploitation, the story of the migrant is also one of violence. But this is also a story of resistance to that violence. I conclude by thinking about what this history of borders, medicalisation as social containment, and migrant mobility can teach us during our current state of emergency.

2 A Line in the Sand

> Quiero recordarle al gringo: Yo no crucé la frontera, la frontera me cruzó
>
> (Los Tigres del Norte 2001)[3]

If on paper the US claimed nearly half of Mexican national territory after its imperialist war of conquest in 1846-48, American cartographers sent to survey and draw the new border in 1851-53 often had to ask indigenous polities for protection and safe passage (St. John 2011, 21-3, 31-43). Even during the US-Mexican War, the border existed mostly as fictitious, aspirational renderings of State power – a feature both countries shared with prior Spanish colonial rule in its northern territories before Mexican independence in 1821. Quite simply, the area that we know today as the US-Mexico border – nearly 2,000 miles stretching from the Pacific Ocean, crossing deserts and mountain ranges before following the Rio Grande to the Gulf of Mexico – remained outside of settler State control. For an assortment of indigenous polities like the Apaches, Yaquis and Mayos wielded actual power in the borderlands well into the 1880s and 1890s. Waging periodic rebellions to protect their land and autonomy, such groups represented major threats to both Mexican and American claims of sovereignty. Conquering the borderlands thus required binational State cooperation.

Such cooperation, during the last decades of the nineteenth century, took the form of 'Indian wars,' settler colonialism, and capitalist development. Creating an industrialising US-Mexico border required the genocidal displacement of indigenous peoples and the commodification of their lands: an army war and a commodity war to borrow from historian Adolfo Gilly (2005, 11). Capitalist development arrived in the form of guns, horrific massacres, ethnic cleansing, plunder, railroads and barbed wire to transform an entire region conceptualised as a "mythical 'barren' wasteland awaiting development" (Lim

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3 "I want to remind gringos: we didn't cross the border, the border crossed us" (Author's transl.).

2017, 33). When railroads arrived in border cities like Nogales, Arizona and El Paso, Texas in the early 1880s, the expansion of mining, livestock ranching, commerce and (in some irrigated regions) the beginnings of commercial agriculture followed suit (Lim 2017, 35-6). Aside from generous government concessions provided by both the US and Mexican governments to capitalists, this 'capitalist revolution' also required labour (St. John 2011, 65-7). On the Mexican side of the border, smallholding peasants who lost their lands during the legalised land plunder regime of President Porfirio Díaz (1876-1910) joined the ranks of a mining and agricultural working class.

Migrants from around the globe, often following the networks created by commerce and capital, also arrived. For the global 'Age of Empire' (1875-1914) was also the age of mass mobility (Hobsbawm 1989). Fleeing imperial wars, violence, famines and/or simply seeking a better life, "25 million Europeans and hundreds of thousands of Asians and Latin Americans" moved to the United States from the 1880s to 1920s (Goodman 2020, 10). They made US industrialisation possible; they built the American 'Thebes of the Seven Gates' that had begun an imperial expansion into the Pacific and Caribbean after the end of the Civil War while it waged its genocidal wars against indigenous communities in the Plains and West (Brecht 1935). Employers and labour recruiters brought a transnational motley assortment of workers to the borderlands – Mexicans, black Americans, Chinese and Europeans – that quickly inspired a series of anxieties over race, labour and sovereignty that unfolded according to both local and national conditions. At the very moment that capitalism demanded mobile armies of labour, white settler societies like the US moved to create "regimes of immobility and enclosure in response to the real and imagined mobility of Asian migrants" (Atkinson 2016, 2). Chinese migrants became the main target.

The modern US immigration regime of regulated movement, surveillance, exclusion, detention and expulsion traces its foundational roots to the 1882 Chinese Exclusion Act that banned Chinese migration to the US. This regime began by practicing its system of racial differentiation and border-making on deportable Chinese bodies, fuelled in part by decades of Orientalist fears that associated Chinese migrants with the spread of diseases like cholera and plague (Goodman 2020, 10-15; Shah 2001). Exclusionists in California claimed that Chinese prostitutes spread more dangerous forms of venereal disease that threatened to 'poison Anglo-Saxon blood' and even cause the downfall of US society (Lee 2003, 33). The demand for exclusionary borders directed outwardly – shaped partly by imagined epidemiological fears – reflected white internal anxieties over shifting race, class and gender relations.

Pushed by a white settler class alliance composed of capitalists and workers, the anti-Chinese legislation revealed an additional anxiety to

match the racialised labour one: an imperial spatial anxiety derived from settler colonialism (Goodman 2020, 24). For the very Supreme Court rulings that established the doctrine of federal 'plenary power' over immigration law after the 1882 Act (*Chae Chang Ping v. United States 1889*), based on the concept of national sovereignty in the face of perceived 'outside' threats, depended upon earlier court rulings that legally justified the treatment of Native Americans as 'internal foreigners' (*United States v. Kagama 1886*). Such rulings enabled subsequent Congressional legislation that stripped Native political and territorial sovereignty – the Dawes Act of 1887 (Lim 2020). This tandem forging of plenary power at the expense of *certain* immigrants and Native Americans, as historian Julian Lim argues, revealed deep anxieties about US territorial expansion during the late nineteenth and whether the federal government actually exercised power in the Far West. In the context of the mass migration of racialised Others and sustained indigenous resistance and survival, the borderlands remained illegible from the standpoint of US sovereignty and would need 'securing' (Lim 2020, 221-3). Such securing required the exclusion of Chinese migrants (and eventually all Asian migrants with the exception of Filipinos) and the extermination of indigenous sovereignty.

The immigration regime thus expanded in scope and power to help 'secure' the US-Mexico border during the 1890s and early 1900s as US borders expanded extra-continentally with colonial possessions after the 1898 Spanish-American War. With plenary powers, the federal government determined which migrants to welcome, exclude, or deport with little to no judicial overview based on racialised and ideological prerequisites. In 1891, a new Immigration Act included new categories used to exclude and deport migrants: "individuals with contagious diseases", those "likely to become public charges", and women accused of immoral (read: sexual) acts (Goodman 2020, 21-3; Lee 2003, 37). A newly formed federal Bureau of Immigration was charged with screening migrants and putting into practice immigration legislation. Twelve years later, an additional act permitted the barring of entry for migrants suspected of harbouring radical political ideologies, in particular anarchism (Tilner 1987). The US had become a "gatekeeping nation [...] largely based on race and nationality", along with gendered and ideological prerequisites (Lee 2003, 16). Its southern border thickened, became something more than just "a line in the sand" (St. John 2011, 9).

3 Revolution at the Border

The 1910 Mexican Revolution helped materialise the US-Mexico border as a physical barrier. Thousands of Mexican labourers and agricultural guest workers, matched by refugees fleeing the violence

of the 1910 Revolution, encountered a gradually built physical infrastructure and legal apparatus that included fences, checkpoints, tens of thousands of soldiers and State police, customs houses, detention/deportation and even patrol planes (Goodman 2020; *New York Times* 1916; *Los Angeles Times* 1919).[4] The first fences erected in California and Arizona in 1909 and throughout the 1910s responded to US concerns over enforcing neutrality laws, preventing the cross-border spillover of violence and arms smuggling, and waging borderlands counterinsurgency to 'quarantine' against transnational political radicalisms and revolutionary movements.[5] Mexican revolutionary leader Pancho Villa's 1916 cross-border raid on Columbus, New Mexico and World War I further intensified US concerns over 'securing' its southern border. Such securing translated into increased policing for border communities long accustomed to a sort of transnational fluidity, at times devolving into the sort of racial pogroms and horrific extralegal State violence experienced by Mexicans in the Texas borderlands from 1915-20 (Muñoz Martínez 2018).

Medicalisation matched the militarisation of the border during the 1910s; concern over epidemiological pathogens paralleled worries over political 'pathogens'. Indeed, both represented two sides of the same counterinsurgent coin, as historian Alexandra Minna Stern (1999) demonstrates. Using medical knowledge and public health experiences gained in US colonial wars and nation-building waged in places like the Philippine Islands and Cuba, military officers, Public Health Service (USPHS) doctors, and federal immigration officials used medical quarantines and coercive sanitation practices against working-class Mexican migrants and Mexican-American border communities during and after the 1910 Revolution. Beginning in El Paso, Texas, in 1917, public health officials launched a quarantine ostensibly against typhus fever that subjected border-crossers from Mexico crossing the Santa Fe Street Bridge into the US to a humiliating and toxic process of medical inspection in a 'disinfection plant'. Working from the premise that "all persons coming to El Paso from Mexico, considered as likely to be vermin infested" (Stern 1999, 45), US officials put migrants through an exhaustive delousing process that included: stripping them naked; "chemically scouring" their clothes; sex-segregated showers that used a combination of water and toxic chemicals like kerosene and even Zyklon B according to historian David Dorado Romo; and,

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[4] Goodman (2020, 32) lists 1907 – the year of the Gentleman's Agreement between the US and Japan that essentially ended all Asian labour migration to the former – as the beginning of this mass migration.

[5] For example, the labour organising of the Industrial Workers of the World (IWW), the 1915 Plan de San Diego revolution in southern Texas and the 1917 Bisbee Deportation. For a list of violent, migrant expulsions carried out in the Southwest by local police forces targeting IWW labour organising during the 1910s, see Goodman 2020, 235 fn. 76.

smallpox inoculation "if deemed necessary" (Stern 1999, 45-6; Romo 2005, 221-8). And even if migrants passed, a final screening – "a general medical examination, cursory psychological profiling, and an interrogation about self and citizenship" – could still establish grounds for their exclusion (Stern 1999, 46). Workers who lived in Mexico but worked in the US experienced this process once a week.

That only four deadly cases of typhus fever in two months in 1916 provoked this medicalisation regime raises questions about intent and purpose. As Stern (1999) argues, this border quarantine – that inspected hundreds of thousands of Mexican bodies, lasted well into the 1920s and spread to other border points of entry – represented the exercise of biopower at the border (Foucault [1978] 1990, 140-3). The disciplining of Mexican bodies and the regulation/management of Mexican populations in El Paso, inspired by eugenicist and medical discourses, contributed to the racialisation of migrants whose labour US agro-capitalists needed (Stern 1999 50-3). By imagining Mexicans as living in unsanitary conditions and therefore making them the carriers of diseases like smallpox and typhus, these American medical officials helped make the US-Mexico border into a *racialised* boundary – and differentiated Mexican identity from a national to a *racial* one, neither white nor black. "Only after being cleansed – and, in turn, racialised", Stern writes, "were Mexicans allowed cross the threshold from diseased body to desired labor" (1999, 73).

Such racial thinking and 'desired' Mexican labour impacted national debates in the 1920s over immigration. By 1919-20, the medicalised war-making on Mexican migrants at border points of entry was matched by a "deportation machine" that made Mexicans who entered the country without inspection the "typical deportee" (Goodman 2020, 32-4). The federal prohibition on alcohol and narcotics enacted in the 1910s subsequently allowed anti-migrant politicians to conflate migration with the smuggling of illicit substances when demanding the placement of police and military forces on the southern border (*New York Times* 1922a; 1922b; 1925). Indeed, the creation of the US Border Patrol in 1924 reflected the influence of eugenics-minded, nativist restrictionists who only partially won the migration debate with the 1924 National Origins Act. Though the Act continued the ban on Asian migration and created a severely restrictive national origins quota system for Southern/Eastern Europeans, it exempted the Western Hemisphere due to intense pressure from southwestern agricultural capitalists who needed Mexican migrant labour. The Immigration Act of 1929 made unauthorised entry a misdemeanour and subsequent attempts after deportation a felony punishable by fines and prison (Lytle Hernández 2010, 92). These acts collectively "created a new class of persons within the national body – illegal aliens – whose inclusion in the nation was at once a social reality and a legal impossibility", as historian Mae Ngai argues (2004, 57).

While the law – and the Border Patrol as its policing arm – violently ensured that legal impossibility, US capitalism generated the social reality it needed (and profited from): workers deemed illegal or temporary and thereby more exploitable. In moments of crisis, as during the Great Depression of the 1930s, such workers became disposable and 'deportable'.[6] To note one example from 1940: Border Patrol agents in California's Imperial Valley seized Mexican workers' health records in order to issue deportation warrants based on the affliction of "a loathsome and dangerous contagious disease" (Molina 2014, 100). When the outbreak of World War II helped end the Great Depression in the 1940s, agricultural capitalists needed labour and similarly counted on State officials to help in the form of the Bracero Program (1942-64): a binational US-Mexico labour agreement that provided nearly 5 million short-term contracts to more than 400,000 Mexican men to work in the United States (Goodman 2020, 46-7; Sifuentez 2016, 10-35). This programme reflected the type of racial logics and anxiety that earlier animated congressional commissions and debates over legislation that culminated in the 1924 Act. Mexicans represented a more ideal labour source because they generally wanted to return to their Mexican homes, not stay in the US. "In the case of the Mexican", the 1911 Dillingham Commission wrote, "he is less desirable as a citizen than as a laborer" (Denvir 2020, 23). Decades later, a Florida sugar planter expressed this crudely, if not more honestly: "we used to own our slaves; now we just rent them" (Grandin 2019, 182).

4 Cold Wars, Drug Wars, and Terror Wars. A Singular War Against the Poor

By the mid-1940s, expelling Mexicans had "emerged as the central project of the US Border Patrol" in which local agents wielded significant discretionary power in the application (or non-application) of immigration law with little juridical oversight (Lytle Hernández 2010, 148). In 1945, two anti-migrant physical spaces symbolised the US legacy of unjust detention and portended its massified future. Government authorities built chain link fencing near Calexico on the Mexico-California border from materials used in the Crystal City Internment Camp that caged Japanese Americans during World War II. Nearly 12 miles north in El Centro, immigration agents opened a detention camp for undocumented migrants. The death of five mi-

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6   In 1930, the US Census listed 'Mexican' as a racial identity, followed by congressional legislative attempts that sought to limit birthright citizenship for the children of migrants in 1933. See Molina 2014, 79-98.

grants who died of dehydration in 1952 after the border fence forced them to cross through isolated, inhospitable terrain signalled an additional, deadly presage: the necropolitical weaponisation of landscapes by the US State officials to deter migration (Grandin 2019, 200, 327 fn 29; Ordaz 2021).

With the onset of the Cold War in the late 1940s and early 1950s, the tripartite project of militarised border policing, detention and expulsion expanded, justified by an anticommunist logic that deemed the 'porous' southern border as a national security threat. "Aliens of the most dangerous subversive classes" could take advantage of this border porosity, US Attorney General Herbert Brownell argued in late 1953 (Goodman 2020, 52). A year later during the summer months, government officials launched 'Operation Wetback': a series of mass deportation campaigns along the US-Mexico border, Chicago and even in the Mississippi Delta that sought to cut down on unauthorised border entries. Through a combination of formal deportation, voluntary deportation, and self-deportation, more than a million mostly Mexicans were expelled before and during the operation. Yet, as historian Kelly Lytle Hernández argues, 'Operation Wetback' also represented a broader effort by the Border Patrol to "reinvent" border security and immigration control as "a site of crime control" (Lytle Hernández 2010, 156; see also Goodman 2020, 52-72). Drugs would come to represent a primary transnational element in that site.

As US politicians demanded that rival Cold War States elsewhere tear down walls, the 'monster' in the Southwest required new walls. Two 'monstrous' progeny thus helped shape the gradual emergence of a national political bipartisan consensus that agreed on the need for militarised border policies as an urgent matter of national security by the 1960s: the exponential rise of undocumented migration in the years after immigration reform in 1965 and the so-called War on Crime officially declared by President Lyndon Johnson that identified Mexico as the main supplier of marijuana to US consumers (Goodman 2020, 109-10).[7] In a 1967 government report entitled *The Challenge of Crime in a Free Society*, the authors argued that since most marijuana came from Mexico, a logical solution should consist of increased inspection and interception of "both drugs and people" at the border (Timmons 2017, 20). The transborder metropolis of Ciudad Juárez-El Paso was once again thrust into the vanguard of border control and wall-building – the site where wars on crime, drugs, and border-crossing people collapsed into one.

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[7] The 1965 Immigration and Nationality Act removed the racist national origins quota system set in 1924 while also placing caps on migration from the Western Hemisphere for the first time. Such caps, plus the end of the Bracero Program in 1964 and additional caps in 1976 specifically targeting Mexico, forced Mexican workers long accustomed to legally seek work in the US to do so illegally.

In September 1969, President Nixon ordered 'Operation Intercept': the unilateral closing of the entire US-Mexico border and the inspection of all cross-border traffic to prevent the smuggling of illicit drugs into the country. Having won the presidency in 1968 promising to increase border policing and surveillance to deal with the 'marijuana problem', Nixon worked from and expanded Johnson's border policy. A militarised crackdown across all major border crossing points, the operation resulted in massive automobile 'border bottlenecks' and economic distress in major binational urban spaces like Juárez-El Paso. As historian Patrick Timmons shows, the recommendations that Nixon received for 'Operation Intercept' materialised in later years as official border-making policy: racially profiling "the kind of person who smuggles contraband articles"; the use of radar, aerial reconnaissance, pursuit planes, 'perimeter detection' technology and the proliferation of fencing to prevent unauthorised crossings; and the collaboration between expanded Border Patrol forces and anti-narcotics agents throughout the borderlands (Timmons 2017, 20-1). While Mexican officials vigorously protested this operation, they ultimately succumbed to this form of border blackmail.

As undocumented migration from Mexico exponentially increased during the 1970s – along with marijuana and heroin smuggling spurred by American demand – politicians and policymakers began to deploy a political script that conflated drug trafficking with the 'illegal alien' – a dehumanising political construction of migrants that drew on a long American tradition of imagining migrants as simultaneously impoverished 'public charges' and 'job thieves' willing to tolerate hyper-exploitation (Hirota 2017). By the mid-1970s, the term had become common in television news clips and printed media (Dunn 1996, 18-19).[8] Towards the end of the decade, 'illegal alien' was discursively accompanied by warlike language that spoke of 'silent invasion' coming from uncontrolled, insecure southern borders described as a 'combat zone' (Williams 1978). The southern border, in the words of one politician in April 1977, constituted "our Maginot Line […] [where] the enemy is continually outflanking us and infiltrating our country […]. And you know what happened to the French" (Sterba 1977; see also Wald 1977).

Cold War logic and the spectre of Vietnam further contributed to the militarisation of the borderlands after the presidential election of Ronald Reagan in 1980. Previous efforts to create an 'electronic fence' along the border during the early 1970s, using the same technology from the 'McNamara Line' that failed to stifle North Vietnamese movement into South Vietnam, failed once again (Andelman 1973; Chaar-López 2019, 508). Rather than leading to critical reassess-

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8 Julian Lim and Adam Goodman, personal communication, 19 May 2021.

ment, more Vietnam technology arrived in the borderlands during the 1980s – including infrared "viewing devices introduced by Marine Corps snipers developed by Marine snipers in Khe Sanh" – along with many Vietnam War veterans who joined a rapidly expanding Border Patrol now armed with military-grade weaponry (Harris 1980). When combined with the presence of anti-communist, white power paramilitary organisations (that also included Vietnam veterans, some with mercenary experience in 1970s-1980s Central America and Rhodesia) on the border in July 1986, it seems that the Ho Chi Minh trail had led all the way back to the borderlands (Belew 2018, 77-100). Empire returned home – to where it all began.

At the same time, in a moment of imperial psychological projection, Reagan's support for death squads and genocidal dictatorships in 1980s Central America produced a third 'monstrosity' that stalked and thrived in an allegedly out-of-control US-Mexico border: Latin American Communist revolutionaries seeking the US' destruction via military invasion and, according to congressional reports, drug trafficking. In multiple 1980s congressional hearings, politicians and expert witnesses alleged that the Soviet Union and its allies in the Americas used the trafficking "of illegal drugs to attack this [US] country" (US Congress, Senate Committees on Foreign Affairs and Judiciary 1985, 1). A useful porosity thus characterised the discursive and material boundaries between the War on Drugs, the War on Communism and the War on 'Illegals'. Indeed, they converged in the figure of 'narco-terrorism/narco-guerrilla' that by 1986 had become, according to death squad enthusiast Elliott Abrams, "the hemisphere's greatest security threat" (*New York Times* 1988; Ehrenfeld 1986; Brinkley 1986c). Reagan's immigration reform in 1986 not only doubled the number of Border Patrol agents but was also matched by an anti-drug bill that gave such agents expanded powers in drug interdiction efforts (Brinkley 1986b; Human Rights Watch 1992, 4-5; *New York Times* 1986).

US empire continued its tradition of generating the very things it claimed to fight as it exported violence abroad and continued to militarise the borderlands at home. After the fall of the Soviet Union, the wars on drugs and migrants only intensified, becoming a form of governmentality during an era of globalisation that celebrated interaction, integration and movement across national borders – for capital. For labour, for undocumented migrants and refugees across the globe fleeing the wreckage of sovereign debt crises, the consequences of so-called 'free trade' treaties and 'humanitarian interventions', they experienced not a flattening world in the 1990s but an increasingly global regime of border walls, weaponised land and seascapes and mass incarceration. While elites celebrated the negotiation of the North American Free Trade Agreement (NAFTA) in the early 1990s, they quietly predicted the agreement's displacing impact on poor

farmers and workers in Mexico (Nevins 2013, 114). The US-Mexico border thus experienced the fortification and militarisation of binational 'twin city' crossing points in California, Arizona and Texas. As part of a broader Border Patrol policy of 'prevention through deterrence' (PTD), such efforts worked to channel undocumented migration routes away from border cities to more isolated, dangerous physical landscapes that included deserts and mountain ranges. "Raising the risk of apprehension" at cities, "illegal traffic will be deterred or forced over more hostile terrain, less suited for crossing and more suited for enforcement" (US Border Patrol 1994, 7).

These bureaucratic euphemisms muddled the intent of PTD. In the Arizona borderlands, it weaponised the Sonoran Desert and re-directed culpability of harm to migrants themselves who risked all to cross through dangerous landscapes. It turned the region into what anthropologist Jason de León (2015) termed a "land of open graves" where thousands of desperate migrants pushed away from border cities – walled off by repurposed helicopter landing pads recycled from US imperial wars in Vietnam and the Persian Gulf – have died in the crossing attempt (de León 2015, 30-7; Miller 2016). Some disappear in the desert leaving behind pieces of clothing; the bones of others have been recovered by humanitarian groups. The Border Patrol used – and continues to use – those migrant deaths as a metric of PTD's effectiveness (Dickerson 2020). President Bill Clinton's broader policy of more walls, more criminalisation of migrants (through the 1996 Illegal Immigration Reform and Immigration Responsibility Act, IIRAIRA), more incarceration, and bigger Border Patrol budgets turned the borderlands "into a carpet of human remains" (Ortigoza quoted in Bogado 2018).

After 2001, the War on Terror joined the War on Drugs and War on 'Illegals' – a structure that, in practice, amounts to a singular global war against poor people that uses borders as "an ordering regime, both assembling and assembled through racial-capitalist accumulation and colonial relations" (Walia 2021, 2). Since 2001, the US-Mexico borderlands have gone global, both exporting its logics and practices of violence while also importing border knowledge and 'virtual wall' technology from other settler colonial entities like Israel (Schivone, Miller 2015). Ever beyond security and control, the borderlands are now constituted by layer upon layer of militarised police agents, walls and advanced technology – a "border-industrial complex", as termed by journalist Todd Miller (2019), that both continues to brutalise migrants and generate profits and political benefits for private security corporations and US politicians, respectively. As the US waged wars of conquest and occupation in Afghanistan and Iraq, the US-Mexico border continued to shape the imperial outlook of politicians and military officials. In the 2011 operation that killed Osama bin Laden, military officials code-named him 'Geronimo', af-

ter that original border crossing Apache rebel who challenged US and Mexican sovereign power throughout the latter half of the nineteenth century (Westcott 2011). He still haunts US empire.

5   Do not Come. Title 42 and Public Health in the Time of COVID-19

The histories recounted thus far help contextualise the issuance of Title 42 by CDC Director Robert Redfield in March 2020 during the early days of the COVID-19 pandemic (US Department of Health and Human Services, Centers for Disease Control and Prevention 2020). An obscure public health directive that ordered the immediate expulsion of migrants arriving at US-Mexican and US-Canadian land Ports of Entry (POE) or Border Patrol stations, the order that invoked Title 42 is justified by a legal scaffolding of immigration legislation and laws shot through with the historical legacies of settler colonialism, eugenics, racism, and social control. It also violates international laws that guarantee the right of migrants to seek asylum. That the order targeted only those who attempted to enter the US through land POEs – overwhelmingly impoverished persons from throughout the Global South fleeing violence and seeking asylum – signals that the public health emergency order is yet another instance of State war-making against migrants at the US-Mexico border (Pillai, Artiga 2022). Arguing that migrants are coming from and travelling through countries 'where a communicable disease exists', Title 42 deploys the trope of migrants as 'contagion' threatening to 'contaminate' US society. Yet public health experts argue that it has few, if any, legitimate public health justifications (American Immigration Council 2022). Like El Paso in 1917, or the treatment of Haitian refugees as potential carriers of the AIDS virus during the early 1990s, the border is once again medicalised and quarantined for reasons other than public health (Pak 2013).

Indeed, Title 42 forms part of the most recent iteration of the long bipartisan war on migrants and undocumented communities that since at least 2010 includes the following practices: an array of State-level laws that persecuted undocumented persons; systematic US Immigration and Customs Enforcement (ICE) raids; mass deportations of over 3 million people; horrific family separation at the US-Mexico border; and the caging of migrants in a constellation of privatised and State prisons (Denvir 2020, 189-251). In its vicious persecution of migrants, the Trump administration (2017-21) wielded repressive tools, practices, and institutions forged and implemented by previous presidential administrations. Title 42 constitutes one such tool that, as journalists have demonstrated, emanated first from anti-migrant ideologues in the Department of Homeland Security and Trump's

closest advisors and allies who long sought to 'close the border' – not the CDC and Director Redfield who initially refused to issue the order (Dearen, Burke 2020). With the collaboration of the Mexican government – acting as sort of colonial gendarme in helping to execute US migration policy – the US has expelled hundreds of thousands of migrants and asylum seekers, mostly to Mexico, since March 2020 (Hesson 2021). After expulsion and then stranded in Mexico, at least 3,300 migrants "were kidnapped, raped, trafficked or assaulted" as of June 2021 (Hesson 2021).

Despite the election and inauguration of a new president in 2021, Title 42 remains in place – albeit in modified form – at the time of writing. It seems that the 'progressive' politics of President Joe Biden, Vice President Kamala Harris and Secretary of Homeland Security Alejandro Mayorkas stop where the US-Mexico border begins. "Do not come", Harris, the daughter of migrants, told Guatemalans in June 2021 (quoted in *BBC News* 2021). Mayorkas, once a refugee from Cuba himself, told Haitians and Cubans in July 2021 that "if you take to the sea, you will not come to the US" (quoted in Rodriguez 2021). That the US empire currently has an assortment of multiracial operators with migrant backgrounds at its highest levels is not the biggest scandal. Perhaps the biggest scandal is that US empire, past and present, continues to fuel the very processes of structural and political violence, exploitation and climate change that transform people into migrants. Forced to flee their homelands, they arrive at the gates of the very country most responsible for their condition, only to be told, 'do not come'.

6 Conclusions. No Human Is Illegal

> Si con mi canto pudiera, derrumbaría las fronteras
> (Los Tigres del Norte 2002)[9]

Placing war at the centre of border-making and migration history offers a radical point of departure for diagnosing what power looks like today. In confronting the outward physical manifestations of State power – borders, fences, border police, cages – migrant mobility exposes the exclusionary and exploitative logics that underscore US sovereignty and internally organise US society today. In a sense, borders historically work to racially differentiate and structure exploitative social relations within the US by demarcating externally who does not belong, who suffers deportation, who is policed, who is incarcerated, who dies in the crossing attempt. Moreover, this border work takes place on stolen indigenous land through the (attempted)

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[9] "If I could, I would demolish borders with my singing" (Author's transl.).

elimination of indigenous communal sovereignty. Analysing migration through the lens of settler colonialism reveals an ongoing 'logic of elimination' that made and makes the US possible (Wolfe 2006, 387). Violent systematic efforts to accomplish 'native elimination' created a white settler society that simultaneously depends simultaneously on 'racialised workforces' and the ability to revoke "the right of racialised outsiders to be within the invaded territory" (Lytle Hernández 2017, 7-8). Settler colonialism structures US society for all, historically and currently. How, then, can someone be considered illegal on stolen land?

Migrant movement thus points towards thinking about migration not as a crisis itself but as the outcome of broader, systemic crises generated within and without, to paraphrase Cuban revolutionary José Marti (1895),[10] the entrails of the monster: US settler empire. The crisis does not begin at the US-Mexico border or the Mediterranean Sea when migrants suddenly appear, living and dying, in the scope of global north States and politicians. In a variety of different ways, the crisis began more than five hundred years ago when that entity referred to as 'the West' started to materialise and expand through conquest, slavery, imperialism, settler colonialism, and capitalism. Migrants today fleeing war, poverty and climate change are paying the bill for debts incurred in the past and present by European and US colonial powers. To borrow the aphorism coined by the late Sri Lankan writer A. Sivanandan, "we are here because you were there" (2008, xi). As such, following E. Tendayi Achiume's (2019) compelling argument, migration represents a form of decolonial political agency that demands the repairing and restitution of historical injustices through unfettered global mobility in search of a better life.

If today national borders fuel a resurgent, far-right revanchist nationalism across the globe and help global capital decouple from its pretension for 'liberal democracy', then perhaps migrant mobility and solidarity movements can point us towards different, more egalitarian, and radically just futures. Dismantling borders, as activist and writer Harsha Walia (2021, 215) argues, would disrupt a primary mechanism by which difference – citizenship, race, gender, class, sexuality, caste – is organised and used to legitimise myriad forms of violence. Adopting what Walia (2021) refers to as a "leftist politics of no borders", combined with historian A. Naomi Pak's (2020) call for "abolitionist sanctuary" in the US that "seeks to eliminate the need for sanctuary altogether", essentially entails an exercise of radical homemaking for all (Pak 2020; see also Achiume 2019). "The world, which is the private property of a few, suffers from amnesia", the

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10 Reproduced in *Counterpunch* (May 2006). `https://www.counterpunch.org/2006/05/19/letter-to-manuel-mercado`.

Uruguayan writer Eduardo Galeano once suggested. "It is not an innocent amnesia", he continued. "The owners prefer not to remember that the world was born yearning to be a home for everyone" (quoted in Seghal 2009).

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Torture, Migration, and State Violence in Contemporary Spain

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Abstract   Whilst torture is an age-old phenomenon, prevalent in Western societies since the oldest available records, the twentieth century brought about significant transformations in its conceptualisation. Torture remains the subject of complex and controversial debates, both from academic, political, and legal approaches. Dwelling on the current problematisations of this concept that recognises torture within the logic of its social production, this text explores the connection – and its omission – between State violence and torture against migrants. The chapter examines the case of the Spanish State's failure to protect migrant victims of torture's rights, as well as the physical aggression at borders, by which migrants are subjected to different forms of violence by the migration control apparatus.

Keywords   Torture. Migration. Asylum seekers. Violence. Spain. Neglect.

Summary   1 Migration and Torture as a Continuum of State Violence. – 2 Spain's Approach to Torture. Conceal and Impunity. – 3 Migration Policies and the Disposability of Migrant Lives. – 4 Asylum Seekers. Re-Victimisation, Torture, and Abandonment. – 5 Conclusions. State Violence against Migrants in Contemporary Spain.

1 Migration and Torture as a Continuum of State Violence

Whilst torture is an age-old phenomenon, prevalent in Western societies since the oldest available records, the twentieth century brought about significant transformations in the way this is comprehended

and conceptualised. Yet, despite continuous efforts to reach common understandings, interpretations, and categorisations of torture, it still remains the subject of complex and controversial debates, both from academic, political, and legal approaches. In the midst of these discussions, the connection between torture and migration has increasingly become the focus of debate in the last two decades and, consequently, there has been an increase in academic studies on this nexus, largely as a response to its growing global perceptibility and its multiplicity in practices. This emphasis on the phenomenon, however, does not mean that the connection between torture and migration is anything new. This connection has, in fact, been present in international covenants, particularly with relation to the prohibition of torture, which admittedly recognises the link between migration and torture through the ban on refoulement.

This right, also recognised under the 1951 *Refugee Convention*, prohibits States to enforce the deportation of any foreign subject to a place where they may be at risk of torture or inhuman or degrading treatment. The need for this provision arises from an increasing restriction on free movement through the securitisation of State borders that makes it possible for States to forcefully remove foreigners from their territory. In turn, increased border control has played on a criminalisation of migration and the legitimisation of State violence against migrants in the pursuit of protecting sovereignty. This has been articulated from the failure to protect torture victim's rights and structural violence, to the physical aggression at borders, in which migrants have long been, and are still today, subjected to different forms of violence by the migration control apparatus. In this, torture is not the only, but certainly the most visible and aberrant event of a continuum of violence. Yet, the central question here is not the limits nor the different expressions of torture in relation to migrants, which would indirectly legitimise any violence that is not officially condemned as torture or inhuman treatment, but the conditions of the possibility that legitimate the continuum of violence that leads to extreme violence and death as part of State action and defines the global migration control regime.

The purpose of this chapter is not to provide an epistemological review of torture and migration, but to present an in-depth analysis of this phenomenon in a current setting. Yet, in order to set up a discursive ground for it, it's necessary to stem from a reflexive consideration of the key underpinnings of the concept. This implies going beyond common perceptions of torture, its victims, perpetrators, and the societies where it takes place, to consider and explore the intertwining between the two complex realities that torture and migration presuppose.

Events of torture have been commonly presented by public, political and media debates as exceptional deviant acts, barbarous aberra-

tions alien to democratic societies (Tullock 2005). Yet, from an analytical point of view, this assumption largely simplifies the phenomenon. Torture cannot be considered as an exceptional event, nor can torturers be simply dismissed as monsters. Torture is performed by ordinary people in the normal exercise of their work duties because, as Arendt (1964) vindicated, far from being monstrous, evil is often banal. Such acts are provoked and eventually normalised by the society and the circumstances (Huggins, Haritos-Fatouros, Zimbardo 2002), such as those endorsed by the so-called Global North's 'war on terror'. Thus, whilst from a legal point of view torture has tended to be studied as a form of exceptional State violence, deviating from the basic values of modern Western democracies, from a sociocultural analytical viewpoint torture has to be understood as a criminal act, yet consistent with contemporary Western values and Western perceptions of the State, citizenship, and migration (Mendiola 2014). From this perspective, torture cannot be considered solely as an exceptional event in the hands of 'folk devils' but is rather to be understood within the logic of its social production (Cohen 1972). It is crucial to consider that the practice of torture does not take place in isolation, but under the influence of certain narratives, sites and times where particular subjects are construed as dehumanised (Bauman 2008). These frameworks denote the potential for torture as inherent in the power relations that determine the dehumanisation of the disempowered as 'torturable subjects' (Mendiola 2014). Such [re]construction of the disempowered as 'the other' assents to their identification with whatever "questions the imagined security, peace, order and rule of law of Western democratic societies" (Mendiola 2014, 218).

In a context of increasing criminalisation of the poor and those considered 'irregular' or even 'illegal', for those living at the edges of society the persistent and latent danger of being subjected to torture is part of the apparatus of control over their daily reality (Wacquant 2009). Torture becomes not only a means of punishment but also "part of the civilizing mission" (Butler 2009, 16). State violence, non-exceptional but normalised, is practiced against this 'other' as a mode of disciplining them into the prevailing social order and asserting the moral superiority of the torturer over the tortured as guardian of this social order. Torture becomes, thus, not the only but certainly the most visible outcome of a continuum of violent State practices aiming to control and discipline populations that are regarded as criminal and as the threatening 'other'.

Arguably, one of the most evident imprints of 'othering' processes in the current Global North is manifested by the production and normalisation of social spaces and boundaries between 'us' and 'them'. This is nowadays epitomised by the exploitation of modern migration categories, most of which leave people Stateless and thus, rightless (Arendt 1973). Migrants and asylum seekers are at the core of the

socially excluded, being constantly [re]constructed as the 'alien others', through discourses of sovereignty and national security, as the flagged values of modern societies (Jubany 2017; 2020). They stand at the intersection that challenges the State's sovereignty by their presence, particularly as poor and racialised populations, while living and working in situations of legal exclusion. Thus, in analysing the link between migration and torture in contemporary Europe, torture must be understood in a continuum that makes no sharp divide between direct forms of State violence, and other, subtler forms, in what is frequently referred to as "structural violence" (Galtung 1969). It is arguable that, following Parry, "the use of these forms of violence by modern States as a way of regulating populations is far more significant than whether 'torture' is the particular form of violence used" (Parry 2010, 17). In other words, the fact that violence in its different forms is being used as a mechanism of migration and border control should shadow any debate on whether a particular instance of its practice is legally framed and condemned as torture. Thus, as pointed out, the question is not on the limits of torture, but on its legitimation in the continuum of State violence.

Within this continuum, the States' disciplinary practices that create the narratives and sites of torture extend to other spaces and milieus, including spaces of protection. Most accounts of torture and migration concentrate on exploring the experience of those who have suffered violence in their countries of origin and during transit, and seek protection in the 'modern liberal democracies', allegedly free of torture. The core of this literature addresses the mental health impact of torture among asylum seekers and the consequences this has for their asylum applications and incorporation in countries of settlement (Daniel, Knudsen, Cher 1995; Haoussou 2017; McColl, Bhui, Jones 2012; Oomen 2007). There have also been a number of studies tackling the lack of protection for victims of torture in countries of arrival regarding the absence of social safeguards, poverty, and destitution, as well as problems and considerations with reference to health care (Vannotti, Bodenmann 2003). Similarly, while there is a solid body of literature regarding violence suffered by migrants and asylum seekers in Europe, especially concerning violence at borders, detention and deportation, this issue is rarely addressed in regard to the prohibition of torture (Morales 2016; Sanggaran, Zion 2016). Within this framework, this paper presents an ethnographic approach that address the mechanisms that underpin the absence of protection and neglect that asylum seekers suffer in Europe in light of this continuum of State violence and the possibility of torture within it.

Grounded on the results of an ethnographic investigation of asylum seekers as victims of torture in Spain, this chapter revisits both these issues to analyse the governmental devices that define the re-

ality of migrants as victims of torture. It provides an updated analysis of the prevalence of extreme forms of violence in border protection practices and the lack of recognition of these events as forms of torture and a revised examination on how, despite strong legal protections being in place, practices of victim protection for victims of torture, particularly migrant and refugee victims, fail to provide basic guarantees and often incur in re-victimisation. The empirical investigation that grounds the results presented here included two consecutive research projects that took place over a period of four years (2015-19). The arguments presented in this chapter are thus built on an exhaustive examination of documentation, with a particular focus on reports and official files related to the prevalence of torture against migrants in Spain, as well as an extensive ethnographic research. This involved over 50 in-depth interviews with key actors in civil society organisations and public officers working for asylum seekers and victims of torture. The results of this research reveal how asylum seekers, especially those who have been victims of torture, are not only subject to the violent consequences of inaction and neglect of a failing asylum system but are also potential victims of torture by the direct use of violence in the enforcement of migration policies.

To illustrate this, the case of Spain stands as paradigmatic in the exploration of migration and torture within Europe. This is not only because Spain has become one of the 'gates of Europe' but also for its central role in the development of border control technologies and strategies in the EU (Andersson 2014; Garcés Mascareñas 2015). As in other EU bordering countries, violent practices of border control have been a prevalent feature of Spain's migration policy. In this regard, condemnatory reports, and measures by human rights international bodies against Spain for its practices at borders, in detention and deportation are testimony of the pervasiveness in Spain of all the modern forms of torture against migrants. Yet, death and torture are only the tip of the iceberg of the continuum of violence that defines the global migration control regime. In the normalisation of extreme violence, death becomes a legitimate means to border enforcement. The re-victimisation and lack of support, the dehumanisation, as well as the criminalisation of migrants, make it possible for modern States to incur in forms of torture without consequence as they neglect torture victim's rights, particularly when migrant.

The chapter begins by offering an overview of the context of torture in Spain: its legal framework and limitations, and its violations. Building on this analysis, it exposes the double vulnerability that migrants face in Spain, as potential victims of torture and as unprotected victims of torture. The chapter then sheds light onto the mechanisms that underpin the particular types of violence that arise in the enforcement of migration policies. Finally, grounded on ethnograph-

ic evidence, the paper discusses this double vulnerability in the particular case of asylum seekers. The precarious legal status of asylum seekers and the failure of the systems of social and health protection for victims, combined with meritocratic approaches to migrant incorporation, expose these victims to further situations of violence and abandonment and can lead them to re-victimisation and chronic situations of exclusion and violence. Whilst this might be applicable to migrant victims of torture in general, the case of asylum-seeking victims of torture is especially paradigmatic due to the specific right of protection they enjoy as asylum claimants and the particular need of protection that all asylum regulations recognise for victims of torture.

2 Spain's Approach to Torture. Conceal and Impunity

To understand and recognise how modern forms of torture have developed and taken a central place in the enforcement of migration policies in Spain, we must first review, analyse and recognise the importance of the legal and social background of torture in Spain of the last 50 years. After a 40-year dictatorship, in which the most evident practices of torture were a legitimate State tool (Acosta Bono, del Río Sánchez, Valcuende del Río 2008), starting from the democratic transition in the late 1970s, Spain has ratified all international legislation against torture and has adapted relevant national legislation geared to prevent and punish these acts. The Spanish Constitution prohibits torture in Article 15, stating that: "Everyone has the right to life and physical and moral integrity, and under no circumstances may be subjected to torture or to inhuman or degrading punishment or treatment".

Further, in 1984, Spain ratified the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and, in 2005, the 2002 UN's *Optional Protocol*. Thus, at face value, Spain adopts a clear approach against torture as it has ratified all international covenants and their amendments, as well as integrated them into its national law. However, when looking closely into how Spain has transposed these responsibilities and principles, as well as into the practices of torture in its different expressions, it becomes evident that Spanish legislation for the prevention and reparation of torture does not offer all the guarantees recognised in international law (Rights International Spain 2017).

Considering the recent historical trajectory of Spain, with a background of a long-lasting dictatorship, a major problem in the transpositions of rules and interpretation of torture stems from the definition of the concept of torture included in the Spanish legislation, and particularly in the current Spanish Penal Code. This, for instance, does

not recognise that torture can be committed by "any person exercising public functions" other than public officers, and it does not recognise "intimidation" as a form of torture, despite both of them are considered in international covenants ratified by Spain. Also, it fails to consider torture as a crime against the international community (Amnesty International 2015, 8) and it distinguishes between 'severe' and 'light' types of torture (Rights International Spain 2017, 1). A further illustration of the gaps in the legal protection against torture, linked to its conceptualisation, is the authorisation and common practice of *incommunicado* detentions, a particular situation of deprivation of liberty in which the detainee is detained in solitary confinement, has no possibility to access an attorney, an independent physician or family members.[1] This lack of development of the national legislation for the prevention of torture can, and often does lead, to cases where torture is not condemned because it is not recognised as such (Bergalli, Rivera Beiras 2006). Also, and crucially, this contributes to a normalisation of behaviours and punishments that legitimise the excessive use of violence by public officials in the exercise of their duty.

However, the underdevelopment and lack of revision of the concept in the national legislation are not the only factors that hinder the possibilities of reporting and recognising torture and inhuman treatment in Spain. As the empirical evidence reveals, public bodies and private organisations investigating allegations of such acts face barriers to their inquiries, mainly in accessing existing evidentiary documentation and information on the cases, as well as delays, which severely curtail their capacity to provide documentary proof for these allegations:

> We also face difficulties when investigating torture complaints because when we ask public bodies for information, well, finally they are the ones who decide and filter what they tell you. So, some things are out of our reach; we don't get them. We cannot take the civil servants' statements nor watch the images. When we finally ask for the images, well, they have already been erased [due to programmed erasure], so there is a difficulty in proving torture.[2]

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[1] Whilst international laws do not explicitly prohibit *incommunicado* detention, there is a general agreement among human rights bodies in the international community (Human Rights Watch 2005) that this can lead to severe human rights violations, including torture, and that it could be constitutive of torture in itself.

[2] All interviews have been codified to guarantee the anonymity of the interviewees. SG-I-1. Own codes are included in reference to each quote for access and data management purposes.

The sharpest illustration of this is that the European Court of Human Rights (ECHR) has condemned Spain for not investigating duly torture allegations on nine different occasions.[3] This systematic lack of investigation relates to an invisibility of this practice by which, as Bergalli and Rivera Beiras (2006, 73) put it, "public authorities consistently deny the existence of torture [...] by the lack of condemnatory rulings". This situation raises the question of whether such a lack of condemnatory rulings responds to a denial of the existence of torture rather than to a scarcity of cases, as is the concern of many professionals in the field:

> The system is perhaps not ready to acknowledge its own violation of human rights, because it would imply paying compensations and changing surveillance and confinement structures. But if there are 200 reports per year it is hard to imagine they are all made up or exaggerated, you can easily see this is a recurrent and structural issue, and that there would be 2,000 reports if people were aware of the possibility of reporting.[4]

In this regard, in addition to the already mentioned sentences of the ECHR for not duly investigating torture cases, Spanish government bodies have repeatedly nullified the rulings condemning public servants for torture or inhuman or degrading treatment. Moreover, Spanish institutions have not only pardoned but also decorated or promoted some offenders previously found guilty of torture or inhuman treatment by national courts (Bergalli, Rivera Beiras 2006), projecting a strong message of impunity to both torturers and the victims, often perceived as a form of institutional violence in itself, and contributing to the secondary victimisation of complainants. This is despite the fact that several United Nations human rights mechanisms, such as the Human Rights Committee and the Committee against Torture, have expressed their rejection of the application of an Amnesty Law to pardon torturers in Spain. A decision backed by NGOs that have protested against pardoning rulings on several occasions, urging Spain to ensure the non-applicability of statutory limitations to torture:

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3   The nine cases are: *Martinez Sala and others v Spain*; *San Argimiro Isasa v Spain*; *Beristain Ukar v Spain*; *B.S. v Spain*; *Otamendi Egiguren v Spain*; *Etxebarria Caballero v Spain*; *Ataun Rojo v Spain*; *Arratibel Garciandia v Spain*; *Berotegui Martinez v Spain*; *Portu Juanenea and Sarasola Yarzabal v Spain* (Source: European Court of Human Rights Database – HUDOC). In all cases Spain was condemned for not duly investigating torture claims, except in *Portu Juanenea and Sarasola Yarzabal v Spain*, where the court condemned Spain for inhuman and degrading treatment. In *B.S. v Spain*, the court condemned Spain for not duly investigating on the grounds that it should have considered the victim's ethnicity, gender and migration status.

4   EX/B/TS/FN.

I believe there should be independent mechanisms [to assessment] institutional violence, complaints against the police shouldn't be managed by the same public authorities […] from experience we can say that public bodies rarely accept that they have done a wrong. So, people see this and think: "this was a clear case, and the culprit has not been sentenced", or "they have been sentenced but later they have been pardoned". You are conveying a clear message of impunity.[5]

Thus, even when reporting is possible, the outcome is rarely positive for the victim, as Spain's approach to torture has been characterised by the impunity of perpetrators.

3   Migration Policies and the Disposability of Migrant Lives

Violence, in its different forms, permeates all bordering practices. It is an undeniable fact that the number of torture allegations by migrants or their representatives In Spain has increased almost every year, often exceeding half the total number of complaints registered.[6] These complaints relate, in the most part, to violence at border crossings, including the practice of pushbacks, and situations of confinement, especially in detention centres. In this context, the increased criminalisation of migration and the violent acts by public officials in the enforcement of migratory policies are still normalised every day, and often legitimated as use of force in the protection of the State's sovereignty (Bigo 2014). Even those migrants who have been legally recognised as asylum seekers and, therefore, are subject to the specific protection that this category entails, are vulnerable to the State's effort to enforce the securitisation of the extended EU borders (Gruszczak 2017).

This is particularly obvious in the practices land and maritime border policing, where physical violence and death are repeatedly inflicted in detention and deportation and referred to as a 'deterrence mechanism'. Yet extreme violence permeates beyond these onto subtler expressions through neglect. As Spain has reinforced its position as one of the main gateways into Europe as well as a central site in the development of border control technologies and strategies in the EU (Andersson 2014), migrants have become one of the

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5   SG-I-1.

6   In 2014, complaints made by migrants were 37% of the total, in 2015 a 50%, in 2016 a 54%. In 2017, the number of complaints filed by migrants represented a 28% due to the large number of complaints for police violence in relation to the referendum in Catalonia (*Coordinadora de la Prevención de la Tortura*).

main group of complainants in allegations of torture and inhuman treatment in Spain, as the reports by the *Coordinadora para la prevención de la tortura*[7] show.

Every other day, migrants attempt crossing the Spanish Moroccan border at the enclaves of Ceuta and Melilla by jumping over the threatening fences that separate the two countries or attempt the dangerous journey across the Atlantic Sea to the Canary Islands. In Ceuta and Melilla, the border fences are protected with technological gadgets, barbed wire, and guarded by armed police. The Mediterranean and Atlantic Sea are operated by Spanish and Moroccan security forces, coastguards and Frontex who control the arrival of boats and the activation (or not) of rescue operations. Border control at sea has been the most controversial in recent years due to the increasing number of deaths brought about by the tightening of border control measures, the restrictions in private rescue operations and the cancellation of public ones. Whilst human rights organisations complained about the lack of governmental action in rescuing stranded boats and the prohibition to act that some rescue NGOs operating in the Mediterranean have faced, the Minister of Foreign Affairs issued an order to stop rescue operations by the coastguards in the Southern Coast arguing that not rescuing migrant boats in distress would, in fact, contribute to saving migrant lives as the existence of rescue operations was the cause of the increasingly fragility of navigation technologies used by migrants and smugglers and, therefore, of their deaths at sea (Escrivá 2019). The disposability of migrant lives dominates the border control discourse and reinforces the use of active forms of violence and passive forms of violence (such as not-rescuing boats in distress) as legitimate means of policing borders.

Occasionally, images of everyday violence are leaked, showing the police trying to pull migrants from the fence with blows from batons and carrying them back to Morocco across the doors that were installed to facilitate these 'pushbacks'. This practice – pushbacks, not violence to enforce them – has been condemned by various international bodies, including the ECHR (*N.D. and N.T. v Spain*. App nos 8675/15/ and 8697/15; ECtHR, 17 February 2020)[8] as contravening the right to asylum. Despite this, these practices not only continue to be in place, but further deterrence mechanisms aiming at producing physical harm, such as concertina wire have been introduced, repeatedly causing serious injuries to migrants trying to cross the border across the fencing.

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7 The *Coordinadora para la prevención de la tortura* is the most prominent civil society organisation for the prevention of torture in Spain and publishes a yearly report aggregating data from all known cases that fall within the parameters of torture as defined by Article 1 of the *United Nations Convention against Torture*.

8 This decision was, however, later overturned by the ECtHR Grand Chamber in 2020, reversing the Court's previous decision (Raimondo 2020).

Similarly, pushbacks are common across the Mediterranean Sea. Across the European Mediterranean border, migrants detected on their way towards EU member States have been returned. The collaboration between member States and third countries such as Morocco, Mauritania, Libya, and Turkey allow for the forced return of migrants at sea (Andersson 2014). While most of the border control and its violence continues to be externalised to third countries, violent enforcement of migration control by member States and Frontex has worsened during the COVID-19 pandemic when mobility restrictions seemed to legitimise an ever harder take on border control.

However, as in the Tarajal case,[9] where 15 people died after the police used antiriot equipment to stop them from swimming around the Spanish-Moroccan border (Sánchez 2018). Courts often dismiss such cases arguing lack of evidence or that the police were "acting under their obligation as border custodians, which compels them to prevent anyone from entering illegally in Spain" (Europa Press 2015).

A further interpretation of modern forms of torture refers to the enforcement of deprivation of freedom without trial and the living conditions in detention facilities, known as CIE (*Centros de Internamiento de Extranjeros*). All EU countries have detention facilities for irregular migrants. In Spain, these centres were first established in 1985 across territory, coinciding with the country's accession to the EU, and continue to be the only instance under Spanish by which the deprivation of freedom of movement due to an administrative sanction is allowed (Solanes Corella 2016). In principle, detention is used to avoid absconding in the process of enforcing a deportation order, yet only a small part of those detained in CIEs end up being deported. Most people are set free after the maximum detention time of 60 days is reached, leaving them in a legal limbo that prevents them from being deported as well as from regularising (Servicio Jesuita a Migrantes 2016). These centres are characterised by a lack of transparency regarding their internal conditions and proceedings. The number of inmates is not made public, nor are any other aspects of their detention, despite there being an obligation to do so under Spanish law (Martínez Escamilla 2016, 13). The UN Human Rights Committee raised concerns about the prevalence of these circumstances in Spain in a 2015 report denouncing "the persistent use of depriva-

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[9] In February 2014, about 200 persons tried to cross the Spanish border at Ceuta by swimming around the breakwater. The Spanish police tried to deter them from swimming to shore by shooting rubber bullets and gas grenades. Fifteen were killed in the incident. The case was dismissed twice by the local Court in Ceuta, the judge arguing that the police were acting under their obligation as border custodians. In neither occasion could any of the migrants who survived the incident testify, as they were sent back to Morocco through 'pushbacks' or deported later. The case was finally reopened at the third attempt and it is now still pending resolution (Sánchez 2018).

tion of liberty to migrants in an irregular situation".[10] Complaints of mistreatment, torture, and failure to aid have been filed in all existing CIEs yet, sentencings are rare and often these cases are tainted by the deportation of victims and witnesses before they can testify in a trial and the routine erasure of videotaped evidence (Irídia 2017).

The lack of investigation and restoration of victims of border violence is consistent with the general pattern in addressing torture and mistreatment allegations that see torture complaints not duly investigated, acquitted, or pardoned and, later, even promoted and decorated (Bergalli, Rivera Beiras 2006), reinforcing the idea that extreme violence or even death are legitimate when used against alleged threats to the State's sovereignty. In a context where migration is criminalised, these practices expose the recurrence of torture in modern liberal societies in its contemporary forms and its position in mechanisms of control of the socially excluded, among which policies and practices of migration control play a central role.

The absence of recognition of such violent events as breaches of the prohibition of torture contributes to their normalisation and legitimates the exercise of force in the enforcement of migratory policies, targeting undocumented migrants and contravening the protection that the right to claim asylum entails. Western democracies claim to offer international protection against torture to asylum seekers is contradicted by their own practices of migration management. On the ground, this protection is only recognised if torture is perpetrated by a 'folk devil' or a 'threatening other' despite the many gaps in these protection mechanisms. In the meantime, as the empirical evidence shows, torture practiced in a so-called modern democratic State like Spain is still disregarded, normalised, and legitimated by the lack of recognition and protection against it. This general lack of visibility and accountability of the practice of torture within the Spanish context leads to an insufficient protection of victims who have to obtain a recognition of their victimisation to be able to access justice, restoration, and support services:

> Socially, it is an irrelevant issue, that is, it is uninteresting or invisible... so there are not enough mechanisms or resources [...]. If someone has been victim of the police in Spain, the public health services have to acknowledge that their 'blood relative' has done something... has committed a crime, really, [...] so, it's difficult.[11]

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10   UN Human Rights Office (2015). "Concluding observations on the sixth periodic report of Spain". http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqX7R5nHBFqJOu4nx7MjbHJAiPJpixsP8%2Bk%2BsXvixZUFiczygBcJ%2B9knj92Cy1WTuvIoN4F6vBJkQvaB%2BidSeWRBSH8MwA14T87JaN2JRGby.

11   EX/B/TS/1/FN.

This has particular consequences for migrants, who often face additional barriers for reporting, including the fear of being arrested and deported, particularly if undocumented. Despite the reported prevalence of situations of abuse at the border, in detention and deportation, rates of reporting, even to human rights defenders and organisations is particularly low due to these barriers (Servicio Jesuita a Migrantes 2018). Migrants' lack of legal protection enables situations of abuse and defencelessness against the law, which in turn lead to fewer reporting and further impunity of perpetrators, as even when reported victims experience secondary victimisation or there is no follow-up on the cases:

> We have had cases of police beating some of the girls, sex workers, so we have had to figure out how to follow-up on these, so they continue reporting, how to set a precedent so they don't feel it goes unpunished.[12]

Furthermore, reporting becomes especially challenging in the case of migrants who have been previously victims of torture and police violence in their countries or origin. As this social worker from a migrant support organisation explained, they encounter many challenges including:

> [f]ear, their [previous] relationships with the authorities, the fear that nothing will change, that reporting will have consequences, the time they will lose on this… these are very long and taxing processes.[13]

Likewise, human rights organisations have raised concerns about possible victims and witnesses of torture cases within detention institutions being deported before they could give testimony after having raised a complaint for having suffered torture (Calvó 2018). This adds to the lack of transparency and accountability in both cases of torture and the management of detention centres, leaving victims of torture with no access to justice, restoration, or support services.

[12] AH/B/C/1/FN.
[13] AH/B/C/1/FN.

4   **Asylum Seekers. Re-Victimisation, Torture,**
         and Abandonment

From failure to protect torture victim's rights and structural violence
to the physical aggression at borders, migrants are subject to differ-
ent forms of violence by the migration control apparatus, of which
torture, as we have seen in the previous section, is only the most vis-
ible and aberrant event of a continuum of violence. Any account of
the practice of torture in modern Western democracies needs to di-
verge from approaches that regard torture as an isolated event but
rather provide an in-depth analysis of the practices and discourses
that make events of inhuman treatment and torture possible in the
enforcement of migration control. In this section, we will contribute
to this debate by presenting a case study of the double vulnerabili-
ty of asylum seekers as unprotected victims of torture and potential
victims of torture by the border control apparatus.

The asylum system assumes, by definition, that asylum seekers
may have been victims of severe violations of human rights, including
torture, for which, in Spain, the asylum system offers a specific set
of measures to provide health support and social protection to asy-
lum seekers. Whilst all asylum seekers have the possibility to access
specific provisions for victims of torture and inhuman or degrading
treatment, most of this protection is offered through the mediation
of the State's 'system for the integration and autonomy of claimants
and beneficiaries of international protection'. Yet, this programme
presents a series of shortcomings that contribute to the vulnerabili-
ty of victims of torture and potentially drives them to further situa-
tions of exclusion and violence. These can be seen in its access crite-
ria; in the behavioural and administrative requirements, and in the
meritocratic logic in social care by which the Spanish asylum sys-
tem increases the vulnerability of victims of torture instead of pro-
tecting them (Jubany 2020). At the core of these are barriers to ac-
cess adequate mental healthcare for victims of torture.

This is particularly relevant because, as mentioned earlier, in re-
cent years Spain has experienced a sharp increase in the number
of asylum claims.[14] Still, despite the large prevalence of victims of
torture among asylum seekers – considering victimisation in origin,
transit and destination (Vannotti, Bodenmann 2003) – the increase in
the availability of specialised protection services for asylum seeking
victims of torture has not kept up with this rise in applications. Cur-

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[14]   Whereas from 1994 to 2014 the number of international protection applicants was
consistently below 10,000, since the generalised rise in the number of asylum seekers
in Europe in the 2015-16 period and the worsening of the Venezuelan crisis, the num-
ber of applications has surged in Spain. While, in 2014, there were only 5,947 asylum
applications, in 2018 there were 54,065.

rently, most mental health and social protections for asylum seekers, including those regarding the specific care for victims of torture, are provided within the State's asylum reception programme.

However, this programme is characterised by an abandonment of asylum seekers due to the saturation of the system (Garcés Mascareñas 2019; Jubany, Rué 2020). In general, there is an alarming lack of accommodation, and the few available slots are destined to those who are classified as 'extremely vulnerable':

> To have access to certain services, which are really scarce, really limited, you need not only be vulnerable but have a series of additional issues. 100% of those who come here are vulnerable. But beyond being in a situation of social and economic vulnerability, you need to have additional issues which are the ones that give you priority access to certain resources. Children, physical or mental health conditions, etc. (Coordinator of Emergency Services for Migrants, NGO)[15]

Despite the fact that under all legal frameworks and protocols victims of torture are recognised as especially vulnerable, the detection of vulnerability often responds to a criterion of urgency although according to the professionals working with victims of torture on a daily basis, most cases of torture are frequently invisible:

> They will not take you in unless you are visibly about to lose an arm… no, really, unless something very visible is about to happen to you when you come through the door. (Social Worker, NGO)[16]

This implies that mental health issues are rarely considered, unless claimants have documentary proof, or unless the frontline worker is able to identify them in the frame of the one-hour first social screening interview, often mediated by an interpreter. This absence of detection often leaves victims of torture without access to emergency shelter accommodation, leading to further situations of vulnerability such as the appearance and worsening of physical and mental health disorders or drug addictions:

> As they go through the first screening, they might look perfectly fine, they have just arrived, so the social worker there does not identify any issues and is not obliged to give them a full medical check. Then they get here, and they have a very visible mental health issue or a substance abuse problem or tuberculosis […] be-

15 CR/B/C-SA/1/F0.
16 AH/B/TS/1/FN.

cause they have been living in the streets for six months before being assigned here. (Social Worker, NGO in Asylum Reception)[17]

Such deficiency in the identification of victims of torture is a common concern among organisations that provide legal, social and health care for victims. Irídia – a main organisation defending human, civil and political rights in Spain, has denounced the lack of training within public institutions, such as the Forensic Medicine Institute, in assessing these cases (Irídia 2017). On these lines, the ethnography shows how the scarce preparation of professionals can lead to the credibility of the victim being questioned and their symptomatology wrongly assessed, leading to situations of exclusion from access to basic services:

> The worst is that the clinical presentation or the psychosomatic reactions of victims of torture or of traumatic processes are so unknown that many people are taken for something they are not. That is, if a person has suffered torture and goes to a public service and is not treated as they would have expected… they will most likely have a reaction of distrust, lack of control or lack of empathy or whatever, which will make other people regard them as… as something they are not. (Psychologist, specialised NGO)[18]

Credibility is a recurrent barrier that asylum-seeking victims of torture face and is not only questioned due to insufficient training but also because of professionals' expectations over asylum seekers stories and behaviour. In the context of asylum screening, cases of rape and torture are where "The fragility of a concept of credibility is most evident [...], where officers may deny alleged events could have taken place, usually because of pre-attached labels" (Jubany 2017, 195).

At the same time, the asylum reception programme demands a high performance by asylum seekers. In this regard it is interesting how all social workers refer to how the bureaucratic maze and near-impossible requirements to obtain social benefits put a lot of pressure on asylum claimants, which is taxing for those who are experiencing effects on their health due to having suffered torture:

> Adding stress to a person who is already stressed or who comes with a traumatic process, who sees that all they are doing administratively is not working, they lead people to self-exclude, which is frustrating for the professionals who support them, so the user is, like, abandoned, because there's nothing you can do, right? They have to leave. They have to leave the centre and there's no

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17   CE/B/TS/1/F1.

18   EX/B/P/1/FN.

other centre to go to. There are shelters, of course, but well, anyway, everything is precarious and temporary. (Psychologist, NGO)[19]

Although the asylum reception programme considers extensions for vulnerable cases, professionals consider that this is clearly not enough for people who are experiencing the symptomatology of torture or are in a recovery process from having suffered severe trauma. In addition, there is a scarcity of resources independent to the asylum programme for referrals for those who have exhausted asylum reception without achieving the expected degree of autonomy. Furthermore, and as previously mentioned, many of these cases are not properly identified or recognised, and extensions are often difficult to obtain due to different and changing criteria of assessment of vulnerability, which may exclude victims of torture.

This lack of resources and attention to the specific needs of asylum seekers in situations of vulnerability leads to a system that mainly supports those who are able to pull through the system by their own means, whilst it further burdens those who struggle to get through.

While this is especially obvious in the case of asylum seekers and refugees, it can also be applied to other migrant victims of torture or to those who have suffered severe trauma of other kinds, such as rape, but who have not entered the system of international protection. In fact, asylum seekers are perceived as being well supported by a reception programme that anticipates the specific vulnerability of victims of torture and plans the referral of these victims to specialised services although, as has been shown, this is not working adequately. Still, the high number of negative final decisions in asylum cases[20] means that most of these asylum seekers will later become undocumented, which places a particular toll on their mental health:

> [The rejection] is terrible, for everything it implies, losing your job, having your bank account blocked, everything. It's… and… the lack of recognition, not being a person with the right to be protected. This is something that, emotionally, is really hard. (Social worker, NGO)[21]

The general malfunctioning of the mental health services in Spain adds to the insufficiency of referral mechanisms for asylum seekers beyond the reception programme and other migrants who have access to generalist health services:

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[19]   EX/B/P/1/FN.

[20]   In 2018, 76% of the asylum claims that were evaluated were rejected (8,980 out of 11,875) (Oficina de Asilo y Refugio 2019).

[21]   FC/B/TS/1/FN.

> [T]he mental health public network, in general, is terrible. Refer-
> ring this type of profiles [migrants] is complicated because there
> are no resources. (Social worker, NGO)[22]

This deficiency of resources, together with the inadequate identi-
fication of victims of torture and a meritocratic social services ap-
proach in asylum seekers' reception can lead to situations of chron-
ic exclusion:

> I had this kid, he'd been here since 2014 [...] he had his papers
> and all, but he was still homeless so [his social worker said to me]:
> "This kid's been here since 2014, he should have done his bit". And
> I was like... precisely because he's been here since 2014 *and* he
> continues to be in the street, he has a vulnerability. I can clearly
> see it, why can't you? I needed their authorisation to act on it. But
> no, [for them it was] just the opposite; if you've been here since
> 2014, [...] you've had your chance, you should have made the best
> of it. (Social Worker, NGO)[23]

The COVID-19 crisis brought a further layer of abandonment to these
services as public authorities, shelters and charities closed down
or faced increased demand and delays. In 2020, asylum procedures
were stopped for months due to the strict lockdown enforced to curb
the pandemic, but migrants continued to arrive at Spanish borders
despite mobility restrictions. Violence against migrants and racial
profiling by public authorities heightened as policing became strict-
er (Mamadou et al. 2020).

Despite the many shortcomings of the reception system and its
consequences, not being able to access this social protection system,
however, can have similar results, as ratios of homelessness and ex-
treme poverty are particularly high for asylum seekers in Spain (Rib-
era Almandoz, Delclós, Garcés Mascareñas 2020; Iglesias, Rua, Ares
2020), situations which are particularly taxing for victims of torture
or other trauma (Mazzetti 2008). The possibility of accessing men-
tal health and other services for victims is even more reduced out-
side the reception system. As mentioned, most of these provisions
are linked to accessing one of the official reception programmes
or subject to referral from other institutions, such as social servic-
es. While there is a severe lack of research about the trajectories of
asylum seekers who do not have access to reception programmes in
Spain, recent investigations point out that for those without access,
about 70% of the total, access to information and referrals to specif-

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[22] BCN/SA/1/FN.

[23] AH/B/TS/1/FN.

ic services for asylum seekers is restricted (Ribera Almandoz, Delclós, Garcés Mascareñas 2020).

Such policies of inaction that subject asylum-seeking victims of torture to abandonment and neglect despite the mandate of protection towards them, are part of a wider logic and narrative of governance of migration that are also at the core of practices of overt violence in the enforcement of policies of border control.

5   Conclusions. State Violence against Migrants in Contemporary Spain

The intention of migration policies in Western States is clearly that of prevention, rather than protection of migrants (Jubany 2020). In an effort to enforcing such prevention and deterrence of migration, control policies have come to merge high levels of active involvement of the State in politics of inaction (Davies, Isakjee, Dhesi 2017) with violent consequences for migrants. This combination of migration policies of intensive State presence in areas like border control, with the politics of inaction in other areas like refugee reception, have exposed asylum seekers and migrants to potential torture and violence which, in different forms, permeates all bordering practices. On the one hand migrants are exposed to insufficient legal and social safeguards as victims of torture and to the deficiency of investment and resources in all mechanisms for the protection for asylum-seeking victims of torture, despite all legal provisions to this effect. On the other, they are subject to the potential violence of the enforcement of migration policies, including that resulting from State neglect and inaction.

The enforcement of migration control policies exposes migrants to specific forms of State violence that contravene the prohibition of torture. Borders, detention, and deportation have been identified as the main sites where serious violations of human rights occur in relation to migration and where modern forms of torture are exposed. Within this, the case of asylum seekers is especially paradigmatic due to the specific mandate of protection towards them. Yet, because of the weak juridical status of asylum seekers, which leaves them at the fringe of the political community, States are not fully committed, nor concerned, in providing the protection that national and international regulations anticipate. This leads to a political abandonment that has violent consequences for asylum seekers, especially for those victims of torture or inhuman and cruel degrading treatments. Asylum seekers who have been victims of torture, either in origin, transit, or arrival, not only experience a lack of legal protection but are also made vulnerable to protracted situations of exclusion by the enforcement of migratory policies, even by those policies designed

for their protection and the promotion of their inclusion (Freedman 2019), such as asylum reception programmes.

There is nothing exceptional about this abandonment of victims of torture but rather the denial of its existence. The Spanish State's approach to torture has been one of impunity that has led to the neglect of victims, to which migrant victims are made especially vulnerable. As the empirical evidence put forward in this chapter has shown, strong legal protection is not enough in a context of narratives that construe migrants as criminals and legitimise the violent enforcement of migration policies, on behalf of modern democracies.

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Replay of Torture Across 'Other' Places and 'Europe'
The Case of Migration at the Bosnian-Croatian Border

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Abstract   This chapter explores whether and how refugees' past experiences of torture at home interconnect with extreme violence at borders and impact migration journeys. To do so, it draws upon eight months of ethnographic fieldwork at the Bosnian-Croatian border, which includes sixty-eight interviews. The chapter suggests that racialisation and 'othering' of people makes torture a fluid practice that migrates across globalised borders, despite their institutional format remaining unchanged. By shedding light on complex relational patterns of torture in migration, the text contributes to the literature on torture, racial studies and critical migration and border studies.

Keywords   Torture. Migration. Borders. Othering. European Union. War conflicts.

Summary   1 Introduction. – 2 Imagining Torture (in Migration). From 'Other' Places to 'EUrope'. – 2.1 Home of Torture in 'Other' Places. The Balkans and the Middle East. – 2.2 EUrope and Liberal Torture against the Other. – 3 Methodological Remarks. – 4 Torture at the Bosnian-Croatian Border. – 4.1 Pushbacks from EUrope. – 4.2 Memories from Home and Indirect Torture. – 5 Drawing Relational Patterns of Torture from the Bosnian-Croatian Border.

Edizioni
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1   Introduction

While working around makeshift refugee camps along the Bosnian-Croatian border, I saw visible marks of severe beatings and torture for the first time in my life. This visibility of violence was omnipresent around Velika Kladuša, Bosnia and Herzegovina, an entry point for thousands of refugees to the eastern frontier (i.e., Croatia) of the European Union (EU), the union of European countries that represents itself as 'liberal and democratic' (Isakjee et al. 2020). Every day, I was meeting people with broken limbs, open wounds, burns from electrical devices, and foot-long bruises from police baton strikes and listened to their narratives of the 'pushbacks'. For many of them, these imprints of violence were coupled with old scars from their home countries as it was not the first time that they had been attacked, tortured, and humiliated. As Bank, Fröhlich and Schneiker (2017) suggest, migration is often triggered by violence *from* which people move *into* violence when crossing borders. Although these violent events take place across distant geopolitical contexts – 'non-European autocracies' and 'EUropean democracies' – I noticed that violence at the EU border was often intertwined with abuses in one's home country and relied on similar methods of torture.

The existing literature (Barnes 2022; Isakjee et al. 2020; McMahon, Sigona 2020; Stierl 2020; Weber, Pickering 2011) suggests that migrants are exposed to extreme violence in places of origin and transit. However, scholars commonly analyse these violent events as two separate phenomena and sideline any correlation between the two. To address this scholarly neglect, this chapter discusses whether and how refugees' past experiences of violence in their home States interconnect with border violence and impact their cross-border journeys. By doing so, I wish to shed light on complex relational patterns of extreme violence and its strategies in transit and at home for migrants as narrated by refugees at the Bosnian-Croatian border.

This chapter examines extreme, direct violence and its strategies. I do not want to downplay structural violence, which is equally present around borders, but this topic has been extensively examined elsewhere (Davies, Isakjee, Dhesi 2017; Igonin 2016; Martínez et al. 2014; Schneider, Shraiky, Wofford 2017) in contrast to physical torture. I follow Lazreg's (2008) understanding of torture that systematically and routinely inflicts both bodily and psychological pain and uses dehumanising symbolic techniques in people's culture. Moving the analysis further, McMahon and Sigona (2020) suggest that refugees experience violence both directly and indirectly through daily communication with their families about the atrocities in their home States and past memories of harm. Indeed, torture is not only one traumatic act; it is the accumulation of complex trauma across different times and dynamics (Kira 2017) and distinctly considered (auto-

cratic/democratic) fields (Austin 2016). Departing from this point of analysis to study ethnographic encounters from the Bosnian-Croatian border, this chapter will show that both direct experiences of attacks at the EU's border together with indirect encounters of violence from refugees' home States constitute forms of torture in migration. By doing so, this chapter contributes to the literature on torture in migration and border studies.

Scrutinising extreme violence in migration at the Bosnian-Croatian border offers a particularly insightful analysis as this border has been constructed within policy narratives as a symbolic line between Europe and the Other (Balkans and beyond), Christianity and Islam, peace and violence (Razsa, Lindstrom 2004). By showing the relationship between torture across the EU and non-EU places such as migrants' path of transit and home, this chapter also empirically adds to the literature discussing how assumptions about extreme violence belonging exclusively to 'other' places and cultures in fact justify torture of 'them' – migrants – along the EU's borders (Isakjee et al. 2020).

In what follows, I provide further context to the process of 'othering' and discuss how it plays into migration and torture across migrants' places of travel and home. The next section outlines methodological remarks on my ethnographic fieldwork in makeshift camps at the Bosnian-Croatian border. I then move to the main discussion on torture along the EU's borders coupled with migrants' indirect encounters of violence at home, which often leads migrants to search for relational patterns between the two. On this empirical basis, I analyse how torture across distinct migration places – at home and in transit – come together at the border and discuss how 'othering' of torture to certain places and cultures underpins the logic of using this extreme violence along the EU's borders.

2 Imagining Torture (in Migration). From 'Other' Places to 'EUrope'

With world borders becoming increasingly violent (Jones 2016; Vaughan-Williams 2015), the process of migration adds to migrants' already violent experiences prior to departing their country of origin (Guarch-Rubio, Byrne, Manzanero 2020). However, when evidence of violence along borders is laid out in front of State authorities and the public, they tend to turn a blind eye to these rights violations, which are framed as taking place in 'other' places or against 'other' people that allegedly pose a threat to them (Conrad, Hill, Moore 2018). Border deterrents and the construction of the 'other' are thus inherently intertwined. Fear of the 'other', such as Arabs and Muslims and their 'inherently violent' cultures, is often used in calls for exclusion-

ary responses at borders (Butler 2008). In what follows, I will elaborate further on what the process of 'othering' is and how it allows us to use and displace torture to 'other' non-EUropean places and cultures – the Balkans and the Middle East – where migrants travel from and through where they transit.

2.1   Home of Torture in 'Other' Places. The Balkans and the Middle East

Growing up in the Czech Republic in the 1990s, I learned about South-Eastern Europe in line with contemporary generalisations of the Balkan region: a holiday place for families from the Soviet Union as well as the site for stories of displacement and extreme violence. The Balkans – a term invented by Western travellers in the late eighteenth century – had been used by Western powers to label South-Eastern Europe as economically backward, tribal, and primitive homogenous region, already before the wars (Todorova 2009). However, since the Yugoslav Wars in the 1990s, people in Europe imagine the 'Balkans' as interconnected with the intense brutality, rape, and torture committed across the region. International media narrated and justified the wars specifically as the 'Balkan Wars', a conflict triggered by ancient ethnic hatred in the region (Baker 2015; Huliaras 2011; Razsa, Lindstrom 2004). This violence was commonly seen by the EUropean public as something inherently 'Balkan' due to the region and its peoples' barbaric way of life, othered from civilised Europe, which made derogatory connotations of the Balkans stronger than ever (Hatzopoulos 2003). North American and West European expert texts contributed to the connotation of Balkans with violence as they have been written particularly during moments of 'crisis', such as the dissolution of Yugoslavia. As Fleming (2000) points out, Western expert texts re-produced imaginations of the Balkans as a region with no history than a continual source of danger to the peace of the world.

Cleaning the past marks of extreme violence, in addition to adopting EU governance practices, has been an essential aspect of the former Yugoslav States' paths to EU membership. In the aftermath of the Yugoslav Wars, the UN Security Council established the International Criminal Tribunal for the former Republic of Yugoslavia to investigate war crimes and torture in the region (Bassiouni 1994). Full cooperation with the tribunal became the cornerstone of Western Balkan States starting membership talks and signing a Stabilisation and Association Process (SAP) with the EU (Jović 2009). Within the stabilisation talks, States were expected to adopt humanitarian values (Jakešević 2017) and migration policies complementary to those existing in the EU, such as the Geneva Convention asylum system and collaborate on combating illegal migration (Stojić-Mitrović, Vilenica 2019).

Joining the EU strongly resonates with the symbolic process of de-Balkanisation and Europeanisation, start of the 'new civilised' history within the region. As Razsa and Lindstrom (2004) suggest, EU membership has been crucial for States to escape the Balkan stereotypes of being the uncivilised and intolerant 'other', which are often perpetuated by Western political leaders, media and academics, and to enter the community that views itself as the progressive, tolerant, and democratic Europe. While Slovenia, Bulgaria, and Croatia are now EU member States (Huliaras 2011; Dahlman 2016), Bosnia and Herzegovina was the last country in the Western Balkans to sign the SAP with the EU in 2008 (Memisevic 2009) and is still far away from joining the EU. Consequently, countries in the 'Western Balkans', like Bosnia and Herzegovina, remain shady places in Europe, stranded in the narratives of having fragile economies, questionable rule of law, and diminishing political rights and civil liberties (Stojić-Mitrović, Vilenica 2019).

Derogatory narratives of the 'Balkans' as interconnected with threats and mass migration re-emerged in 2015 when the public started hearing about the 'Balkan Route' used by migrants on their way to the EU. For instance, Frontex – the EU border agency – has been portraying migration across the 'Western Balkans' predominantly through the lens of its 'risk analysis': designated as an area with imagined crime and chaos for which it proposes subtle yet violent tools to 'fix' it (van Houtum, Bueno Lacy 2020; von der Brelie, Salfiti 2018). The deployment of the military and militarised technology along the Hungarian and Croatian borders has contributed to the racialisation of migrants according to their religion, portraying the population living in and migrating via Bosnia and Herzegovina as Muslims against whom the EU's borders should be protected (Razsa, Lindstrom 2004; Rexhepi 2018). As, for instance, Hungarian President Viktor Orbán has said, Hungary belongs to Christian Western civilisation and Europe, and thus, Hungary has a moral obligation to protect its borders, which in turn also protects Europe (Thorleifsson 2017). The 'Balkan (Route)' thus remains stranded amid the West-East dichotomy in Europe (El-Shaarawi, Razsa 2019) and Europe's Orient (Mishkova 2008).

The image of the 'other' – the opposite as constructed by Europe and Western Civilisation (Isakjee at al. 2020) – echoes the broader racialised process of 'othering' of Arab and Muslim societies in the Middle East as 'Eastern' and 'Oriental'. In fact, South-Eastern reaches of Europe provided a template for how Western Europe would ultimately perceive the entire non-Western world (Fleming 2000, 1230). With the same mode of thoughts, European intellectual (science), political (colonial and imperial establishment), and cultural (tastes, texts, values) representations of the Orient as a social and political fact have deeply engrained the idea that the Arab and Muslim worlds are Europe's 'Other' (Said 1978). Countries in the Middle East, from where many

migrants travel to the EU, are homogenised within EUropean political narratives as countries that not only have failed to develop economic and social programmes but also deploy State torture (Cohen, Corrado 2005). This violent image of the Middle East as the 'other' is especially strengthened by Islam, which is seen by definition as violent, backward, a cultural threat, and requiring subordination and thus justifying exclusion from European culture (Butler 2008; Razack 2004).

The process of othering, however, goes beyond cultural and ideological dimensions as it is also embedded in economic value affiliated with people across the globe. As Rajaram (2017) and Sharma (2020a) suggest, there is a relationship of histories of othering and capitalism as the logics of capital accumulation has been shaped by racialised structures built upon colonial era and slavery. Capitalism and its value structures assert desirable traits to be associated with Western European culture whilst restrict the possibility of racialised groups (i.e., migrants) to become valuable, rendering them surplus populations in the world labour market (Rajaram 2017). The process of othering is thus also about separation of 'our EUropean' working class from the 'other' working people, which allow racialised people to be framed as posing not only 'cultural and security threats' but also 'economic danger' (Sharma 2020a). This means that 'othering' propel the structures of capitalism, which devaluates workforce of racialised groups of populations and contribute to their exclusion from what is constructed as 'rich and civilised Europe'.

The above-outlined racialised assumptions create symbolic resonance between (post-)conflict States with large Muslim populations, from where migrants come and through where they travel. These countries are therefore singularly categorised as 'other' – Muslim, Arab, Eastern, Oriental, and economically inferiorised non-European – places (Trakilović 2020), despite their tremendous differences. This imagined context allows disorder and torture to be imagined as culturally permissible, expected, and justified by region-specific predicaments in the context of 'other' territories (Galtung 1990; Hatzopoulos 2003). As Taussig (2004) argues, visible violence, terror, and mass displacement are always imagined in 'An-Other' places, in troubling worlds where the rule of law is deeply suspicious and a wild order historically exists.

These stereotypical notions of the 'other' are significant not only because they displace and conceal diverse forms of violence outside of EUropean lands (Isakjee et al. 2020) but also because they justify material practices to survey, control, and discipline the 'other' in the 'modern', 'civilised' world (Razack 2004). The process of 'othering' thus allows for the creation of violent policies and intervention strategies by the West and EUrope in 'other' regions and against 'other' people with the pursue of their immobilisation which the following section elaborates on.

2.2   EUrope and Liberal Torture against the Other

Josep Borrell (2021), High Representative of the European Union for Foreign Affairs and Security Policy, stated that Europe has been building a unique peace project under the banner of the European Union. Indeed, what is considered as Europe and the European Union (EUrope) project a liberal image, where human dignity, human rights, and the rule of law condemning State violence and practices of torture are the fundamental tenets of 'European values' (Isakjee et al. 2020). The EU legally prohibits torture in its declarations, conventions, international and domestic laws, most prominently *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which States that under *no* circumstances is torture either legal or legitimate (Schlag 2019). In short, European ideas of governance (of migration) promote openness and tolerance and distinguish torture as an un-European way of governance. Within this context, State use of torture is not only extremely risky and costly but also unimaginable (Galtung 1990).

However, responses to migration along the EU's borders often pursue xenophobic, violent, and thus 'un-European' migration policies (Stierl 2020). The connection between torture and migration is evident from the extensive evidence of pushbacks along the EU's borders, during which EU State authorities commonly use (extreme) violence or expose migrants to violent situations and death. This pattern of violence has been examined from the Mediterranean Sea where thousands drowned (Stierl 2020; Weber, Pickering 2011) to the coast of Italy from where people are pushed to Libya, and then, detained and tortured (Human Rights Watch 2019). Torture of migrants is also common along the EU's land borders marking the end of the 'Balkan Route' and Greece (Augustová 2020a; Barnes 2022; BVMN 2021a; Guarch-Rubio, Byrne, Manzanero 2020). Migration across the EU's borders thus places ideas about European ways to govern migration in conflict with what is commonly assumed as non-European, intolerant, and violent.

Extreme violence used by States that construct their core values as liberal, humanitarian, and modern is not a new phenomenon. Many scholars (Danewid 2017; Isakjee et al. 2020; Mayblin 2017; Mountz, Loyd 2013) argue that violence against migrants is founded in slavery and colonialism, when European States used violence to discipline non-Western populations despite the freedoms under which European nations espoused. For De Genova (2017), colonial and racial violence are further intertwined with the 'war on terror' and military interventions in Iraq, Afghanistan, Syria, Libya, Mali, or Somalia, during which the 'West' deployed extreme violence to modernise the 'other' nations. The post-9/11 US rendition, detention, and torture programme became visible especially in Guantánamo Bay and

Abu Ghraib (Schlag 2019). Simultaneously, the 9/11 events, portraying an exceptional and global threat to Western States, highlighted the terrorism-migration connection within Western States (see Avdan 2014; Bhui 2018), which often justify militarised borders. Finally, devaluated economic value of 'othered' people within today's capitalist hierarchies, as rooted in the histories of colonialism and slavery, contribute to reworking of migrants into 'illegals' as they cross borders to Europe, and create a fertile terrain for human right abuses and violence (Green 2011).

Histories of colonialism, recent anti-terror measures and the international division of capital show that the use of violence and torture of 'others' – e.g., imagined terrorists, criminals, Arabs, Muslims, migrants, illegals – is not exceptional. As Danewid (2017) suggests, it is not possible to divorce Europe's long history of colonialism, imperialism, and racial violence in migrants' home States from understanding today's violent EU borders.

What I aimed to show so far is that torture remains common across autocracies and democracies (Conrad, Hill, Moore 2018). Butler (2008) suggests that when some people come to represent a threat to the cultural conditions of humanisation, of citizenship, and of wealth, the rationale for their torture is secured. The idea of Europe as modern and liberal and the effort to protect it from the threat allow liberal-democratic and advanced capitalist societies to engage in repressive policies and extreme violence (Cohen, Corrado 2005; Danewid 2017; Isakjee et al. 2020). Within this context, State authorities are allowed to 'get their hands dirty' as violence is necessary for State security (Conrad, Hill, Moore 2018). While these scholarly findings show that torture is transnational, we know little about how torture in migrants' homes and in transit are interconnected and eventually shape migrants' cross-border journeys, which will be explored next in this chapter after outlining the methodology used in this research.

3 Methodological Remarks

The data presented in this chapter draws upon eight months of ethnographic research (May 2018-January 2019) in makeshift refugee camps at the Bosnian-Croatian border. The overarching aim of the project was to explore diverse forms of border violence against migrants and their impact on everyday practices at the border. I volunteered in makeshift camps in order to participate, observe, and contribute to the positive transformation of living and travelling border spaces. I also conducted semi-structured interviews with the displaced people about violent pushbacks as a part of a 'border violence monitoring' project supported by collaboration with activists, a medical organisation, and independent lawyers. The interviews proved

useful to map evidence of violence at the border and capture information about direct and often extreme violence against migrants by EU border guards that would be otherwise difficult to examine due to their dangerous and clandestine nature. In total, sixty-eight interviews were conducted either in English or in the language that participants felt comfortable communicating and were translated into English by their friends or other camp inhabitants as there was no possibility to cooperate with professional translators.

The people living in the camps detailed their escapes from numerous forms of violence, from wars and totalitarian regimes to long histories of interventions and exploitation (i.e., colonialism) leaving economic and political insecurities. While all were exposed to the same direct attacks along the Bosnian-Croatian borders, this chapter focuses mainly on the interviewees who had been moving *from* and *into* direct violence in order to map relational patterns of torture across migrants' home and transit. Since border violence is not only racialised but also gendered (see Augustová 2020a), most people interviewed were adult men. These participants were recruited via circumstance and snowball sampling techniques during aid provision in camps, when they often told me or other volunteers about being pushed back. Firstly, our group ensured medical care for them and then, if appropriate, asked if they would like to be interviewed for the purposes of legal and public advocacy and academic purposes. People in the camp spread the news of the option to record their violent incidents to others, who later approached me or other volunteers on their own will. I obtained oral consent from all participants,[1] and all names and identifiable information have been changed to respect their anonymity.

While scholar-activism offers a more sensitive approach to examine border violence than short field visits and pure interview-based research (Jordan, Moser 2020), volunteering is not a panacea to violent fields or unequal dynamics between predominantly Western, white, and economically secure aid providers and observers and people migrating across borders. Still, extensive daily cooperation with people in the camps put me in close proximity with extreme violence and its strategies across imagined lines of 'civilised European' and 'uncivilised non-European' territories, as I discuss in the following sections.

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1 I avoided written consent as this was not appropriate in the context of the borders. Migrants said that they were commonly forced by State authorities to sign forms that undermined their rights and mobility when being forcibly moved from makeshift camps to detention centres, apprehended in border zones, or arrested in police stations during the games.

4   Torture at the Bosnian-Croatian Border

4.1   Pushbacks from EUrope

> They [Croatian police] stole 1,000 euro from all of us, broke our power banks. After, they took us on the road and beat us. They were beating us with batons on our shoulders, back, and head and private parts. We don't even know where all they hit. In the dark night, they can hit hard and not only one person. Now, everything is broken... One person was torturing us by shining the light into our eyes, and the other five were beating us one by one. (Ejaz, Pakistan)

The above interview excerpt is from Ejaz, who was describing playing the 'games', as people commonly refer to an attempt to cross the border when walking for weeks across mountains, forests, rivers, and uncleared minefields from the Yugoslav Wars. This land border marks the end of the 'Balkan Route' and an entry point to the EU: a symbolic line between racialised categories such as 'non-European, uncivilised, and backward' places and the 'European, civilised, modern' world (Razsa, Lindstrom 2004). Indeed, the Croatian border has been increasingly modernised by military technology, such as helicopters, drones, thermal imaging cameras, vehicle scanners (BVMN 2021b), besides the deployment of border patrols in order to stop unwanted migration, often using violence. Game returnees, like Ejaz, most commonly described being denied any legal assistance by the EU authorities who then stole or destroyed their possessions (i.e., phones) to hinder their future movement and prevent documentation of such incidents and inflicted various degrees of pain upon them during the pushbacks.

Like for Ejaz, entering a police van started what many described as 'torture', 'beatings', and 'humiliation'. Police vans often serve as a means of intercepted people's transportation to secluded places along the Croatian border, from where they are pushed back to Bosnia and Herzegovina during the late hours of the night. Across eight months of interviews and observations, it became apparent that police officers used vans to evoke breathing problems, nausea, and malaise in people while detaining them in large numbers as they closed ventilation systems and turned the heater up to extremely high temperatures for hours. Vans, however, were not the only place of detention. Those interviewed also said that they were driven to abandoned buildings in the forest before being transported to the border, where they were detained without food and water for long hours or days. Verbal and physical attacks were common while being detained in these abandoned buildings, with one person reporting being choked

by a police officer using a rope. However, for most people, extreme violence was waiting at the point of their pushback.

When arriving at the Croatian-Bosnian border, people commonly described being taken one by one from the van. While sitting in the dark of the van and waiting for their turn, people described hearing noises of "batons against bones". EU State authorities reportedly used a number of methods and devices, psychological as well as physical, which are all crucial for understanding extreme violence and torture (Lazreg 2008). Several testimonies point to the use of extreme sensory stimulation, when police officers first point a powerful light into their eyes, causing them sensory overload, or use pepper spray to blind them before ordering them to get out the van to be attacked, as Ejaz's testimony above also shows.

The weapons and strategies of physical violence used by police officers varied, from hits by plastic or metal batons and gun butts to kicks and slaps. The police also used electronic weapons (e.g., tasers) against game players on their necks and chests, placing them in stressful or pain-inducing positions. For instance, Azzam (Afghanistan, 47) said that "a police officer told him to lean on his knees and put his head on the ground. Then, another police officer sat on Azzam's head and was pushing his head with his whole weight into the ground until he was bleeding from his head". Most of those interviewed reported being exposed to this extreme violence upon aggressive accusation of entry to the EU without authorisation. The minority of those interviewed said that they were subjected to enhanced interrogation by State authorities who were trying to find out information and get confessions on record about human smuggling activities, which are in line with the common objectives of State torture (Austin 2016).

Extreme violence at the border was not only direct but also coupled with psychological torture – for instance, pointing a gun to one's head and threatening to kill him/her – and using dehumanising symbolic techniques and sexual torture. Interviewees commonly referred to being ordered by police officers to remove their clothes to be frisked after their apprehension. People who had been forced into nudity perceived this strategy as intertwined with shame and sexual violence, especially when police were kicking or hitting them in the genitals. As Lazreg (2008) suggests, torture is sexual in nature as it toys with people's sexual identity and violates their most private domain. Especially women consider forced nudity as sexual humiliation directed against their religion and persona. For instance, Marva (Afghanistan, 42) said that

> she told the Slovenian police that she was a Muslim and refused to take off her clothes and a scarf. Officers forced her to strip naked and aggressively removed her scarf while calling her *picka ti materina* (motherfucker in Slovenian) and saying that here is Europe and not Afghanistan and Islam.

Other women reported being inappropriately frisked and touched on their breasts and genitals by male police officers, while the latest reports (BVMN 2021a) also point to one case of rape.

Others reported being forced to enter freezing rivers or walk back to Bosnia in the winter naked. In these cases, forced nudity was combined with violence being re-delegated by police officers onto 'natural' and environmental factors, which according to Schindel (2019) are often included in strategies of border controls (i.e., the Mediterranean Sea) to make harm look like it was caused by 'nature'. In a few cases, I was also told that officers were using cameras to take photos and videos of the attacks. The eye of the camera speaks to Laustsen's (2008) understanding of torture as a strategy that possibly causes public exposure and shame forever while showing police officers no shame for their actions.

While whistle-blower testimonies of Croatian police officers affirm that police officers are clearly ordered to forcefully return everyone without papers to Bosnia (BVMN 2021a, 14), State authorities have denied all allegations of violence. For example, the Croatian Minister of Interior claimed that the signs of beatings on migrants' bodies were the result of inter-communal fights in Bosnian camps (ECRE 2021). This comment resonates with the symbolic exclusion and concealment of torture in the EU's 'liberal and humanitarian' States and outsourcing to the Balkans, the 'problematic and non-European' region (Isakjee et al. 2020). Indeed, the use of democratic-autocratic and European and non-European binaries can hide violent symmetries along borders (Austin 2016). In this case, migrants themselves are also blamed for their injuries (Doty 2011), which is culturally imaginable based on their racialisation as "the deepest and most recurring image of the Other" (Said 1978, 1). Signs of the 'other' (places and people) thus prove useful for EU State authorities to subordinate displaced people along the imagined line between West and East (e.g., the Balkans, Orient) to fix their imagined 'criminality' via torture and, consequently, exclude them from the EU (Butler 2008).

Throughout the empirical observations and interviews outlined so far it is apparent that torture takes place along EU borders despite the displaced people coming to the border wish to escape violence in their home States and find peace and equality in line with the EUropean self-image (Borrell 2021; Isakjee et al. 2020). These strategies of extreme violence at the EU border are not isolated in the 'modern West' as they echo the torture carried out throughout the West's colonial history and war on terror in 'other' places, which are used by the 'civilised West' to discipline and subordinate the 'uncivilised East' (Danewid 2017; De Genova 2017). It is important to note that these are often the same groups of populations that migrate to the EU borders. This connection is visible in the forced unveiling of Afghani women by US soldiers in Afghanistan (Butler 2008) and French

soldiers in Algeria (Lazreg 2008) and the forced nudity and beating of prisoners in Abu Ghraib and Guantánamo while taking photos of them (Laustsen 2008) as well as the cross-border spread of tasers as tools of enforcement-cum-torture (Austin 2016). These tactics all mirror the displaced people's narratives at the Bosnian-Croatian border.

These relational patterns reveal that torture is transnational (Austin 2016); it migrates with people from their home through transit. As Mayblin (2017, 175) aptly points out, "migrants make connections between their present situation and histories of colonial domination and its attendant racial violence", as also visible on torture across people's home and transit. This interconnection of torture across diverse, yet overlapping contexts is further trackable through migrants' indirect experiences of violence (McMahon, Sigona 2020). In the following section, I explore how symbols and sounds of militarised borders stimulate flashbacks of wars and contact with people's families enables them to keep witnessing torture in their home States.

4.2   Memories from Home and Indirect Torture

"When the police were beating me, I was very scared. I thought that *Daesh* [ISIS] was trying to kill me here in Europe. I came to Europe to be safe and to get help and I found this", said Azzam (Afghanistan, 45), who was placed into a stress position by two Croatian police officers during his pushback until he bled from his head (Afghanistan, 45). The major identifying feature that the displaced people pointed to when describing perpetrators of extreme violence were dark uniforms and black balaclava masks. For this reason, Azzam and a few other people from Iraq and Syria said that the look of the border guards and their strategies of torture reminded them of combatants from their countries. Thus, violence from home and at the border became intertwined in the makeshift camps where people returned after their pushbacks. When I saw Jamal (Syria, 19) covering his ears every time he heard a helicopter flying over the camp, I asked him if he was fine. He responded, "A bomb in Aleppo damaged my hearing. Anytime I hear strong sounds that remind me of the war, like a helicopter, that moment comes back, and my ears hurt".

Azzam, Jamal, and many others were not physically present in officially recognised war zones and terrorist-controlled areas at the EU border. However, the violence from home migrated with them to the border as EU border guards' strategies of torture inflicted pain in very similar ways and created a similar atmosphere of fear that belongs to militarised spaces. Material objects, such as military technologies and perpetrators' uniforms, or sounds around the border could thus rebuild violence from home and transport torture from site to site (Austin 2016).

People were also reminded daily about the violence in their home States through being in contact with their families. For instance, while sitting in the Trnovi camp thousands of kilometres away from Syria, numerous people from Syria told me about finding out about the dead bodies that were newly pulled from the ruins in their hometowns after airstrikes by Russian and Syrian warplanes. I never knew how to appropriately react when sitting in a tent at the so-called 'Syrian centre' of the camp and was shown videos of dead bodies after gas attacks or groups of people loudly mourning over dozens of coffins. "This is Syria today", said Yezen (Syria, 20), when showing me these images and videos of despair and brutality.

At first sight, these events may seem secondary or less important in the analysis of violence (in migration) due to their lack of physical, direct, and momentary violence. However, being informed about harm to and the death of family members and friends and daily communicating about such occurrences, although in faraway places, also construe people's indirect experiences of violence when being stranded at the border (McMahon, Sigona 2020). Moreover, Kira (2017) suggests that witnessing or hearing about torture, rape, dead bodies, and killing of family members is considered psychological torture, which more likely leads to psychological disorders (e.g., post-traumatic stress disorder) than physical torture. In line with this, these forms of indirect violence should not be sidelined in the analysis of torture in migration around borders. Moreover, I observed that torture at home had a significant impact on people's lives at the border. While some people said that past exposure to harm increased their capacity to cope with present violence, for others, past traumas developed into psychological issues that had negative effects on their day-to-day survival at the border. This became obvious to me when meeting Hamed, a skinny man in his forties, who used to be a teacher in Syria. Despite Hamed's intelligence, he was often at the centre of jokes in the camp by others, who commonly called him the 'crazy Syrian teacher'. Hamed would be overwhelmingly kind one day, while the next day he would be persuaded that me or the other volunteers were working for the Syrian regime and spying on him. He would then get aggressive, threatening others with a knife, spitting on them, shouting out loud, and then crying and running away. He would not remember these events the following day.

Once, Hamed told me that he was tortured in the governmental prison in Syria, recounting an incident in which he was hung from his wrists for hours, subjected to severe beatings and electrical shocks, and threatened with guns. He said that these memories still haunted him at the border and along with the new instances of beatings during pushbacks. Moreover, every day Hamed was seeing people around the border who carried similar imprints of violence as in the prison, e.g., burns by electric devices, bruises, open wounds, broken ribs, and broken teeth.

"This guy will never get out of here. No one wants to go with him in the game. So, he goes alone and gets pushed back all the time. He has no strategy because he is crazy", said Chaled (Syria, 19), who had known Hamed for several months in Velika Kladuša. Indeed, Hamed's paranoia and accusations of others spying on him caused many problems in establishing the social bonds in the camp that were necessary for developing strategies for the games (Augustová 2020b), and this negatively affected his ability to navigate the complex and violent border architecture. Due to the lack of medical and absence of psychological care, Hamed did not receive any special attention in his condition, and I could see his behaviour getting more paranoid over time. Two years after leaving the field, I was told by other volunteers that Hamed was still living at the border.

Hamed's story adds to the argument here that violence is not only about how one's journey begins and, in some cases ends, in death. Instead, violence is key to shaping the evolution of migratory journeys over time (McMahon, Sigona 2020) when moving across diverse geopolitical territories. As Womersley (2020) also suggests, painful moments in migrants' country of origin and memories of families left behind fold together with the numerous instances of harm while in transit. For Hamed and others, the way in which these two diverse geopolitical contexts merged together through memories of torture effected how people navigate life at borders, games, and pushbacks.

What these empirical encounters show is that although torture at home and in transit are triggered by diverse contexts that are often placed in racialised opposites – EUrope versus the 'other' East – there is a significant relationship between them. Strategies of torture, weapons, the look of perpetrators, and the indirect presence of torture through sounds and objects around militarised spaces and contact with families mapped in this chapter speak to Austin's (2016) symmetrical understanding of torture that draws together 'Europe' and 'other' places into the same time and space of pain, despite their institutional format remaining unchanged. Indeed, torture at the border is often multi-layered due to the perpetual exposure to the same violent strategies and atmosphere of fear at home and in transit, in European and non-European places, and in the past and present. What essentially matters is that extreme violence has the same power to harm and eventually destroy people's world as they know and value it (Nieminen 2019), which is a global phenomenon (Lazreg 2008), although the drivers, perpetrators, and political projects underpinning torture vary.

5   Drawing Relational Patterns of Torture
from the Bosnian-Croatian Border

The purpose of this chapter was to underscore the repetition of similar patterns of torture across home and transit States and question how this impacts people's cross-border journeys along the Bosnian-Croatian border. While scholars in this book and elsewhere (Barnes 2022; Jubany, Pasqualetto, Rué 2019) point to extreme violence in migration, this chapter shifts attention to the raw strategies and weapons of torture that travel across borders from the East to the West, autocracies to democracies, and non-EU to EU territories despite the diverse contexts underpinning them. First, I shed light on the torture of the displaced people by EU State authorities (mainly in Croatia), which systematically and routinely inflicts both bodily and psychological pain (e.g., severe beatings, extreme sensory stimulation, use of electronic weapons, placing people in stress positions) and uses dehumanising symbolic techniques in people's culture (e.g., unveiling of Muslim women, forced nudity, rape, torture photography). Second, I focused on indirect violence at the border (McMahon, Sigona 2020), where black balaclava masks reminded people of their past traumas as they tried to escape being beaten with batons during the pushbacks, the sounds of military technology and visible injuries in the camps, and witnessing torture in their home States via contact with their families.

The primary argument of this chapter is that thinking through torture across the displaced people's journeys from home through transit, which often fold together along borders, is key to understanding how torture is fluid and multi-layered in migration processes. Many people are pushed to migrate due to extreme violence (e.g., Syria, Afghanistan) but are later exposed to very similar strategies of violence when moving across geopolitically distinct fields. The relational patterns between torture across home and transit mapped in this chapter show that torture not only takes place in topographically dislocated places or war zones, totalitarian regimes, and racialised nations (i.e., Arab, Muslim States, former colonies). Instead, the relation patterns of torture in migration reveal how polities of entirely distinct institutional form and situated in completely different geographical sites, yet linked by histories of colonialism and racial violence (Mayblin 2017), employ torture in the same way across time and space (Austin 2016). I argue that although there is a difference in the geographical scope and institutions of torture at migrants' home and transit, there is only little difference in its implementation, strategies, and experiences, which migrate across globalised borders. The empirical evidence here thus adds to the literature (Conrad, Hill, Moore 2018; Danewid 2017; Galtung 1990; Isakjee et al. 2020; Taussig 2004) challenging the dominant assumption that (extreme) violence takes

place exclusively in An-Other places. As Lazreg (2008) argues, torture functions in all places that are willing to justify the lesser evil of torture against the greater evil of imagined threats to EUropean culture, security and wealth; which is a colonial logics continuing today when the displaced people move from the 'non-modern' to the 'modern' world (Mayblin 2017).

This leads to the second major point of this chapter, revealing that racialisation and othering of people as imagined threats make torture a fluid practice that migrates across borders, from faraway places to the centre of European practices of migration management. This is imminent at the Bosnian-Croatian border, where a symbolic line between Europe and the Balkans and beyond, Christianity and Islam, peace and violence, poverty and wealth is also sustained (Razsa, Lindstrom 2004) in migration management to rationalise 'othering' of people and justify their torture. This conceptualisation of the region can reify and obscure torture through regional distinctions that assume territorial stabilities of the Balkans and the East to be known, mapped, and policed by the EU (Mountz, Loyd 2013). Although the process of joining the EU represents de-Balkanisation and correction of past torture in the region during the Yugoslav Wars (Jović 2009; Razsa, Lindstrom 2004), it simultaneously underpins the logics of deploying torture against migrants for the sake of EU border protection when safeguarding its liberal and humanitarian values (i.e., Croatia) (Isakjee et al. 2020). The torture of the displaced people thus became a precondition for passing the test on EU border management and further reinforcing the anxiety-ridden division from the Other – the Balkans, the East, and the Orient.

Imaginations about where torture belongs allow the torture of migrants to be used by EU member States that place themselves in racialised opposition from the 'other'. Othering of people is a historically rooted recipe for torture when invading and remapping of Other places (i.e., colonialism, modern war interventions) (Butler 2008; Said 1978) and preventing their movement but for labour exploitation (Green 2011; Sharma 2020b). When escaping this historical context of violence coupled with the contemporary authoritarian regimes (e.g., Syria), terrorism (e.g., Afghanistan) and the modern capitalist hierarchies generating 'surplus' populations (Rajaram 2017), people continue to replay experiences of torture along borders that in turn sustain their exclusion from the EU, in Other places, as this chapter shows. Torture is thus not locally contained, but as Austin (2016) suggests, torture can re-emerge and re-converge. This calls for further mapping of the transnational relations of torture in migration, in which people's forced journeys are triggered and then shaped over time.

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Towards the Legalisation of Pushbacks and Inhuman Treatment in Greece
The Case of Evros/Meriç Border

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Abstract Throughout the last decades, the process of deterrence and of securitisation of EU borders has gone hand in hand with a decades-long pattern of routine and systematic pushbacks perpetuated by the Greek authorities against refugees, migrants and asylum seekers. The present article studies the intensification of the phenomenon of pushbacks at the Evros region over the past years and, especially, after the *EU-Turkey Statement*.

Keywords Pushbacks. CEAS. Dublin Regulation. Migration. EU-Turkey Statement. Greek police. Frontex.

Summary 1 Introduction and Definitions. – 2 The Intensification after 2010 and the Trends. – 3 From Securitisation to Weaponisation. – 4 Legalising Pushbacks? – 5 The Difficulty of Legal Redress and Evidence Gathering.

1 Introduction and Definitions

Throughout modern history, routes of irregular migration are constantly shifting; as immigration enforcement measures stiffen in one area, migrants and smugglers probe and test for other soft points of entry. But two factors rarely change: the political boundaries that delineate international borders and the topography that makes one frontier porous and another impenetrable.

Greece is not new to the phenomenon of migration, since the country has faced at least three major waves of migration in its recent history: firstly, the collapse of socialist regimes in Central and Eastern Europe at the beginning of the 1990s triggered massive migration waves, mostly of Albanians into Greece. About a decade later, the geopolitical developments in the region (regional conflicts, war on terror etc.) have triggered new population movements; by the beginning of 2000s, new waves of migrants from the Middle East, Pakistan and African countries have started arriving. Thirdly, after the Arab spring in 2011 and the escalation of the war in Syria, the number of people seeking international protection in Europe – either through Turkey or through the central Mediterranean – began to grow even more. In 2015, the pressure on European borders increased dramatically, adding further problems to an EU already fragmented due to the economic crisis (Papastergiou, Takou 2019). Since the very constitution of the EU and the first Dublin Regulation/CEAS, Greece has been seen a member-gatekeeper for migration towards the EU. Thus, Greece has repeatedly found itself in the midst of a constant process, where the EU has attempted through its executive branch – the European Commission, but also its agencies – to intensify the doctrine of deterrence, bypassing the institutional procedures and accountability mechanisms that it is supposed to serve. This process of securitisation of borders and of deterrence has been coupled with an ongoing EU attempt to externalise border control to third countries; in other words, to create 'fortress-Europe' by locking those in need out. Recently, this process has been intensified even further, passing from securitisation to weaponisation (HumanRights360 2021b) through the use of 'hybrid war' rhetoric.

The Evros-Meriç River border between Turkey and Greece is one of the easternmost frontiers of the European Union. Until a fence went up throughout the most easily accessed 12 kilometres of the Evros border, between Kastanies and Nea Vyssa, in 2012, it was the easiest and safest path for asylum seekers from the Middle East and elsewhere to reach Europe, and nearly 55,000 people crossed the border irregularly in 2011.

This process of strengthening border control went hand in hand with a decades-long pattern of routine and systematic pushbacks perpetuated by the Greek authorities against refugees, migrants and asylum seekers. According to K. Tsitselikis, human rights law professor, Greek authorities have been conducting pushbacks across the Evros River since at least the mid-1990s (Reidy 2018), with Human Rights Watch reporting on systematic pushbacks since as early as 2008:

> Summary forcible expulsions across the Evros River by Greek police and security forces are routine and systematic [...] Human Rights Watch confirmed the systematic nature of the summary ex-

pulsions in 41 testimonies of migrants and asylum seekers interviewed in Greece and Turkey. (Human Rights Watch 2008)

Greek coast guard, police officials and other agencies carrying out pushbacks violate a host of basic rights, including the right not to be subjected to torture, inhuman and degrading treatment, persecution, or other serious harm. In the absence of an internationally agreed upon definition of 'pushbacks' in the context of global migration, we use the term to describe various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement.

Thus, we also include forcible irregular expulsions. Pushback practices demonstrate a denial of State's international obligation to protect the human rights of migrants at international borders. They result in human rights violations such as forced returns without individual assessment and often collective expulsions with high risk of refoulement, including chain refoulement.

These operations also include violations like illegal detention. The practice of pushbacks is prohibited both by Greek and EU law, as well as by international treaties and agreements signed and ratified by Greece. Pushbacks constitute an unofficial practice, going against official processes and protection mechanisms concerning the irregular entry and stay in Greece, as well as official return and deportation procedures. The practice takes place in violation of the Greek constitution (Art. 2, on the protection of human dignity), the *Geneva Convention on Refugees* (denying people the fundamental right to seek international protection), the *European Convention of Human Rights* (Art. 3, on the prohibition of torture and any kind of inhuman or degrading treatment or punishment) as well as the *Charter of Fundamental Rights of the European Union* (specifically, Art. 4, on the prohibition of torture and inhumane or degrading treatment or punishment, Art. 18, on the right to seek asylum, and Art. 19, § 1, on the prohibition of collective deportations, and § 2, on the prohibition of deportation, removal, or extradition from the State of persons that face grave danger of death penalty, torture or other cruel, inhuman and degrading treatment or punishment).

The principle of non-refoulement, is considered as a core principle of international customary law and takes effect from the moment a person is under the jurisdiction of a State, regardless of the stage of the official processes. On top of the explicit provisions of Art. 33, § 1 of the *Geneva Convention*, it is present in most international treaties and conventions protecting human rights, such as Art. 3 of the *United Nations Convention against Torture and Other Cruel Inhuman or*

Degrading Treatment or Punishment, Art. 16 of the *The International Convention for the Protection of All Persons from Enforced Disappearance*, as well as regional human rights protection mechanisms. In addition, the United Nations Committee on Human Rights considers the principle of non-refoulement as an inseparable element of protection against torture and other cruel, inhuman or degrading treatment or punishment, as well as protection from arbitrary loss of life (HumanRights360, Greek Council for Refugees, ARSIS 2018).

Being a part of border control for so long, pushbacks have gradually become normalised, and have become seen as an alternative way of border control; the frequency and organised coordination of these operations have been well-substantiated by various local and international organisations over recent years. Greece has been repeatedly denying the existence of these operations, while the EU has – quite hypocritically – been calling for investigation, at the same time of rewarding Greece's position as the 'shield of Europe'. The present article studies the intensification of the phenomenon of pushbacks at the Evros region over the past years and, especially, after the *EU-Turkey Statement*.

2   The Intensification after 2010 and the Trends

Europe began registering increased numbers of refugee arrivals in 2010 due to a confluence of conflicts in parts of the Middle East, Asia and Africa, particularly the wars in Syria, Iraq and Afghanistan, but also terrorist insurgencies in Nigeria and Pakistan, and long-running human rights abuses in Eritrea, all contributing to refugee flows (Zaragoza-Cristiani 2015). Between January and September 2010, Greece arrested 31,219 immigrants for unlawful entry across the Evros River, compared to 6,615 between January and September 2009.[1] Within this context, Frontex began deploying Rapid Border Intervention Teams (RABIT) along the Evros River in 2010, sending guest officers from 26 member States to assist Greek authorities "in controlling the border areas as well as in identifying the apprehended irregular immigrants".[2] The impact of Frontex cooperation with Greek forces in reducing arrivals to Greece has been significant and became quickly evident. Within four months of deploying the RABIT operation in November 2010, arrivals had decreased by approximately 75%.[3]

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1   Data available at the Hellenic Police website: http://www.astynomia.gr/index. php?option=ozo_content&perform=view&id=3665&Itemid=429&lang=.

2   https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007R0863.

3   From the EC Memo of 2 March 2011, available here: https://ec.europa.eu/commission/presscorner/detail/cs/MEMO_11_130 (Frontex and the RABIT operation at the Greek-Turkish border).

Greece initiated Operation Aspida ('Shield') in 2012, deploying a further 1,800 law-enforcement officials to patrol the borders, and constructing a 3-metres-high border fence along 12 kilometres of the river; this fence, constructed as a deterrent for border crossing, re-routed flows at the sea borders and, also, individuals towards crossing in more dangerous parts of the river. The area surrounding the river is a closed military zone, which strictly regulates entry and forbids photography, thereby largely preventing journalists, researchers, advocates and migrants themselves from documenting the expulsions across the border.

Although the EU has attempted to curb the migration flow across the Evros River, it should be noted that this flow itself is due, *inter alia*, to the EU's own agreement with Turkey: a controversial 2016 *EU-Turkey Statement* that paved the way for asylum seekers to be returned from the Greek Islands to Turkey (which it deems safe under the terms of that agreement), does not apply to the Evros border; thus, following the March 2016 signing of the EU-Turkey Deal, attempted crossings to Greece across the river have increased as a result. As the *EU-Turkey Statement* stifled migration to Greece through the sea route, river crossings increased once more in direct response; from 3,784 land arrivals in 2016 to 6,592 in 2017 to 18,014 in 2018.[4]

Within the overall EU fixation to insist on a deterrence policy, pushbacks seem to be a constant tool of operations. Testimonies have detailed thousands of expulsions (pushbacks) by Greece across the Evros River throughout the last few years, of individuals from various countries, including Afghanistan, Algeria, Egypt, Iran, Iraq, Morocco, Pakistan, Palestine, Somalia, Sudan, Syria, Tunisia, Turkey and Yemen. Greece has detained men, women (including women in various stages of pregnancy), children, infants, persons with disabilities and persons with serious injuries. Illegal detention, police brutality and violence have become a steady parameter of the operation.

Case study 1

The Greek NGO HumanRights360 has closely followed the case of Fady, who was illegally expelled from Greece during the night between 30 November 2016 and 1st December 2016 after having been stripped of his German residency permit, travel document and other belongings. Specifically, the complaint concerns arbitrary detention, ill-treatment and a summary expulsion (pushback) carried out during that night; Greek police officers and German-speaking individuals forcibly returned approximately 50 asylum

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4   Data on Greece from UNHCR site provided by the Hellenic Police: `https://data2.unhcr.org/en/situations/mediterranean/location/5179`.

seekers, refugees and other migrants from Greece to Turkey, along with Fady. Fady had travelled to Greece from Germany – where he had been recognised as a refugee and was granted permanent residency in 2015 – on 28 November 2016 in order to find his then 11-year-old brother, who had lost contact with Fady the week before when he was about to cross the Evros River from Turkey.

During the afternoon of 30 November 2016, Fady approached the bus station in the Greek border town of Didymoteicho to look for his brother, where he was approached by Greek police officers who, upon learning he was Syrian, arrested him without explaining his rights. He was then brought to a detention centre, where Greek police officers stripped him of his German permanent residency document, travel document and the keys to his home. They held him in a dirty cell along with other men for several hours without food or water, along with some 50 other migrants, including men, women, and children. Throughout his apprehension and detention, Fady tried to tell the officers that he had a German passport and was legally present in Greece, but the officers refused to listen to him, instead shouting at him to follow their orders, refusing to provide any reason for their actions, and beating him on several occasions. While he was detained, the Greek police also confiscated Fady's German documentation, passport and house keys. The same night, Greek forces and German-speaking commandos engaged in an operation to forcibly remove the group of migrants to Turkey across the Evros River.

As a result of his expulsion on 30 November 2016, Fady was subject to significant physical and mental harm and roughly three years of precarity and legal limbo, which ended in December 2019 after the German authorities reissued his documentation. During the 13 months he spent in Turkey, between 30 November 2016 and 19 December 2017, Fady attempted to return to Greece 16 times, during which he was pushed back to Turkey by the Greek authorities 11 times, and pulled back by the Turkish authorities five times. In many of these instances, he was also subject to arbitrary detention, beatings and other forms of ill-treatment by the Greek and Turkish authorities respectively. One of his attempts to re-enter Greece took place via the sea route from Turkey to Greece, during which Fady was returned by the Turkish coast guard, whereas the others were along the Evros River border.

Fady was trapped without legal status in Turkey until he succeeded to re-enter Greece on 19 December 2017, 385 days after his initial expulsion. He was then trapped in Greece without documentation or a legal right to remain in Greece for almost two years, before he was finally able to return to Germany on 30 October 2019. His expulsion to Turkey by the Greek authorities in November 2016 meant that he had to undergo a protracted pro-

cess of returning his German documentation that he initiated at the German Consulate in Istanbul and that proceeded for many more months through the German Embassy in Athens. During the 1,065 days that elapsed between Fady's expulsion from Greece and the reissuance of his German residency permit, Fady experienced physical and mental harm, including bodily injury, toxic stress and severe financial hardship, all of which were caused by the initial pushback incident on 30 November 2016.

The arbitrary detention and expulsion of Fady by Greek border forces – allegedly accompanied by German-speaking officers, likely members of the EU's border agency Frontex – showcases a continuous pattern of degrading and inhumane behaviour which amount to torture. The Greek authorities confiscated Fady's German residency and travel documents, arbitrarily detained Fady, and proceeded to forcibly remove Fady to Turkey, rendering him de facto stateless and rightless for several years, including by hindering his access to basic needs such as medical care.

HumanRights360 supported Fady until he was able to re-enter safely to Germany and has subsequently filed, in cooperation with Global Legal Action Network (GLAN), a complaint with the UN Human Rights Committee on his behalf (HumanRights360 2020a). To mitigate the lack of evidence created by the pattern of confiscation of phones and any other electronic equipment, combined with the fact that Evros River is a closed military zone so any chance of witnesses is excluded, the legal submission made use of evidence in a report compiled by Forensic Architecture which reconstructed events with Fady's testimony and input through a technique called 'situated testimony' (Forensic Architecture 2020a).

The case of Fady showcases the general pattern implemented: migrants are caught by Greek police, either during the river crossing, immediately after reaching the Greek side of the river, or while walking in a nearby village. They are apprehended by Greek police and brought to a detention centre or other unofficial detention facilities in the form of confined spaces such as warehouses. They are detained for hours, in unsanitary conditions, without access to food or water, even for infants. The Greek police fail to provide a reason for their detention, they ignore requests for legal representation including to seek asylum, and they instruct the migrants to remain silent. Migrants are stripped and searched, and the officials confiscate and/or destroy the migrants' phones and other personal belongings, sometimes including money and documentation. Officials regularly beat the migrants in detention, sometimes including pregnant women and children. At night, the officials then transfer the migrants to a group of commandos, who wear black and/or camouflage, with their faces covered, and speak softly or not at all, and who push the mi-

grants back to Turkey across the Evros on small inflatable boats, often beating them along the way.

3 From Securitisation to Weaponisation

The unprecedented health emergency that hit Europe in the first half of 2020, and is still, at the time of writing, plaguing large parts of the American, Asian and African continents, accompanied with a widespread socioeconomic downturn, has at the time overshadowed the crisis created at the Greek-Turkish border. On 27 February, Turkey decided to effectively suspend the 2016 *EU-Turkey Statement* and in doing so directed thousands of asylum seekers to the border with Greece; On 28 February 2020 President Erdogan announced that the Turkish government "will no longer stop Syrian refugees from reaching Europe",[5] causing diplomatic disputes, violent clashes between newcomers and Greek governmental actors, and an aggressive political response.

In the war of words exchanged by the two sides, the Greek government and far-right Twitter users has been using the term 'hybrid war' to describe what they perceive as a Turkish attempt to 'intrude' on Greek territory through indirect means, here with refugee bodies instead of bullets. In response to Turkey's weaponisation of refugees, Greece and EU intensified the war against refugees themselves with escalating violence (Forensic Architecture 2020b).

The Greek government has chosen to respond to the presence of immigrants and refugees as an imminent threat, as potential enemies who are jeopardising the country's sovereignty. Such a response is obvious by their decision to purchase and supply ammunition, M84 stun grenades, grenades of chemicals, grenades (CS830) and armament, amounting to €2,180,520.00. According to the Ministry of Citizen Protection, all of those purchases were completed "for the purpose of covering any urgent and unforeseen necessities of the Greek Police concerning any tackling of migration flows in Evros Region" (HumanRights360 2020b).

As a result, since February 2020 there is a substantial increase in human rights violations of newcomers, including, but not limited to, their right to non-refoulement, the prohibition of torture, and their right to have access to the asylum process (HumanRights360 2020b). The Greek government justified the actions taken by stating that the country "came under an illegal, mass and orchestrated attempt to raze our borders" adding that Greek authorities "stood up protecting

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5 https://www.euractiv.com/section/justice-home-affairs/news/turkey-says-will-not-stop-syrian-refugees-reaching-europe-after-troops-killed/.

not only our frontiers, but those of Europe too". The same line of reasoning was also reflected in the decree adopted by the Greek government on 2 March, suspending the possibility to lodge asylum applications for one month. The decree justified the suspension of asylum applications with reference to "[t]he extraordinary circumstances of the urgent and unforeseeable necessity to confront an asymmetrical threat to the national security, which prevails over the reasoning for applying the rules of EU law and international law on asylum procedures" (Odysseus Network 2020).

Case study 2

HumanRights360 has documented and closely followed the case of Parvin, a 30-year-old Iranian woman.

According to her testimony: "Five times I was pushed back to Turkey, without having the time and the safeguards to apply for international protection".

"They were waiting for us in the field. I do not know if police were, commandos or border police. They had binoculars that could sense body heat. They were acting very differently than other policemen. They confiscated our mobiles, chargers, power banks".

"They took us out and drove us to the yard. I got afraid that they wanted to push us back to Turkey, so I started yelling at everyone 'go back, go back'. At that moment, they caught me and drove me to a room, away from the other cells which had two doors, one towards the yard and the other one downstairs. There I was bitten up by one policeman and one man with a baton and a wire. I stayed there for six hours. While I was there the other detainees were yelling all the time: 'Where is Parvin, where is Parvin?'. Because of this upheaval, other policemen came – commandos. In the beginning, there were twelve policemen with blue uniforms, and later on, fifty people arrived, commandos in black uniforms and guns. Moreover, a man dressed in civil clothes was in this place. He was the one who bitted me up, and he insulted me, yelling at me 'fuck you!'. Not only him but the other policemen too. When they drove us to the river, they put us in a line to enter the plastic boats and they were telling us 'to be quiet', especially when somebody was passing by. Additionally, they had flashlights with a red light in order to not be seen by the Turkish soldiers".

Parvin tried to enter Greece during the tensions at the borders of 27-8 February 2020. She was once again apprehended, illegally detained in an informal detention site, denied the right to apply for asylum although she claimed she was at risk of chain refoulement to Iran if returned, and, eventually, violently pushed back to Turkey. During that specific incident, she managed to hide her phone and communicate with us, and even send us a video for the

cell where the group was kept (HumanRights360 2020b). We communicated with local authorities and even submitted an urgent appeal to the UN Special Rapporteur on Torture; sadly, to no avail.

Those who are lucky enough to cross the river and not be pushed back to Turkey face the danger of being injured or even killed within the Greek borders. Due to the aggressive persecutions by the police, throughout 2020, there has been an increase in car accidents, and consequently in the number of deaths, of newcomers while trying to reach further into Europe. The rise in car injuries, especially for minors who are obligated by the smugglers to act as drivers, is one of the by-products if the policy implemented.

Case study 3

In November 2020, one Unaccompanied minor (UAM) was referred to HumanRights360 team in Evros, in order to undertake his legal representation and to support his claim of international protection before the Asylum Unit of Fylakio on 16 November 2020. The UAM was a victim of a car accident following an aggressive car chase persecution by the police. Following his hospitalisation in Kavala General hospital he was transferred to RIC Fylakio, Orestiada on 2 October 2020. On 19 November 2020 he was referred in priority, due to his serious injury, at Diavata Safe Zone through National Centre for Social Solidarity. By mid-December, HumanRights360 was informed by NGO ARSIS' lawyer who has undertaken his legal representation at Diavata Safe Zone that the minor had left the camp to buy food and never returned. One month later the minor communicated with them testifying that he had been arrested outside the camp and despite the fact he showed his legal documentation – proving he is an applicant of international protection – he was violently pushed back at Turkey. (HumanRights360 2021a)

4 Legalising Pushbacks?

The de-escalation of the situation at the Evros land border did not in any case restore respect for EU asylum standards at the Greek land and sea borders. Over the following months, civil society organisations and independent observers reported increasing use of different pushback practices by the Greek authorities and unidentified paramilitaries (Cortinovis 2021).

The allocation of substantial funds in order to enhance the militarisation of the borders in conjunction with the rhetoric of an 'invisible enemy' threatening our borders have resulted to a legitimisation of

pushback operations and an increase of racist speech and violence. At the same time these practices have resulted to further violations of third-country nationals' rights both by 'border guards' (police, army, Frontex etc.) and/or by self-appointed groups. These groups operate at the borders in order to protect the citizens from the 'invisible enemy' deploying criminal behaviour carried out by complete impunity. The failure of an effectively address of the pandemic has deteriorated the situation throughout Europe excluding this population from EU member States. Member States mostly limit their actions on addressing the 'emergency' situation disregarding the flagrant violation of these people's rights and disregarding the fact that this population has fled from their countries of origin due to their fear of persecution and therefore they are in need of international protection.

The issuance and implementation of the Joint Ministerial Decision for Turkey as a safe third country, in essence, seems to function, in the communication for the political leadership of the relevant ministries, as a legitimate argument for the systematic pushbacks at the country's sea and land borders (Joint NGO Press Release 2021).

Case study 4

HumanRights360 filed an action before the ECHR on 18 March 2021 for violations of arts 2 §§ 1, 3, 5, 13 and Art. 4 of the *Fourth Protocol* of the ECHR representing Mr. Z.I., beneficiary of subsidiary protection granted from the German authorities, who was arrested on 20 September 2020, in Thessaloniki. The applicant, while in a town square, was approached by police, who requested his documents and then took him to the nearest police station. The applicant, from the very beginning, showed the police authorities who requested the documents he had with him, a certificate from the Regional Asylum Office of Samos about his recognition by the German authorities as a beneficiary of subsidiary protection as well as other documents. At the police station, he showed them the certificates again but the police ignored him. After some time, he was transferred to another place, reminiscent of a detention centre. There they took his bag and mobile phone, also took his fingerprints and then put him in detention, along with other people. The next day, four white Greek police vans arrived, with Greek license plates, closed without windows, and led them to a stadium-like area. There came a police cage, with the driver and co-driver dressed in military uniforms and led them to the Evros River. They were forced to sit down and after hitting them, they were told not to make a fuss. They put him on the boat, beat him and sent him back to Turkey.

Mr. Z.I. was subjected to inhuman and degrading treatment as the Greek authorities, via the police, in essence, kidnapped him, forcibly pushed him back and put him in a constant risk of being

tortured and of being subjected to inhumane treatment in Turkey and Syria. The overall behaviour of Greek authorities is a violation of art. 3, as the apprehension, the arbitrary arrest, the abduction and transportation of the applicant in an organised manner to the land borders of the region of Evros and his violent pushback to Turkey, with the factual use of force (hits with truncheons and kicks) are in themselves inhumane and degrading. Following his pushback to Turkey, he also faced the risk of being sent back to Syria, where he was in danger of being tortured, as well as in a risk for his life and personal safety.

5 The Difficulty of Legal Redress and Evidence Gathering

Several NGOs and human rights groups have been documenting those practices for years; numerous attempts have been made to find legal recourse before national and international courts and bodies. The difficulty to acquire hard data is flagrant: the militarisation of this border region makes access extremely difficult; a restricted 'buffer zone' runs along both banks of the river. Detention centres and border guard stations are often located within this buffer zone, keeping detained people out of sight and without access to legal support.

For many people pushed back, it is essentially impossible to return to Greece and pick up where they left off. Legal redress – while theoretically possible – is exceedingly difficult to access. Once outside the country, it's extremely hard to connect with lawyers inside Greece and sign a power of attorney. People who are pushed back usually end up undocumented in Turkey, which has made it more difficult for refugees and asylum seekers to access humanitarian protections there in recent years, adding another layer of insecurity and complexity. Even those who make it, are afraid that this would negatively affect their asylum seeker status and have to wait until they find haven; ie. move to another European country. But then, again, time has elapsed, evidence has been lost, deadlines have passed. Only two pushbacks cases were investigated in 2020 by the Hellenic Police and four cases by the Greek Prosecutor, but no case of pushback has ever resulted in a trial before a court (ENNHRI, HRNCHR 2021).

The Greek authorities' widespread and systematic practice of collective summary expulsions of refugees, asylum seekers, and migrants across the Evros border has been documented and condemned by international authorities for several years – recently including the UN Special Rapporteur on the Human Rights of Migrants, Felipe González Morales (2021), EU Commissioner for Home Affairs, Ylva

Johansson,[6] and the Council of Europe Commissioner for Human Rights, Dunja Mijatović (2021); all facing the monotonous yet ambiguous reply by the Greek State that "[a]llegations about violations of the principle of non-refoulement do not correspond to the operational activities which are implemented" (UN Human Rights Council 2021).

Besides the direct responsibilities of Greek authorities, mounting evidence of human rights violations at the Greek-Turkish borders calls into question the responsibility of the EU for tacitly accepting those violations; as militarisation of border intensifies and the lack of EU scrutiny continues, it becomes evident that the EU counts on Greece to deliver its dirty job. There is now a great volume of national and predominantly EU legislation with references to border security and the need to guard them. The Schengen Treaty dictates the bolstering of the European borderline, while the bolstering of national borders is a fundamental requirement of national sovereignty. In every document relating to the management of the refugee crisis, EU bodies constantly reiterate both of these principles, affirming the need for border control, in much the same way the same principles are affirmed when tackling terrorism. Thereby, the notion of 'security' acquires a double meaning: a) for the refugees, especially during search and rescue and in securing safe passage and b) for the borders, with a series of special operations by forces created to patrol sea borders, south and southeast, with continuously surging EU funding (operations 'Poseidon' and 'Sophia' by Frontex, RABIT units, and EU NAVFOR). The confusion relating to substance of security negatively affects migrants, as it is clear that national and European borders are not threatened but porous to successive waves of people with a legitimate claim to asylum.

EU officials have openly applauded the fortressing and 'weaponising' of the Evros-Meriç border as a 'European shield' and have provided increasing amounts of funding to Greece's management of the EU's external border. As Frontex continues to enforce the border of the Evros-Meriç River border in cooperation with Greek officials, Greece completed in August 2021 a new 40-km (25 mile) fence on its border with Turkey and a new surveillance system was in place to stop potential asylum seekers from trying to reach Europe following the Taliban's takeover of Afghanistan (*BBC News* 2021).

The launch in September 2020 of another round of reform of EU asylum and migration law (EU Pact) represents an opportunity to address identified shortcomings in existing accountability instruments, and to put in place a comprehensive and independent system for monitoring compliance with fundamental rights at EU external borders;

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6 See Ylva Johansson's statement: `https://twitter.com/dw_europe/status/1446109344379011093?ref_src=twsrc%5Etfw`.

yet, this opportunity will only remain theoretical if the EU continues this process of externalisation of migration management and militarisation of border control. As long as European countries continue to arbitrarily replace their international obligations with *ad hoc* humanitarian gestures and refuse to legislate for safe passage to Europe for the people who need it, fortress-Europe remains the main premise and illegal pushbacks one of its tools.

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Relocation of Torture and 'State Torture'
Readmission Agreements, Externalisation of Borders and Closure of Ports in the Mediterranean Sea

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Abstract   The aim of this essay is to focus on a present and important problem, i.e., the rejecting of people coming from Libya together with the closing of harbours for migrants and the criminalisation and obstruction towards the NGOs that are engaged in saving human beings in the Mediterranean Sea. The text argues how such attitudes are crimes against humanity, comparable to the infringement of prohibition of torture and of inhuman or degrading treatments. Responsibility certainly lies with who personally practise torture, but the European States governments and the European Union Institutions cannot actually disclaim liability.

Keywords   Torture. Borders. Crimes against humanity. Readmission agreements. Principle of non-refoulement.

Summary   1 Border Control as the *Grundnorm* of Immigration Policies. – 2 Readmission Agreements as an Icon of Border Externalisation. – 3 Returns, Relocation of Controls and Closure of Ports. Violation of the Principle of Non-Refoulement and Inhuman or Degrading Treatment. – 4 Conclusions. State Torture?

> "Let us leave this Europe that doesn't stop talking
> about man, despite slaughtering him wherever he
> meets him, on every corner of its streets, in every
> corner of the world. For centuries, Europe has halt-
> ed the progression of other men and has enslaved
> them to its designs and its glory; for centuries, in the
> name of a supposed 'spiritual adventure', it has suffo-
> cated almost all of mankind [...]" (Fanon 1962, 240)

1 Border Control as the *Grundnorm* of Immigration Policies

For some years now, the issue of border control has been the focus of national and European immigration policies. These policies base on two fundamental axes: return and readmission. In both cases, co-operation with third countries is crucial.

If we look back over the last few years,[1] unequivocal indication in this sense is provided by an European Union Communication dated 2016, "on establishing a new Partnership Framework with third countries under the European Agenda on Migration", which reaffirms the central role of "a coherent, credible and effective policy with regard to the return", and that the proper functioning of the return and re-admission system is essential in agreements with third countries, with a view to "specifically and measurably increasing the number of returns and readmissions".[2]

In 2017, the European Commission adopted two policies with evocative titles: *Communication on a more Effective Return Policy in the European Union. A Renewed Action Plan*[3] and *Recommendation on Making Returns more Effective when Implementing Directive 2008/115/EC of the European Parliament and of the Council*.[4]

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1 Previously (and in particular since 2005), several acts, mostly soft law ones, such as the *Global Approach to Migration and Mobility*, marked a change in the manner and intensity of European policies (Gjergji 2016, 70), with a growing role for cooperation with third countries, "mobility partnerships", based on the assumption that "without effective border controls, reduced illegal immigration and an effective return policy, the EU will not be able to offer better opportunities for legal migration and mobility" (European Commission, *The Global Approach to Migration and Mobility*, COM(2011) 743 final, Brussels, 18/11/2011, 5).

2 COM(2016) 385, 07/06/2016.

3 Communication from the Commission to the European Parliament also the Council, COM(2017) 200 final, Brussels, 02/03/2017.

4 Commission Recommendation, C(2017) 1600 final, Brussels, 07/03/2017.

As for documents with a broader scope, such as the *European Agenda on Migration*, adopted by the European Commission on 13 May 2015, "border management" is one of the "four levels of action" identified, but it also interacts with the other three levels ("reducing the incentives for irregular migration", "duty to protect: a strong common asylum policy", "a new policy on legal migration").[5] Similarly, border control is recurrent in the various scenarios outlined in the *White Paper on the Future of Europe* dated 1st of March 2017.[6]

In 2018, the European Commission published a *Progress Report on the Implementation of the European Agenda on Migration*[7] and, in this case too, a significant space is devoted to border control and particularly to cooperation with third countries regarding return and readmission.

The picture is clear: to strengthen border control through cooperation with third countries, i.e., to externalise borders. Fortress Europe, first and foremost: it is of no relevance the fact that many of the countries with whom agreements have been signed are authoritarian, warring States that fail to guarantee human rights and do not protect the right to asylum.

It is a process characterised by a high level of informality, combining development cooperation with the control of migratory flows,[8] whose lines are decided in 'unofficial' contexts, such as, in relation to the involvement of African countries of origin and transit of migrants, the Khartoum Process in 2014 or the Valletta Summit in 2015.

Without disregarding the advantages that development cooperation brings *also* to the countries that govern economic aid,[9] but not forgetting that it fails to compensate for the extraction and despoiling of wealth from the countries receiving aid, we point out that it becomes a bargaining chip in order to obtain border control (see Ferri 2016).[10] (Neo)Colonialism takes on a new interpretation, with paradoxical boundaries: European countries – some of them – have not infrequently contributed, to put it mildly, to the devastation in terms of

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[5] European Commission, COM(2015) 240 final, Brussels, 13/05/2015.

[6] European Commission, *White Paper on the Future of Europe*, COM2017(2025), 01/03/2017.

[7] Communication from the Commission to the European Parliament, the European Council and the Council, COM(2018) 301 final, Brussels, 16/05/2018.

[8] Cf. European Commission, COM(2016) 385, 07/06/2016.

[9] Quantitative references can be found in the report by several non-governmental organisations (cf. Honest Accounts 2017).

[10] For a tangible example, see the creation (at the November 2015 Euro-African Summit in Valletta) of a dedicated fund, the EU Trust Fund for Africa, managed by the European Commission, to which funds for cooperation and humanitarian aid have been diverted; see European Parliament, Resolution on the EU Trust Fund for Africa: the implications for development and humanitarian aid, 13 September 2016, P8 TA(2016)0337.

poverty and wars ravaging Africa and now expect the African countries to cope with the exodus that this has led to, exposing the victims of economic and environmental disasters and armed conflicts to further violation of their rights.

At the beginning of 2020, the European Commission announced the adoption of a *New Pact on Migration and Asylum*,[11] which does not seem to harbour discontinuity,[12] if we consider how it moves from the recognition of the "major strides [...] on migration and borders since the 2015 European Agenda on Migration". It includes "the reform of the Common European Asylum Policy", with a system described as "more resilient, more humane and more effective".[13] The question, given the precedent, is obvious: more effective in guaranteeing the right to asylum or in border control?

The EU model is replicated at national level: facilitated return and readmission procedures and cooperation with third countries to externalise controls and prevent the entry of migrants.

As for the international framework, or rather, in the context of the global governance that is now replacing it, the latest actions include the adoption of the *Global Compact for Safe, Orderly and Regular Migration*,[14] a non-legally binding document, aimed at "improving cooperation on international migration", "acknowledging that no State can address migration alone"[15] (Foresti 2018). Among the "interdependent guiding principles", alongside the reference to human rights, national sovereignty and sustainable development, we see the international cooperation, which "requires international, regional and bilateral cooperation and dialogue".[16] Consistently, among the goals indicated, we notice "cooperate in facilitating safe and dignified return and readmission [...]", to be achieved (and it is the first point indicated) through the development and implementation of "bilateral, region-

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[11] European Commission, Communication, Commission Work Programme 2020. *A Union that Strives for More*, COM(2020) 37 final, 29/01/2020, 8.

[12] Pending publication of this paper, the European Commission adopted the *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*, Brussels, 23/09/2020, COM(2020) 609 final. The Communication insists on "robust and fair management of external borders", on "streamlining procedures on asylum and return", on "an effective return policy", on "mutually beneficial partnerships with key third countries of origin and transit".

[13] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*, Brussels, 23/09/2020, COM(2020) 609 final.

[14] A/RES/73/195. The *Global Compact* is adopted by the majority of UN Member States at an Intergovernmental Conference in Marrakesh, Morocco, on 10 December 2018, followed closely by formal endorsement by the UN General Assembly on 19 December 2018.

[15] *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, §§ 7 and 8.

[16] *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, § 15.

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al and multilateral cooperation frameworks and agreements, including readmission agreements", specifying that it is necessary to ensure "that return and readmission of migrants to their own country is safe, dignified and in full compliance with international human rights law".[17]

2   Readmission Agreements as an Icon of Border Externalisation

The core of border control policies are readmission agreements, which are extremely unscrupulous, given that the chosen partners are often authoritarian countries or conflict-torn countries, and demonstrate an abdication of the task of protecting rights, with consequent breach of constitutional, supranational and international laws.

In the first decade of this century (from 2004 to 2014 to be precise), 17 readmission agreements were adopted between the European Union and third countries,[18] on the basis of the powers granted by Article 79, § 3 TFEU (Treaty on the Functioning of the European Union); in addition to these deals, more than three hundred agreements were entered into between EU Member States and third countries (Cassarino 2014, 132).

As far as Italy is concerned, in the Online Archive of International Treaties of the Ministry of Foreign Affairs and International Cooperation,[19] about 40 documents appear under the title 'readmission', including agreements, protocols and implementing provisions. The majority of them were stipulated in simplified form (see Marchegiani 2008, 144), with notification and communication in the Official Journal,[20] without a law of authorisation for ratification.

A complete picture of the possibilities of readmission must also take into account the clauses included in association and cooperation agreements (Vitiello 2016, 13 ff.; Borraccetti 2016, 40 ff.), along the lines of Article 13 of the so-called Cotonou Agreement, that's to say a Partnership Agreement between the members of the African, Caribbean and Pacific States, on one side, and the European Community and its member States on the other, signed on 23 June 2000 (2000/483/EC; first references in Cassarino 2016, 21 ff.).

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17   *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, § 16 (no. 21) and § 37.

18   See *Return and Readmission*, `https://ec.europa.eu/home-affairs`.

19   `http://itra.esteri.it`.

20   By way of example, see the Agreement between Italy and Nigeria, Agreement on migration (readmission), Rome, 12 September 2000, notified on 24/04/2006-20/02/2007, in OJ no. 180 SO dated 04/08/2011; the Agreement between Italy and Egypt, Cooperation Agreement on readmission, with executive protocol and annexes, Rome, 9 January 2007, notified on 24/03/2008-26/03/2008, in OJ no. 242 SO of 15/10/2008.

These agreements, but also the benefits contemplated in the afore-mentioned agreement on readmission, make the nature of the 'money for people' exchange explicit. This exchange is often doubly advantageous for the involved European countries, because they can make business in Africa, with the surplus of a simplified and externalised control of migratory flows. Of course, there is a price to pay: the absence of rights and democracy, but are we sure that this is really a cost for global economic governance?

In recent years – from 2015 to 2016 –,[21] readmission agreements (or clauses) are being increasingly stipulated in para-institutional contexts – with interpretations that can be even paradoxical, as in the case of the "EU-Turkey Agreement" – and through hyper-simplified, i.e., soft procedures: agendas, partnerships, declarations, exchanges of notes, memoranda (Gjergji 2016; Olivito 2020).

The advantages of informality are manifold: greater simplicity in the drafting and management of the agreement, impossibility of public debate and criticism (from parliamentary bodies to political and social forces), circumvention of the control instruments set up by the legal systems (primarily jurisdictional).

The model of these agreements[22] is the *EU-Turkey Statement*, 18 March 2016 (Favilli 2016), which appears in the form of a press release on the institutional website of the European Council.[23]

In reality the form is so 'informal' as to cast doubts on the nature of international agreement (Corten 2016; den Heijer, Spijkerboer 2016; Peers 2016). In its favour, however, we can find the substantialist criterion applied within the EU with regard to sources, and the content of the agreement, which involves legal obligations (not attributable to other acts). This is a typical act of *soft law*: "rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects" (Snyder 1993, 32; Algostino 2016).

The informal character of the agreement contravenes EU law, which in matters covered by the Statement requires, in compliance with Articles 77-78 TFEU, the ordinary legislative procedure, i.e., for the adoption of an international agreement, to follow the procedure laid down in Article 218 TFEU, with the participation, given the subject, of the European Parliament.

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21 The 2015-16 period marks a new phase in the European Union's migration policies, not for a change in their content, but for their acceleration and de-formalisation.

22 The character of 'model' of the EU-Turkey 'agreement' is recognised by political summits and in communications of the European Commission (for all, see European Commission, COM(2016) 385, 07/06/2016, where, with regard to the *EU-Turkey Statement*, it is stated that "its elements can inspire cooperation with other key third countries and point to the key levers to be activated").

23 http://www.consilium.europa.eu/it/press/press-releases/2016/03/18-eu-turkey-statement.

By the way, an essential feature of soft agreements appears here: the substantially exclusive role of the executive bodies in their drafting. Now, being aware that international relations traditionally belong to the domain of executive bodies, the almost total ousting of the legislative system marks a step beyond; a step which is consistent with the growing concentration of power within the executive bodies, whether they act within the scope of government or in the flexible and promiscuous space of 'governance'.

As for the content of the *Statement*, it is typical of readmission agreements: to make return easier,[24] with all that this implies in terms of its impact on the right to asylum, on respect for human rights and particularly on the prohibition of torture.

Therefore, the uncompromising choice of Turkey as partner and safe State demonstrates that the democratic or non-democratic nature of the country with which the agreement is entered into – i.e., the risk of migrants and refugees suffering torture or inhuman or degrading treatment – is considered irrelevant.

The soft character of such agreements concedes irresponsibility, in the face of a content that contravenes the rules of the European Union, as can be seen from the indeed paradoxical ruling of the General Court of the European Union.

An appeal was made to the Court, under Article 263 TFEU, by two Pakistani nationals and one Afghan national, seeking asylum in Greece, who feared, by virtue of the agreement, that they would be sent back to Turkey.[25] The appeals were rejected on the grounds of incompetence. In the press release issued on 18 March 2016 announcing the agreement – the Court order States – the terms "members of the European Council" and "European Union" are used inappropriately. On 17 and 18 March 2016, two separate meetings were held in parallel: the session of the European Council and an international summit, and in the latter the Heads of State and Government, in their own right and not as members of the European Council, adopted the *Statement*, together with their Turkish counterparts.[26] Therefore,

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[24] "Turkey furthermore agreed to accept the rapid return of all migrants not in need of international protection crossing from Turkey into Greece and to take back all irregular migrants intercepted in Turkish waters"; "All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion" (*EU-Turkey Statement*, 18 March 2016).

[25] *Cases NF, NG and NM/European Council* (T-192/16, T-193/16 e T-257/16).

[26] General Court (First Chamber, Extended Composition) of the European Union, *NF v European Council*, Case T-192/16, Order, 28 February 2017, but the orders adopted in relation to the other two cases are of the same substance.

independently of whether it constitutes, as maintained by the European Council, the Council and the Commission, a political statement or, on the contrary, as the applicant submits, a measure capable of producing binding legal effects, the EU-Turkey statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union, or as revealing the existence of such a measure that corresponds to the contested measure.[27]

Hence the Court's lacking of jurisdiction.

No agreement, no act, therefore no breach of EU law, neither in terms of procedure nor in terms of respect for human rights and international protection law. And – it may be added – recognition of an extreme margin of manoeuvre for the governments, who take on different legal guises in parallel, moving seamlessly from the EU's role to the one of international negotiators or of members of a political summit, as befits the 'habitat' of a governance, 'free' from procedures and forms (…and from the constraints imposed by democratic parameters).

Now, even assuming that the *Statement* dated 18 March 2016 is not an act of the European Union, because of the improbable dual role of the governmental summits, there's still a remark to be pointed out. On the one hand, if it is considered to be nothing more than a mere political declaration, the rejections carried out in its name are completely illegitimate. On the other hand, if it is seen as an international agreement, albeit informally entered into, it should still – irrespective of the national law of each State – respect the *ius cogens*, i.e., the "*prohibitive rules* from which derogation is prohibited" (Carreau, Marrella 2016, 65), to which, as we will see shortly, the principle of non-refoulement belongs.

In the *Progress Report on the Implementation of the European Agenda on Migration*,[28] in 2018, therefore *after* the order of the EU Court, it is stated that "the EU-Turkey Statement remains of paramount importance" with the boasting of the results achieved,[29] and, by way of

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27 General Court (First Chamber, Extended Composition) of the European Union, *NF v European Council*, Case T-192/16, Order, 28 February 2017, § 71. The plaintiffs appealed against the ruling before the Court of Justice (Section I), which rejected their appeal, declaring it manifestly inadmissible (Case C-208/17, order of 12 September 2018).

28 Communication from the Commission to the European Parliament, the European Council and the Council, COM(2018) 301 final, Brussels, 16/05/2018.

29 There is no lack of official reporting on the state of application of the Declaration either; see, for example, COM(2017) 204 final, 02/03/2017, Report from the Commission to the European Parliament, the European Council and the Council, *Fifth Report on the Progress Made in the Implementation of the EU-Turkey Statement*.

confirmation of the 'validity' of the model, it is pointed out that "while securing third countries' cooperation on readmission of own nationals remains a challenge for the EU, 2017 has seen significant progress with several new *practical arrangements* concluded" (italics added).

In the early months of 2020, this 'non-agreement' was recalled at the time of the dramatic events involving refugees on the Greek-Turkish border by both the EU Minister of Foreign Affairs and the Turkish government, who request its mutual respect (Spagnolo 2020).

The *Statement* is, in short, an elusive and ambiguous act, in a legal limbo as far as responsibilities and recourses are concerned, generating *real* violations of human rights, first and foremost of that considered by Bobbio – we can almost say, with 'excessive' optimism – as an example of "privileged rights, because they are not placed in competition with other rights" and are not limited due to the occurrence of exceptional circumstances (Bobbio 1990, 11): the prohibition of torture, in this case, as it will be seen in the following pages, in its declination as a ban on refoulement (Amnesty International 2017, 18-20).

In actual fact, Italy had pre-empted the model of the *EU-Turkey Statement*, for example in a readmission agreement entered into with Tunisia in 2011. It is a 'ghost agreement': we only know about it because, in the decision issued on 15 December 2016 by the Grand Chamber of the European Court of Human Rights (ECHR), case of *Khlaifia and Others v. Italy*, in reconstructing the legislation relating to the case, in the context of bilateral relations between Italy and Tunisia, the Court cited an agreement stipulated on 5 April 2011 by the Italian Government with Tunisia "on the control of the wave of irregular immigration from that country". The text of that agreement "had not been made public", but some extracts from the minutes of the meeting where it had been 'concluded' were attached by the Italian Government in its application for referral before the Grand Chamber.[30]

We're talking about a non-public text, whose precise content is unknown. Yet even so the effects are tangible, like those suffered by the plaintiffs in the present case: three Tunisian citizens detained in inhuman and degrading conditions first in Lampedusa, then on a ship docked at the port of Palermo, in the end sent back to Tunisia, after a cursory verification of their identity, in application of the agreement of 5 April 2011.

The agreement, in fact, according to what we know, commits Tunisia to accept the immediate return of Tunisian citizens irregularly arrived in Italy after the conclusion of the agreement, "through simplified procedures, which envisage the simple identification of the

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30   European Court of Human Rights (ECHR), Grand Chamber, *Khlaifia and Others v. Italy*, Application no. 16483/12, Judgement 15 December 2016, § 37.

person concerned by the Tunisian consular authorities"[31] (quick and simplified returns), but it also establishes the "strengthening the control of its borders in order to prevent new departures of illegal immigrants, with the help of logistical means made available to it by the Italian authorities"[32] (externalisation of the borders).

As regards the indifference towards the situation in the country with whom an agreement is entered into, we can cite the *Memorandum of Understanding between the Department of Public Security of the Italian Ministry of the Interior and the National Police of the Sudanese Ministry of the Interior for the Fight Against Crime, Management of Borders and Migratory Flows and Repatriation*, signed in Rome on 3 August 2016.

To quote just one figure (and without considering the current situation), in the year the agreement was concluded, Sudan was placed in the *Democracy Index* drawn up by *The Economist* (*Intelligence Unit*), among the (permanently) authoritarian regimes, with an index of 2.37 out of 10.[33]

Lastly, it is impossible not to mention the agreement with Libya, the *Memorandum of Understanding on Cooperation in the Field of Development, in the Fight Against Illegal Immigration, Trafficking in Human Beings, Smuggling and on the Strengthening of Border Security between the State of Libya and the Italian Republic*, signed by the Government of National Reconciliation of the State of Libya and the Government of the Italian Republic on 2 February 2017; an agreement concluded without any specific formal passage, i.e., in a simplified, or rather hyper-simplified form (in breach of Article 80 of the Constitution).

The Italian Government does not consider important that the other party does not hold jurisdiction over the entire Libyan State. The Memorandum was signed for Libya by the Libyan Government of National Unity led by Al-Serraj, recognised by the United Nations, despite the fact he's controlling only part of the territory, contended by the Parliament of Tobruk and General Haftar's army, as well as being occupied by dozens of armed groups. The statement, as early as 2017, written on the Farnesina website "Viaggiare sicuri" (Travelling Safely) which mentioned a "situation of instability and political-insti-

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31 ECHR, Grand Chamber, *Khlaifia and Others v. Italy,* Application no. 16483/12, Judgement 15 December 2016, § 38.

32 ECHR, Grand Chamber, *Khlaifia and Others v. Italy,* Application no. 16483/12, Judgement 15 December 2016, § 37.

33 `https://infographics.economist.com/2017/DemocracyIndex`, as well as `https://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex2016` (these are numbers which, despite residual perplexities as to the truth of these reports, continue to generate doubts in relation to the authoritarian nature); see also, among the various reports on the country, Amnesty International, `https://www.amnesty.org/en/location/africa/east-africa-the-horn-and-great-lakes/sudan/`.

tutional fragmentation in the country",[34] did not seem to bother the Italian Government when it signed the agreement.

The focus of the agreement is the externalisation of borders, with the launch of cooperation initiatives "in order to stem the flows of illegal migrants and deal with the consequences arising from them". In particular, "technical and technological support for Libyan organisations in charge of the fight against illegal immigration", represented by the Border Guard and Coast Guard, and the "provision of temporary refugee camps in Libya, under the exclusive control of the Libyan Ministry of the Interior, pending repatriation or voluntary return to the countries of origin [...]", were envisaged as a solution for migrants crossing Libya with plans to reach Europe by sea.

In July 2020, in the presence of a widespread civil war, with reports and judgments describing unspeakable tortures in centres for migrants,[35] the Italian Parliament, with a majority vote, refinanced the Italian mission in Libya (among other missions abroad), together with the support of the Libyan Coast Guard.

The agreement envisages a tacit renewal at its expiry date, after three years (on 2 February 2020); the draft of the renegotiation of the *Memorandum* sent by the Italian Government was published in the press on 12 February 2020: apart from the occasional mention of human rights, as it has been said, it appears "disconcerting" and "chilling" (ASGI 2020) to still read about "support to security and military institutions in order to stem the flow of irregular migrants", as well as, in the deafening silence on the tortures perpetrated, the commitment to "*improve* [...] the conditions of migrants detained in reception centres" (italics added).

3 Returns, Relocation of Controls and Closure of Ports. Violation of the Principle of Non-Refoulement and Inhuman or Degrading Treatment

Readmission agreements are likely to collide in several ways with the prohibition of torture, established in the main international catalogues on human rights (now part of the *ius cogens*) and in region-

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34 http://www.viaggiaresicuri.it/paesi/dettaglio/libia.html [valid on 04/05/2017, published on 11/01/2017]; on 18 June 2020, the website states: "we repeat our invitation to Italians not to travel to Libya and, to those present, to temporarily leave the country given the very precarious security situation".

35 In addition to the sentences mentioned below, see, *ex multis*, the report of the United Nations High Commissioner for Human Rights, *Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya*, 20 December 2018.

al pacts[36] and constitutions, and subject of specific conventions;[37] as well as, more recently, of the 1998 Rome *Statute of the International Criminal Court*, which includes torture among crimes against humanity, if committed "as part of a widespread or systematic attack against civilian populations".

Yet, today, the statement that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"[38] cedes to the policies of closing and externalising borders, which violate the ban on torture in several ways.

There is no shortage of formulas in the readmission agreements for the safeguarding of human rights, as: "fully committed in promoting and respecting human rights",[39] "the Parties undertake to interpret and apply this Memorandum in compliance with the international obligations and human rights agreements to which the two countries are party".[40] But the nature of the agreements and the parties shows that they are no more than usual expressions.

Firstly, readmission agreements, when entered into with States such as Libya, violate the prohibition of torture and inhuman or degrading treatment by infringing the principle of non-refoulement:

> 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. (Convention Relating to the Status of Refugees, 1951, Art. 33, § 1)[41]

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36 *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950, Art. 3; *Charter of Fundamental Rights of the European Union*, 2000, Art. 4; *American Convention on Human Rights*, 1969, Art. 5 (c. 2); *African Charter on Human and Peoples' Rights*, 1981, Art. 5.

37 Within the scope of the United Nations, reference can be made to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984); at continental level, we can cite the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1987) and the *Inter-American Convention to Prevent and Punish Torture* (1984).

38 Likewise, the *Universal Declaration of Human Rights* of 1948, Art. 5; similarly, the *International Covenant on Civil and Political Rights* of 1966, Art. 7.

39 *Italy-Sudan Memorandum* of 2016, preamble.

40 *Memorandum of Understanding between Italy and Libya* of 2017, Art. 5.

41 The principle of non-refoulement is enshrined in numerous international treaties (*ex multis, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Art. 3), regional treaties (see for example, *Charter of Fundamental Rights of the European Union*, Art. 19) and part of the customary international law, also in the sense of *ius cogens*.

As clarified by the European Court of Human Rights, which links the principle of non-refoulement to Art. 3 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, which prohibits torture, the rationale of the rule is to protect the life and freedom of every person, which implies that any human person (regardless of possession of, or desire to obtain, refugee status) is entitled to it.

The principle of non-refoulement "is absolute and mandatory" and undoubtedly its effectiveness cannot be limited through bilateral international agreements with third countries, such as readmission agreements (Grosso 2009, 17).

In this perspective, the Grand Chamber of the European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*,[42] condemns the policy of Italian refoulement (relating to 2009),[43] in relation to Art. 3 of the *European Convention on Human Rights*, because, with the transfer of the applicants, in the case in question to Libya, the Italian authorities exposed them "in full knowledge of the facts" to treatment in breach of the Convention,[44] given the existence of "reliable sources" who reveal how, in Libya "any person entering the country by illegal means was deemed to be clandestine and no distinction was made between irregular migrants and asylum-seekers" and "were systematically arrested and detained in conditions […] inhuman".[45]

Non-derogation and absoluteness operate not only in relation to formal data, but also with regard to effectiveness: a State is safe and does not expose people to the risk of suffering, first and foremost, torture or inhuman or degrading treatment, when it *effectively* guarantees that this does not happen; an approach – based on tangible guarantees – which is a constant in the jurisprudence of the Court of Strasbourg[46] and forms the basis of the protection of rights in the Italian Constitution (emblematically, see Art. 3, § 2).

The European Court of Human Rights, as well as the EU Court of Justice, have made it clear, for example, that there is no absolute

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42   ECHR, Grand Chamber, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment 23 February 2012, § 128.

43   There is also no shortage of rulings by the ECHR, such as *N.D. and N.T. v. Spain*, 13 February 2020, and *Ilias and Ahmed v. Hungary*, 21 November 2019, which show a much more 'accommodating' attitude towards State policies and – we might add – a much less secure guarantee of migrants' rights at the borders.

44   ECHR, Grand Chamber, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment 23 February 2012, § 137.

45   ECHR, Grand Chamber, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment 23 February 2012, parr. 128 and 125.

46   The European Court of Human Rights has long pointed out that rights are enshrined not as "theoretical or illusory but rights that are practical and effective" (ECHR, *Artico v. Italy*, ruling 13 May 1980, § 33).

presumption of security even for the Member States of the European Union.[47]

The breach of the principle of non-refoulement, and of the prohibition of torture, again with a view to effective protection, may also occur in the case of indirect repatriation. The State of (first) referral must provide sufficient assurance that it will not return migrants to countries where there is a risk that they will be subject to treatment forbidden by Art. 3 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*:

> It is a matter for the State carrying out the return to ensure that the intermediary country offers sufficient guarantees to prevent the person concerned being removed to his country of origin without an assessment of the risks faced.[48]

Another profile is the one of indirect repatriation, for which Strasbourg Court, in *Hirsi Jamaa and Others v. Italy* judgment, found Italy guilty of violation of Art. 3 the Convention:

> the Court considers that, when the applicants were transferred to Libya, the Italian authorities knew or should have known that there were insufficient guarantees protecting the parties concerned from the risk of being arbitrarily returned to their countries of origin.[49]

Secondly, a violation of the prohibition of torture – as a symbol of violation of human rights – may occur when third States are entrusted with checks, identification and detention. The Libyan centres for migrants are a tragic evidence to the fact that these are not only possibilities, but established realities. When agreements are entered into with non-democratic States or dictatorships, it is (almost) certain that the prohibition of torture will not be respected.

Assigning rescue at sea to the Libyan coastguard, as well as entrusting Libya with the management of migrants, now means, with no possibility to invoke the excuse of 'not knowing', to condemn peo-

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47 In this sense, for ECHR jurisprudence, see, among others, Grand Chamber, *M.S.S. v. Belgium and Greece*, ruling of 21 January 2011, Application no. 30696/09; for EU jurisprudence, Court of Justice of the European Union (Grand Chamber), joined cases C-411/10, *N.S. v. Secretary of State for the Home Department*, and C-493/10, *M.E. et al. v. Refugee Applications Commissioner Minister for Justice, Equality and Law Reform*, ruling of 21 December 2011.

48 Likewise, ECHR, Grand Chamber, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment 23 February 2012, § 147, which reflects consolidated jurisprudence.

49 ECHR, Grand Chamber, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment 23 February 2012, § 156.

ple to a life of torture and violence: in this sense we can talk about relocated torture, or perpetration of torture through a third party.

There are countless reports, or stances by international bodies, that describe the dramatic condition of migrants in Libya; just about Italy, we can mention the ruling of the Milan Court of Assizes which demonstrated, in a documented and crude judgment in 2017, without a shadow of a doubt, the existence of violence and torture inside the centres housing migrants.[50]

The Court of Trapani on 3 June 2019 delivered a verdict (in the *Vos Thalassa* case) in which, after having reconstructed the basis in international law of the principle of non-refoulement and the prohibition of torture, stated: the *Italy-Libya Memorandum* is

> invalid, given that, under article 53 of the Vienna Convention on the Law of Treaties (1969) *"any treaty which, at the time of its conclusion, contravenes an imperative rule of general international law shall be null and void"*.

This *Memorandum* is also incompatible with Art. 10, § 1 of the Constitution (about international customary rules), given the customary nature of non-refoulement principle. Moreover, the law authorising ratification pursuant to Art. 80 of the Constitution is missing, so at most it would be "a legally non-binding agreement".[51]

Thirdly, readmission agreements, in their anxiety to ease returns, may also lead to introduce identification, detention and deportation procedures involving inhumane or degrading treatment[52] into the countries from which people are returned: think of the *hotspots*,[53] but also Deportation Centres (known as *Centri di permanenza per il rimpatrio* – CPR, in Italy).[54] The process of dehumanisation of the migrant, and the denial of his legal subjectivity (Gjergji 2016, 106), which culminates with the policy of closure of ports and indifference towards

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50 Milan Court of Assizes, I, ruling 10 October 2017 (filed on 1 December 2017), confirmed by Milan Court of Appeal, I, no. 9/2019, hearing of 20 March 2019; see also Agrigento Court of Assizes, Section II, ruling 12 June 2018 (filed on 22 June 2019).

51 Court of Trapani, Office of the Judge for Preliminary Investigations, ruling of 23 May 2019 (filed on 3 June 2019).

52 More recently, and emblematically, see EU Court of Justice, Grand Chamber, ruling of 14 May 2020, Joined Cases C-924/19 PPU and C-925/19 PPU, on the detention of asylum seekers in the transit zones on the border with Serbia.

53 See Amnesty International 2016; more recently, see the shared note of the Association for Legal Studies for Immigration, ActionAid, ARCI, Borderline Sicilia, IndieWatch, Medici per i Diritti Umani – MEDU, Sea-Watch. *Illegal Detention in the Messina Hotspot of Migrants Disembarked from Sea-Watch*, 10 July 2019.

54 National Authority for the rights of persons detained or deprived of their personal freedom, *Report on the Thematic Visits Carried Out in the Deportation Centres in Italy (February-March 2018)*, Rome, 6 September 2018.

those who die while attempting to reach Europe, is also expressed in the creation of a sub-law, made up of circulars, internal regulations, tender specifications.[55] Such sub-law testifies to the failure of claims for equality, of the centrality of the human being, at the basis of constitutionalism and democracy, and in its flexibility and fluidity the 'possibility' of inhuman or degrading treatment is easily insinuated.

Fourthly, torture or, *at least*, inhuman or degrading treatment can be considered in relation to the policy of the 'closure of ports', strictly related to the approach of externalisation of borders behind the readmission agreements, with the forced detention of migrants – which leads the courts to envisage abduction (Zirulia, Cancellaro 2019a)[56] – on the ships that have rescued them.

If we only consider the events of recent years, we can remember: the case of the *Aquarius* (June 2018), which sailed the Mediterranean for days without finding an harbour that would receive it; the Italian Coast Guard vessel *Diciotti*, detained in the port of Catania with 177 migrants on board (August 2018); the *Sea Watch* 3 and *Sea Eye*, both forced to remain at sea for 20 and 13 days between December 2018 and January 2019 respectively. During the summer of 2019, with the entry into force of the "Safety Decree bis" (Decree-Law no. 53 of 14 June 2019), converted into law (Law no. 77 of 8 August 2019) in the following weeks, several vessels were blocked, forbidden from entering, transiting or stopping in Italian territorial waters and also subject to the heavy penalties introduced by the decree and exacerbated by the law. In June 2019, the *Sea Watch 3* was stranded at sea again for 17 days; in July 2019, the sailing ship *Alex* belonging to the NGO Mediterranea Saving Humans was left for days without permission for disembarkation; in August 2019, the *Ocean Viking*, a vessel managed by SOS Méditerranée and Médecins sans Frontières, was forced to remain at sea for 13 days between Malta and Lampedusa, with 356 people on board, while the *Open Arms* carrying over 100 people was prevented from landing for 19 days. The *Eleonore*, belonging to the NGO Lifeline, spent 8 days waiting before breaking the ban on entering territorial waters and landing, and the *Mare Jonio* was hit by the sanctions of the decree after days at sea.

On 7 April 2020, an inter-ministerial decree[57] stated as follows:

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55   For a critical reflection on the use of circulars in the field of immigration, see Gjergji 2013.

56   See the case of the Italian Coast Guard vessel, the *Diciotti*, but also the case of the *Open Arms*, where, in addition to the proceedings for abduction, the crime of omission and refusal of official acts is alleged (Public Prosecutor's Office at the Court of Agrigento, Decree of emergency preventive abduction, 20 August 2019, no. 3770/2019 R.G. criminal information (Art. 328, § 1, Italian Criminal Code).

57   Decree no. 150 of 7 April 2020, adopted by the Minister of Infrastructure and Transport, in agreement with the Minister of Foreign Affairs and International Cooperation,

> For the entire duration of the national health emergency resulting from the spread of the COVID-19 virus, Italian ports do not guarantee the necessary requirements to be classified and defined as a Place of Safety [...] for rescues carried out by foreign-flagged vessels from outside the Italian SAR area.

Now, apart from the consideration that the right to health is a fundamental right of the "individual" (Art. 32 Constitution), including victims of shipwrecks who have been rescued, there is no doubt that the right to a safe haven is a necessary condition for the protection of the fundamental and acknowledged rights of every human being, such as the right to life, the prohibition of inhuman or degrading treatment (if not torture), the right to asylum.

The conditions on board ships forced to stay at sea for days constitute inhuman or degrading treatment, for which those who order the closure of ports are responsible. Simply by way of testimony,

> conditions on board the *Diciotti* were appalling. It was impossible to stay in the sun, but there was only one canopy. There was not enough shade for everyone, and when it rained we got wet. There were only two bathrooms.[58]

Inhuman or degrading treatment consists of the conditions in which the forced stay at sea takes place (lack of space, toilets, water) and is aggravated by the personal conditions of many migrants, vulnerable people who "have suffered major traumas". As it has been witnessed, "several of them have suffered torture or sexual violence in Libya" and "the wait to disembark, spent in a confined space in the middle of the sea, only makes their condition worse".[59]

The decree that broke the deadlock affecting the *Open Arms*, which had been at sea for 19 days, on 20 August 2019, stated that "the ship was clearly overcrowded" and "in appalling conditions" ("the migrants occupied the entire deck of the ship, lying on the floor, with only two squat toilets available on board [...]") and described "a state of exasperation among the people who had been on board for several days [...], which led to very critical health situations (at physical and psychological level)".[60]

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the Minister of the Interior and the Minister of Health.

58   Testimony of B.B., Eritrean, 29 years old, from Oxfam Italy, Borderline Sicily, *Italy-Libya agreement: human rights in checkmate in 4 moves*, 2019.

59   L. Pigozzi, doctor working with Médecins Sans Frontières, in C. Lania, *Those 356 ghosts of the Ocean Viking without a dock*, in *il manifesto*, 21 August 2019.

60   Public Prosecutor's Office at the Court of Agrigento, Decree of emergency preventive seizure, 20 August 2019, no. 3770/2019 R.G. criminal information.

Previously, again in relation to the *Open Arms*, in the appeal for the annulment of the provision of 1st August 2019 (made by the Minister of the Interior, in agreement with the Minister of Defence and the Minister of Infrastructure and Transport), forbidding the ship from entering, transiting and stopping in Italian territorial waters, the Regional Administrative Court (TAR) of Lazio had already pointed out, with regard to the danger posed by delay, that the documentation presented (medical report, psychological report, declaration of the head of the mission) envisaged a "situation of exceptional gravity and urgency", "such as to justify the granting [...] of the request for monocratic precautionary protection, in order to allow the *Open Arms* to enter Italian territorial waters".[61]

The blocking of vessels gives rise to numerous statements by the institutions guarantors of rights: from ordinary judges to the National Authority for the rights of persons detained or deprived of personal freedom and to the Authority for children and adolescents; from the United Nations High Commissioner for Refugees (UNHCR) to the European Court of Human Rights (exemplary, in this sense, are the interventions concerning the blocking of the *Sea Watch 3* in January 2019, mentioned by Del Guercio 2019).

Preventing entry into territorial waters violates the prohibition of torture, at least as a prohibition of inhuman or degrading treatment, due to the conditions of the forced stay – if not outright 'detention' – on ships, and because of the violation of the duty of rescue (aimed at protecting the life, together with the conditions, both medical and psychological, of those rescued at sea). But there's also the possibility of assuming the commission of the crime of torture under Art. 613*bis* of the Italian Criminal Code (Zirulia, Cancellaro 2019b).

As pointed out by the Court of Agrigento (Office of the Judge for Preliminary Investigations)[62] – in the ordinance, filed on 2 July 2019, in the proceedings against Carola Rackete, captain of the *Sea Watch 3*, under investigation for crimes of resistance or violence against warships (Art. 1100 of the Italian Civil Code) and resistance to public officials (Art. 337 of the Italian Criminal Code), in relation to her conduct during the night of 29 June 2019 while entering the port of Lampedusa[63] – the Italian legal system, and the international incorporated rules, establish the mandatory obligation to guaran-

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61 TAR Lazio, Section Prima Ter, Monocratic precautionary decree, 14 August 2019, proc. no. 10780/2019 R.G.

62 Order on the request for validation of arrest and application of the precautionary measure, 2 July 2019 (no. 3169/19 R.G.N.R.; no. 2592/19 R.G.GIP).

63 With regard to the *Sea Watch 3* incident, an application for interim measures was also submitted to the European Court of Human Rights, in relation to Articles 2 and 3 of the *European Convention on Human Rights*, but the Court rejected the application (25 June 2019).

tee rescue, as a duty which "does not end with the mere taking on board of shipwrecked people, but with their being accompanied to the [...] safe port".[64] The Court of Cassation, again in relation to the Rackete case, stated:

> A ship at sea which, in addition to being at the mercy of adverse meteorological events, does not allow the respect of the fundamental rights of those rescued, cannot be qualified as a "safe place", due to the evident absence of such condition.[65]

According to the previously mentioned ordinance of the Court of Agrigento, "the obligation to save lives at sea is a duty of all States and takes precedence over bilateral rules and agreements aimed at contrasting irregular immigration".[66] Such obligation consequently should prevail on ministerial directives on closed ports (even when 'covered' by laws),[67] by virtue of Arts 10, § 1, and 117, § 1, of the Constitution.[68]

The policy of criminalisation of solidarity (Masera 2019a; Amnesty International 2020) closes the circle of migration policies that kill and torture, punishing inconvenient witnesses of a border closure that causes a veritable genocide of the migrant people.

The appropriation and violence behind the idea of the border (Mezzadra 2018) and the hypocrisy of 'democratic States' that relocate torture become evident. The words attributed by Livy to Romulus when he killed his brother Remus, guilty of having climbed over the walls of the newly founded Rome, are tragically topical: "So, from now on, anyone who dares to climb over my walls shall die".

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64   In the case in point, the Court thereby refers to Article 51 of the Italian Criminal Code, with the exclusion of punishability because the act was carried out in fulfilment of a duty imposed by a legal provision.

65   Supreme Court of Cassation, III Criminal Section, Judg. no. 112, 16 January 2020 (deposited on 20 February 2020).

66   Public Prosecutor's Office at the Court of Agrigento, Decree of emergency preventive seizure, 20 August 2019, no. 3770/2019 R.G. criminal information.

67   Law no. 77 of 8 August 2019.

68   "By virtue of the superordinate nature of conventional and legislative sources [...], no suitability to impose the obligations incumbent on the captain of *Sea Watch 3* [...] could be covered by ministerial directives on 'closed ports' [...]" (Court of Agrigento, Office of the Judge for Preliminary Investigations, Ordinance on the request for validation of arrest and application of the precautionary measure, 2 July 2019 no. 3169/19 R.G.N.R.; no. 2592/19 R.G.GIP).

4   Conclusions. State Torture?

Returning people to Libya, or preventing them from crossing the borders of Niger (Spagnolo 2018) or Sudan, as well as criminalising and obstructing NGOs operating in the Mediterranean, closing harbours or delegating rescue at sea to the Libyan authorities, violates the prohibition of torture and inhuman or degrading treatment and constitutes a crime against humanity.

This is certainly perpetrated by those who practise torture themselves, as well as by the States that just tolerate it, but the governments of the European States and the EU institutions are definitely not exempt from responsibility. As a matter of fact, in making certain political choices, they cannot avoid envisaging the subsequent scenarios, as stated by the European Court of Human Rights in relation to the Libyan situation: "The Italian authorities knew or should have known".[69]

As declared by the National Authority for the Rights of Persons Detained or Deprived of Personal Freedom, in the person of Mauro Palma, about the blocking at sea of the *Mare Jonio* (August 2019), Italy may be accused – with consequent profiles of responsibility at international level – of the violation of the *European Convention on Human Rights* and the 1951 *Geneva Convention on the Status of Refugees*.[70]

In addition to this,

> the immigration and asylum policies and practices of the EU and its Member States constitute a total denial of the fundamental rights of people and migrants, and are veritable crimes against humanity: even though they may not be personally ascribable to individual perpetrators according to commonly agreed criminal law definitions they must be recognised as 'system crimes'. (Permanent Peoples' Tribunal)[71]

In this perspective, a complaint to the International Criminal Court was recently presented – in June 2019 – accusing the European Union and the Member States of crimes against humanity for policies that have made the Mediterranean route the most lethal migration route in the world and for orchestrating forced transfers to detention camps in Libya, similar to concentration camps, where atrocious crimes are committed (Pasquero 2020).

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[69]   ECHR, Grand Chamber, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment 23 February 2012.

[70]   Appeal of the National Authority for the situation of *Mare Jonio*, 30 August 2019, press release (http://www.garantenazionaleprivatiliberta.it).

[71]   Permanent Peoples' Tribunal, Sessions on the violation of human rights of migrants and refugee people (2017-2019), *Final Document*, European Parliament, Brussels, 9 April 2019.

Those who externalise borders, relocate and subcontract torture and inhuman or degrading treatment are co-responsible, as well as those who take measures to close ports, in condemning shipwrecked people to inhuman or degrading treatment. Whoever, following the Italian policies, signs or renews the 2017 *Memorandum of Understanding with Libya* (Minister Minniti, Gentiloni government; Conte-bis government), whoever closes harbours and criminalises sea rescues (Minister Salvini, Conte government; Conte-bis government), whoever continues to vote for the refinancing of the Libyan Coast Guard (the majority of the members of parliament of the 18th legislature), becomes complicit, to take just the most shocking case, in the crimes committed in the centres for migrants in Libya, not to mention the responsibility for the deaths at sea.

And there is more: what is happening questions the democratic nature itself of States that adopt policies and enter into agreements, which actually (but the rights exist insofar as they are effective) contemplate torture or directly cause inhuman or degrading treatment.

'State torture' is by no means new – Genoa 2001 *docet*. It can – *must* – be stopped and punished in courtrooms, but strong social mobilisation is also needed, with disobedience if necessary, in the name of rights, in order to spread acts of testimony, such as those of the brave captains of NGO ships and of the migrants on the *Vos Thalassa*, who rose up against the order issued by the Italian authorities to the ship's captain to bring them back to Libya (Masera 2019b; Ruggiero 2020).

Torture, relocated or otherwise, towards the migrants is a sign of an authoritarian involution of the State consistency with the dogmas of a global governance marked by the hegemony of a model and a social class. This situation reveals a class conflict which is catastrophic for those who, even with their mere existence, show the inequalities and violence of the neoliberal system.

At the same time, the migrants, as well as people living on the fringes of society, but also those who express dissent, constitute a convenient enemy against whom to channel social anger, creating a fictitious community of intent between people at the top and the ones at the bottom of the pyramid (the atomised masses), in order to prevent inequality from exploding upwards.[72] An enemy is created and a further effect is the inhibition of a conscience – class-conscience (to use a term which not surprisingly is ostracised) – ca-

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[72] Emblematic in this sense are the various 'security decrees', such as, to mention the most recent, the so-called Minniti package (Decree-Law no. 13 of 2017, converted into Law no. 46 of 2017, and Decree-Law no. 14 of 2017, converted into Law no. 48 of 2017) and the Salvini's decrees (Decree-Law no. 113 of 2018, converted into Law no. 113 of 2018. 132 of 2018, Decree-Law no. 53 of 2019, converted into Law no. 77 of 2018, and Decree-Law no. 53 of 2019, converted into Law no. 77 of 2019).

pable of uniting those who, in different places, suffer the effects of neoliberalism.

Operations of dehumanisation occur. We're seeing the return of Francisco De Vitoria's *hebetes* (*Relectio de Indis*, 1539):[73] migrants considered as not fully human beings, against whom torture and inhuman or degrading treatment acquire a different weight, tragically revealing the ambiguities that accompany the proclamation of universal rights and their submission to economic interests.

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The Experience of Undocumented Women and Children in Detention Centres in Belgium
Ill-Treatment or Torture?

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Abstract   The article examines one of the forms of state violence exercised on undocumented migrants in Belgium, in particular on women and children, since the introduction of their confinement in detention centres and their forced deportation in the late 1980s. The article concludes that regarding the norm of the intentionality of migration policies and the detrimental effects on the mental and physical health of children and women migrants, the recognising of these inhuman treatments as typical forms of torture of detention centres and their re-labelling as such would seem more consistent and realistic. The challenge of this re-labelling lies in the need to shift the moral and legal debate to the political one in order to question that form of migrants' governmentality and policy unworthy of a democracy.

Keywords   Undocumented women and children. Detention centres. Deportation. Torture. Belgium.

Summary   1 Introduction. – 2 The Creation of Detention Centres. – 3 The Confinement Policy. – 3.1 Organisational Violence. – 3.2 Agent Violence. – 3.3 Violence against Children. – 4 The Practice of Forced Deportation. – 4.1 Collective Deportations. – 4.2 Individual Deportations. – 5 From the Legal to the Political.

1   Introduction

In the dominant social representation in Europe, the practice of torture and human ill-treatment are generally associated with non-Western States that do not respect fundamental rights and freedoms.

These practices are said to result from behaviour stemming from certain cultural traditions whereby 'The West' sits at the top of the scale in terms of respect for human rights. For Freedman and Valluy, this culturalist approach produces not only a polarisation between cultures[1] which persecute and those which protect, but also a "normalisation" of the persecutions practiced in European countries. In addition, it masks the systemic effects of power relations, notably the patriarchal ones, which precisely generate these oppressions in various sociocultural contexts (Freedman, Valluy 2007).

This social representation is often accompanied by an opposition between "refugee-producing" countries, and those that welcome them, as well as a negative and positive polarisation of their image, which has been clearly contested[2] since the 1990s (Fassin, Morice, Quiminal 1997). Indeed, some NGOs in Europe (Human Rights League and Amnesty International in particular) denounce the violent treatment of migrants. For the first time, in 2009, Amnesty International-Belgium is concerned about the extent of violations of migrants' fundamental rights in Belgium and in Europe:

> Human rights violations related to the arrest, detention and deportation of foreigners have been observed to persist, even when they seek international protection. In some countries, some people were denied the opportunity to apply for asylum. In others, the level of protection afforded Iraqi asylum seekers was reduced, and some were even deported. (Amnesty International 2009, 61)

These practices are part of the new restrictive migration and asylum policies developed in the 1990s when the European Union member States decided to work together to strengthen border controls and 'protect' themselves from populations qualified as 'undesirable'

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1 This is also what Makaremi underlines, drawing inspiration from Talal Asad, who observes in this opposition a different justification based on culture: "The violence exerted by 'civilized nations', often labeled as a security operation, humanitarian intervention or damage collateral, does not seem to relate to any particular culture or relationship to violence, while the relationship to violence of 'uncivilized nations' requires specific grids of understanding mobilizing the concept of culture" (Makaremi 2016, 15).

2 "This image is stereotypical: the rich countries are today at the bottom of the ranking of international hospitality (in number of refugees hosted compared to the number of inhabitants and even more to income per inhabitant)" (Freedman, Valluy 2007, 20). This observation is still valid in 2021.

through two main instruments: the Schengen Agreements (1985, enforced in 1995) and the Dublin Convention (1990, enforced in 1997).

This chapter proposes to examine one of the forms of State violence exercised on undocumented migrants, in particular on women and children, since the introduction of these new policies that have reduced migrants' access to the territory, instituted detention centres for undocumented migrants and mobilised a criminalising rhetoric that justifies ill-treatment. These control policies are based on two pillars: the confinement of undocumented migrants[3] in detention centres defined as places "of deprivation of liberty for people staying illegally awaiting deportation" (CIRÉ 2019, 10) and their forced deportation from the country.[4]

The question raised by this essay concerns the nature of the regime of violence inflicted on undocumented migrants and their children in detention centres: is it ill-treatment or is it similar, in some of its forms, to torture? From a legal standpoint, international law distinguishes the degree of seriousness between the two on the basis of the level of pain/suffering inflicted and the intentionality of the act: torture aims to obtain a confession, punish, exert pressure or intimidate while the ill-treatment (cruel, inhuman, humiliating, degrading, which is insulting to the dignity of the person) has no specific goal and presents a high degree of suffering/pain or humiliation/degradation. This legal description of violence has an operational aim, i.e., to restore justice by reparation for the act suffered with regard to fundamental rights by prioritising the categories of victims (legitimate and illegitimate) (Calzolaio, Colombo, Makaremi 2016). In the social sciences, violence is a complex object both epistemologically and methodologically. It is a social construction which, for some, refers to a descriptive process of a field of experience and of the structuring circumstances which requires an ethical examination, and the politics of "the position of whoever qualifies the act of violence" (Naepels 2006, 489). For others, it is a normative and evaluative concept that produces a "disqualification" or a "denunciation" (Lavergne, Perdoncin 2010).

With regard to State violence exercised in detention centres, I propose to examine, on the one hand, the norm of intentionality of migration policies which, in the legal approach, makes it possible precisely to establish a border between ill-treatment and torture and, on the other hand, violent forms of confinement and deportation and

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3 According to Sampson and Mitchelle, this policy has been accentuated with the increase in migration on a global scale. For an analysis of this policy and alternatives to detention see Sampson, Mitchelle 2013.

4 The article does not deal with violence suffered by women during their migratory journey. On this subject, see Laacher 2007; Canut, Pian, Petit 2017; Schmoll 2020.

their impact on children and undocumented women migrants. This dual approach aims to identify the intentionality of the actors who define migration policies on the basis of explicit[5] designs to discourage 'unwanted' migrants from settling in Belgium, and the repetitive practices (punishment, pressure, intimidation) of violent and technical control, and retention in the detention centres. It also aims to reveal the suffering, the physical and psychological[6] traumas known to the State and its agents from the testimonies of migrants and experts who, in many cases, amount to certain traumas resulting from torture.

The first section briefly presents the political context and the institutional architecture of detention centres developed at the end of the 1980s. The second section describes the violence of confinement and its consequences on women and children. The third section deals with the practices of deportation under their collective and individual aspect which notably led to the murder of Sémira Adamu on 22 September 1998. These practices of confinement and deportation are illustrated on the basis of two emblematic cases: that of a 5-year-old girl and that of a 22-year-old woman, both arrested at Brussels airport while transiting, one to Canada, and the other to England.

With regard to political strategies, the legitimisation of practices and the tragic consequences on migrants, the article raises the question of the re-qualification of what the judges of the ECHR[7] most often designate as "ill-treatment" in specific forms of torture generated in detention centres in order to focus the debate more on the political level and on these forms of governmentality than on the moral or restorative dimension.

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5 One of the gendarmes charged with the murder of Sémira Adamu said that 3,500 deportations were carried out each year and that the interior ministry was exerting pressure to achieve the goal. "There is a repatriation success percentage chart that was posted every day. If the number was too low, Colonel X berated us. Through the members of the internal affairs cabinet, we felt the pressure to remove Semira, supported by the Collective against deportations. If this deportation was not successful, it could lead people to believe that the Collective was capable of undermining the policy on foreigners" (Collective against deportations: `https://ccle.collectifs.net/Resume-de-la-deuxieme-journee-d.html`). In 1996, the Belgian authorities set the number of annual deportations at 15,000. (Carbocci, Vanpaeschen, Vanpaeschen 1998, 9).

6 Consequences now recognised in the 2009 and 2018 reports of Amnesty International which concluded for Europe: "On many occasions, States have failed to assume their responsibilities in terms of protecting refugees and migrants. Women and girls have again this year been victims of human rights violations and institutionalized abuse, including torture and other ill-treatment. Gender-based violence was still widespread" (Amnesty International 2018, 51).

7 The eight judgments of the European Court of Human Rights (ECHR) against the Belgian State for "extremely serious violations" of the fundamental rights of migrants and failure to fulfil its duties to protect women and children, are based on the notion of "ill-treatment" (Van Kiersbilck 2007).

The article mobilised several sources; an underdeveloped scientific literature on detention centres, documents from NGOs defending fundamental rights (such as the Coordination and Initiatives for Refugees and Foreigners-CIRÉ; the Coordination against Raids, Deportations and for Regularisation-CRER) or institutional (General Delegation for Children's Rights; Federal Ombudsman), but also the written press, the exchange of letters between undocumented migrants and citizens, and accounts of the experiences of those without-papers.

2 The Creation of Detention Centres

The turn of restrictive and more repressive migration policies began in Belgium at the end of the 1980s during the successive reforms of the first law (15 December 1980) which regulates access to the territory, stay, settlement and removal of foreigners. These reforms establish the new contours of the migration policy motivated by the "political will to curb immigration, strengthen controls, limit the rights of migrants, and tighten their conditions of stay and deportation" (Perrouty 2003, 108). The law of 15 July 1996, which integrates the European agreements (Schengen and Dublin) abolishes social assistance to undocumented migrants, obliges asylum seekers to reside in "open centres" to receive this social assistance, and prolongs the detention in detention centres of rejected asylum seekers and undocumented migrants for up to eight months before their deportation.[8]

From the beginning of the 1990s, the detention and deportation of undocumented migrants became the 'keystone' of Belgian migration policy and of the mode of governmentality[9] (Foucault 2001) that the State imposed on migrants under the guise of a security imperative. The Minister of the Interior drew up a directive which legitimised the toughening of behaviour towards undocumented migrants in the form of an "internal manual for the use of the gendarmes [which] authorizes the use of coercive techniques, like the cushion, to carry out difficult deportations" (Centres fermés pour étranger 2006, 59). The use of this cushion is intended to prevent people from shouting

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[8] This legislation would lead in particular to the creation, in March 1998, of the Coordination against Raids, Deportations and for Regularisation-CRER, which plays an essential role in the strategy of mobilising passengers and airplane pilots to refuse the deportation of migrants who resist this deportation (Perrouty 2003). The Coordination and Initiatives for Refugees and Foreigners-CIRÉ is a network of NGOs which, since 1954, has also fought against the confinement and deportation of foreigners in Belgium and on a European scale.

[9] For Foucault, it is a form of power exercised over a population, based on a set of institutions, procedures, knowledge, strategies, and techniques (security) to channel the behaviour of citizens.

and alerting the protesting passengers on the plane and thus blocking it from taking off. This technique caused the death by asphyxiation of Sémira Adamu during the sixth attempt at her deportation.

The control and containment of "wild flows" of irregular migrants (Laacher 2007) relies in particular on detention centres intended for the administrative detention of undocumented migrants with a view to their deportation. The first centre in Belgium, called the transit centre, was illegally created in 1988 on the site of the Brussels military airport (Centre 127) in Melsbroek to hold 60 people. In 1993, the Tobback Law provided the legal framework for the detention and deportation of undocumented migrants, but it was immediately criticised and then repealed in 2001 because of the penitentiary regime it imposed on migrants who had committed no crime nor had been the object of any conviction. Despite the change in the law in 2019, NGOs noted that the prison regime is still in force in these centres:

> The operation, organization and even the architecture of the detention centres are clearly prisons (two of them are former prisons). The conditions of detention are set by a Royal Decree, but each centre has its own internal regulations. They have in common a very safe functioning, a group life regime, the possibilities of sanctions going up to imprisonment, a strictly controlled right of visitation (actually non-existent at INAD). (CIRÉ 2019, 28)

Between 1994 and 1999, the capacity of the five newly created centres reached nearly 650 places. They are designated as "Centres for illegal immigrants" (1994 Merksplas: 165 places; 1995 Bruges: 112 places of which 40 are reserved for women and 1999 Vottem: 160 places[10]), "Repatriation Centres" (1994 Centre 127bis of Steenokerzeel: 120 places), "Centres for Inadmissible Persons" at Brussels airport (INAD Centre: 30 places) or even "Transit Centres"(2012 Centre Caricole and Centre 127bis put together: 90 places). These centres are managed by the Immigration Office which is an administration under the supervision of the State Secretariat for Asylum and Migration.

In March 2016, the attacks that hit Brussels helped to strengthen and legitimise the policy of locking up undocumented migrants by including it in the fight against crime and terrorism. In 2017, the Prime Minister of the Federal Government then decided to double the detention capacity by planning the construction of three new detention centres: in 2019, the Holsbeek Centre (50 places) reserved for women; in 2020, the Zandvliet Centre (144 places) and in 2021, the Jumet Centre (200 places). The entire scheme will eventually bring the num-

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10 This centre has a specialised wing for 'difficult' inmates who may be subject to isolation from 10 up to 24 hours.

ber of places to 1,129 in 2022 at the eight existing or planned sites.[11] Finally, in 2018, despite the multiple condemnations of Belgium by the European Court of Human Rights (ECHR) for the confinement of children, the Minister of Asylum and Migration completed the system by establishing the "Unit's detention for families" (Centre 127bis: 34 places) in order to lock up children and their parents, which sparked a wave of protest from NGOs and awareness campaigns.[12]

3 The Confinement Policy

> I did not know that in Belgium, people who have not committed any crime could find themselves locked up. [...] You have to be in my skin to feel what I feel. I live the nightmare, the ordeal and the worst time of my life. [...] my freedom is all I hold dearest. (Ntumba 1999, letter of 12 November)

According to NGO reports and the testimonies of visitors[13] and women migrants themselves, the detention of undocumented migrants is marked by multiple forms of violence both in the institutional organisation of the centres and in the daily social relations with the officers in charge of surveillance or deportation.

3.1 Organisational Violence

Institutional violence results from the mode of organisation of space and movements imposed on undocumented migrants which corresponds to the prison regime: barbed wire and high gates, watchtowers or panoramic control towers, the presence of police officers, loudspeakers, prison cells isolation, armoured doors etc. Two of these detention centres are even former prisons, the one in Bruges accommodated women. For example, in the detention centre of Melsbroek [fig. 1] exits are prohibited, movement inside the centre is limited and the proximity of the airstrip exposes the detainees, day and night, to an unbearable noise.[14]

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11 In 2008, the annual expenditure for the management of the six detentions centres and the organisation of the deportations amounted to more than €25 million (CIRÉ 2009b).

12 The campaign *We do not lock a child. Period!* Supported by three hundred and thirty associations and the creation of the "NotinMyName" collective in 2018.

13 The CRER had organised with citizens residing in Belgium a chain of solidarity consisting in sponsoring one or more imprisoned migrants. This involved supporting detainees through visits, mailing, buying phone cards or educating flight passengers against the deportation of undocumented migrants.

14 The ECHR condemned France for having exposed a young child for seven days to significant noise pollution which caused serious emotional consequences.

Some speak of the "feeling of being treated like a criminal" which oppresses them even though they have not committed any crime (Centres et locaux de rétention administrative 2018, 18).[15]

> What can I possibly do! There is nothing I can do. […] I am not a criminal, not a thief and even less a prostitute, just an asylum seeker. (Ntumba 1999, letter of 24 October)

The Steenokkerzeel centre (Centre 127bis) carries out surveillance of the premises by camera, searches of the rooms, the separation of spaces without the possibility of communication between them, the moving of detainees from one wing to another in the event of indiscipline or failed deportation, the deprivation of telephone communication, the forced injection of calming substances not provided for in the means of restraint authorised by the legislation, or the placing in solitary confinement.

In Bruges, testimonies reveal that agents confiscate cosmetics and medicines, showers are limited, rooms are locked from 9 a.m. to 9 p.m. and detainees are sometimes deprived of food and mattresses in isolation cells.

> The shower is three times a week; Tuesday, Thursday and Sunday for 10 minutes around 4 pm. Even if we are refugees, we still have the right to hygiene like all other women? A woman naturally

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15   See also Médiateur fédéral 2009, CIRÉ 2009a and Centres fermés pour étrangers 2006.

has little problems that the whole universe knows about. Hence 3 times a week is not enough. In the dormitories we have four sinks and only cold water. (Ntumba 1999, 5)

The conditions of detention are regulated by a royal decree, but each centre defines its own internal regulations. The royal decree provides for the prohibition of visits, coercive neutralisation measures (handcuffs on the wrists and ankles, strait-jacket) and, in Bruges for example, the transfer of a person "to a prison with severe regimes". After a nervous breakdown, Nancy Ntumba will undergo this diet for ten days.

It's very hard to know that you are released when you still live locked in the same place. […] The more the days passed, the more hatred grew in me. I couldn't stand being ordered anymore. [After touching a female guard] they took me to solitary confinement where there is concrete and a metal toilet. It was locked with three hooks, it's very scary, I was shaking. […] It was cold, I fell asleep on the concrete without a mattress, without sheets. And at the end of the punishment, I was to take a shower and join Z section in the medical wing for a week, where we are on a severe diet. (Ntumba 1999, 5-6)

Overcrowding in detention centres is another source of violence because privacy spaces are almost non-existent: according to the testimonies of the detainees, the rooms can accommodate 15 to 20 people in a small space, poorly ventilated and often overheated. Daily life takes place in confined and noisy collective spaces (crying, TV sets or radios, various activities of adults and children) which do not offer any serene space. Women also speak of the invasion of their privacy, which is constantly violated by repetitive body searches or their personal effects before and after a deportation, after revolts or during meetings between agents who exchange information on the health of migrants.

3.2 Agent Violence

The living conditions in the detention centres and the social relations with the officers responsible for the control of detainees are a source of violence and suffering for migrants. These lead to various modes of individual (despair, depression, hunger strike, suicide) or collective reactions (hunger strike, riot) which, in turn, trigger the often brutal reaction of the agents (sanctions) on their living conditions.[16]

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16   The NGOs have listed the chronology of the tragic events (e.g., suicides) which punctuate life in the detention centres and provoke revolts. See in particular the re-

Andrew Crosby (2018) observed that initially, policies within detention centres were more or less autonomous with varying internal rules and regulations. This autonomy has caused tensions between the agents because of their conception of the relations established with undocumented migrants, some adopt a security-based approach while others develop a 'humanitarian' one:

> Their management goes a bit in all directions, except their dysfunction. Indeed, there was no royal decree which stipulated the rights and obligations of the personnel of the detention centres. The detention regime therefore varied depending on the security team. The tough teams were very strict, they arbitrarily punished people because there was no stipulation who could put who in solitary confinement. Given the lack of central coordination, these teams were for a long time hegemonic. (Crosby 2018, 16)

Recurrent riots often start after successful or unsuccessful eviction attempts, suicide attempts, death by suicide or accident, or the outbreak of hunger strikes. In response, the managers of the centres appealed to the riot police who, according to the testimonies of the undocumented migrants, act with great brutality (physical violence, use of dogs, physical neutralisation on the ground, imposition of handcuffs etc.). The people designated as the ringleaders are subject to reprisals such as being placed in solitary confinement, being transferred to other detention centres, being deprived of going out and using the telephone, intimidation, bullying and humiliation.[17]

These difficult living conditions in the detention centres have been corroborated, in particular, by a doctor at the Vottem detention centre, Dr. Ginette Marchant, who resigned 11 months after taking office for infringing medical independence and the ethics of the profession. She denounced the injunctions made to the agents of the Ministry of the Interior (social workers, psychologists, doctors, and surveillance agents) to convince the detainees to allow themselves to be repatriated. From a medical point of view, she could only provide basic care (urgent medical aid) and medical confidentiality was not respected (medical examination in the presence of a third person, disclosure of health records in meetings). Finally, she observed the imposition of medical isolation for punitive purposes (Vanpaeschen 2000) and

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ports of Amnesty International (`https://www.amnesty.be/infos/rapports-annuels/ rapport-annuel-2018/europe-et-asie-centrale/article/belgique`) and of the Collective against Raid, Deportations and for Regularisation (CRER), *Les 15 victimes de tentatives d'expulsions par voie aérienne en Europe (1991-2014)* (The 15 victims of attempted deportations by air in Europe (1991-2014): CRER 2015, 28).

17 According to Nancy, the director of the Bruges Centre threatened her never to be released because she was conversing with "human rights activists".

the forced injection of sedatives before deportation (CRER 2009b, 9). CIRÉ (2009b, 33) made similar findings.

The feeling of institutional violence is accentuated in the gap between the recurrent violation of the law on the part of institutions and their agents, and the Rule of Law. Thus, the indefinite extension of the period of detention after failed deportations beyond the maximum period causes incomprehension or even a serious state of mental decompensation:

> My lawyer appealed to Bruges and the judge decided to release me. [...] You cannot imagine my joy when the judge pronounced the verdict. I was very happy, I cried with joy. But when I arrived here [in the Bruges detention centre] the social worker informed me that the public prosecutor had appealed against my release. [...] I was dead that day, yes it is as if I had been crucified. I cried like crazy [...]. It was then that I felt that everything was falling apart. I took the chairs and started to throw them; I had lost control. So, I was isolated for a day. I can't sleep anymore, my head is still hot, my heart has been broken. (Ntumba 1999, letter of 10 August)

The multiple complaints lodged with the management of the centres against ill-treatment by surveillance agents or gendarmes during the evictions remain unanswered and accentuate the feeling of injustice and isolation:

> The violence is most often committed without witnesses, in the police station at the airport, or on the way back to the detention centre after a 'failed' eviction attempt. The assaulted detainee has the right to lodge a complaint, but few complaints are actually lodged, and among them, few succeed. It often happens that the doctors in the centres refuse to certify the violence suffered. (CIRÉ 2009b, 62)

Before her death, Sémira Adamu reported that she was under surveillance by a person who was permanently by her side. After her escape from the 127bis centre, she could no longer use the telephone, she felt alone, was no longer entitled to visits and the migrants with whom she had established links in this centre were displaced. According to the testimony of her godmother[18] (a famous virologist, university professor and member of the Collective against deportations-CRER) and the support of the CRER led to bullying on the part of the agents of the centre.

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18   Lise Thiry, testimony at the gendarmes' trial, 10 September 2003: `https://ccle.collectifs.net/Temoignage-de-Lise-Thiry-marraine`.

3.3 Violence against Children

Although the confinement of children is prohibited by international conventions, this practice is still widespread in Europe. According to UNICEF, only Ireland prohibits the locking up of minors. The ECHR has condemned Belgium on multiple occasions for having detained 2,341 children with their parents in the centres between 2004 and 2008. The government temporarily put an end to it in 2008,[19] but resumed this practice despite the damning medical and psychological reports published since 1999 (Ligue des Droits Humains 2019), which reveal the deleterious consequences on the state of physical and mental health of children and on their future development.[20] Indeed, in 2007, two psychologists drew up reports attesting to the suffering and deterioration of the psychological state of Angelica, an eleven-year-old Ecuadorian girl detained with her mother for a month. She displayed signs of depression, sadness, anxiety, difficulty breathing, had nightmares, headaches, dizziness related to remembering her arrest and the threat of being sent back to her home country.

The high degree of dehumanisation of the policy of confining migrants and the brutality with which it treats children is embodied in the case of Tabitha Kaniki Mitunga, a 5-year-old Congolese girl. In August 2002, she transited at Brussels airport with her maternal uncle (legally resident in the Netherlands) to go to Canada where she was to join her recognised refugee mother in that country. The border police believe that she did not have the necessary travel and residence documents and decided to lock the child in 'detention centre 127' with a view to her deportation to the Congo. The request for recognition of refugee status, often recommended to migrants in transit stopped at the border[21] and not justified in this case, was immediately introduced but deemed inadmissible by the Office of the Commissioner General for Refugees and Stateless Persons. The latter, however, underlines the young age of the child and her right to family reunification guaranteed by the *Children's Rights Convention*.

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19 The government then created the 'return homes' to accommodate families awaiting deportation: 27 units for 169 places in the form of apartments or studios. According to the CIRÉ analysis, 2,180 children were placed in these houses between 2008 and 2016, divided into 27 housing units in the territory. In 2016, 39% of families left the territory, 28% were released and 33% disappeared (CIRÉ 2018, 3).

20 See the list of the damages inflicted and the descent into hell of those subjected to confinement, established from the observations of Dr. Christine Dormal in the centre 127bis. It was published by the Coordination against Raids, Deportations and for Regularisation (CRER 2009a, 9-10).

21 Undocumented migrants in transit arrested indicated that they had no intention of seeking asylum in Belgium, but border control officers recommend that they introduce it to avoid deportation and obtain their release from the detention centre. These requests are exceptionally accepted.

The lawyer then initiated procedures with the Canadian authorities and asked the Immigration Office to entrust the child to a host institution while awaiting family reunification, which was not accepted since Tabitha was locked up alone for two months. The lawyer began the process for her release, which was ordered by the court on 16 October 2002, but the next day, the Office des Étrangers deported the child to the Democratic Republic of the Congo where no member of her family was waiting for her. After several hours of waiting at the airport, she was finally taken care of (and accommodated) by an official from the Congo National Intelligence Agency. Faced with the scandal,[22] the Prime Minister contacted the Canadian government, which grants Tabitha the right to join her mother, which she did a week after her deportation (Van Keirsbilck 2007).

In 2006, the ECHR recognised the responsibility of the Belgian authorities that

> had or should have known of this ill-treatment […] [and that] could not ignore the serious psychological consequences [of this decision]. In their view, such detention shows a lack of humanity and reaches the threshold required to be qualified as inhuman treatment. (*Journal du Droit des Jeunes* 2006, 54)

It condemned Belgium for undermining both respect for private and family life and for liberty and the right to an effective remedy. (Lelièvre 2006, 227-8; Van Keirsbilck 2007).

Despite this new condemnation, this policy continued; in 2014, the government developed a new rhetoric announcing a 'more humane' practice of confining children with their families.[23] In June 2018, the Secretary of State for Migration and Asylum created 'Detention Units for Families'[24] presented as spaces adapted to the needs of children, which the NGOs deny (CIRÉ 2018). On 14 August 2018, a Rom moth-

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[22] The case triggered reactions of indignation and collective action, in particular from the French-speaking and German-speaking bar associations, and from 15 associations who lodged a complaint with the Council of State (no. 244.190, 4 April 2019) that suspended the royal decree allowing the confinement of children in Centre 127 because of the invasion of their private and family life and their exposure to serious noise pollution.

[23] As part of the strengthening of its policy of "quality, humane and sustainable return, in accordance with the principle of return voluntary, if possible, forced if necessary. […] The detention centres will be extended. […] The project to develop accommodation there (Centre 127bis) is being carried out so that appropriate places are provided for certain vulnerable target groups, for example, families with children, so that they no longer must go in the host network" (Federal government agreement, 10 October 2014, 158-60).

[24] Children are allowed to go to school and adults to go out to see a lawyer, a doctor or do some shopping. However, an adult must always be present in the house to avoid escape. The Council of Europe Commissioner for Human Rights asked the Secretary of State for Migration and Asylum in a letter dated 5 June 2018, to drop the project (`https://www.`

er from Serbia and her four children aged between one and six, who had been in Belgium for ten years, were detained for 54 days (instead of one month maximum) and then deported on 24 September 2018 (Rasson 2019).[25] Three other families with young children would suffer the same fate in September and October 2018.

4 The Practice of Forced Deportation

Belgium has a heavy record of forced deportation of undocumented migrants, including the infamous case of Sémira Adamu, who died of suffocation on 22 September 1998.[26] During the trial of the gendarmes who suffocated her, the terrible film of her death was shown: this 11-minute sequence[27] was supposed to provide proof of the use of legitimate and necessary force to control a 'violent' victim who resisted her deportation. However, the film shows a very calm woman with her hands cuffed behind her back, her feet shackled, and two of the three gendarmes present who lean heavily on the victim's back while discussing and ignoring the obvious signs of suffocation.

According to the report of the trial, the incriminated gendarmes above all described the instructions and checkpoints to be observed according to the memo and paid no attention to the condition of the person they were supposed to control:

> We did our job as it should be done; everything was normal in the procedure, no one among my colleagues intervened; I heard she was breathing, I controlled what I had to control. (Van Meulder 2003a)

One of the gendarmes affirmed that he was under pressure from the hierarchy to achieve the quantified objective:

> In the corridors we spoke and we said, "the thirty deportations must succeed or we will have misery". A certain pressure was coming from above. The indicted repatriation officer confirms the or-

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coe.int/fr/web/commissioner/-/commissioner-calls-on-belgium-not-to-resume-detention-of-migrant-children).

25 The visit of the general delegates for children's rights with a paediatrician in these family units in August 2018 revealed the "deplorable" state of the children but did not put an end to this practice despite the existence of alternatives more respectful of human rights, and less costly (International Detention Coalition 2015).

26 The murder of Sémira Adamu leads to the resignation of the Minister of the Interior who had given his support to the gendarmes, the provisional suspension of the deportations - which resumed very quickly - and the publication of a ministerial directive removing the use of restraint techniques that obstruct the respiratory tracts.

27 https://ccle.collectifs.net/Les-onze-dernieres-minutes-de.html.

der to reach the deportation of 23 people "because the (detention) centres were full". (Van Meulder 2003b)

Their lawyer based their defence essentially on "obedience to orders" and on the voluntary commitment of the gendarmes assigned to this "deportation task". In the end, two of the former gendarmes received a suspension of the sentence and the third who had already committed violence against undocumented migrants during other evictions was suspended.[28]

The results of this policy twenty years after the death of Sémira Adamu reveals that the violence of the deportations and the violations of the fundamental rights of migrants remain the rule (Centres fermé pour étrangers 2016). The bill[29] authorising the police to intervene by force in the private homes of citizens or in associations to flush out undocumented migrants (Arnould 2019) and the government plan which provides for a solitary confinement regime announce the hardening of the detention of undocumented migrants.

4.1 Collective Deportations

Belgium not only practices individual deportations, but also collective deportations which also earned it a conviction by the ECHR in February 2002, in particular, for the violation of the *European Convention on Human Rights*, the conditions of detention of the Roma, and the collective nature of the deportation (Carlier 2002).

The first large-scale collective deportation that the Belgian government organised was implemented in October 1999 for 74 Roma, including many children, expelled to Slovakia despite the suspensive judgment of the ECHR issued one hour before takeoff. To arrest undocumented migrants, the police of the city of Ghent (Flanders) summoned, at the end of September 1999, several dozens of these Roma families, including the Conka family, on the grounds of "completing the file relating to the asylum application" (Carlier 2002, 64). At the police station, they received an order to leave the country and were taken directly to the 127bis detention centre for repatriation. In addition, the police wrote a number with a ballpoint pen on their hand to mark the spirits with a strong symbolism.

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28 The gendarme who filmed the deportation was dismissed since, during the operation, he said he asked several times if the victim was still breathing while the charge of non-assistance to a person in danger could have been retained. As for their superiors, they were acquitted (Perrouty 2003).

29 In August 2018, the press announced that the federal government had abandoned this project, which drew much criticism, particularly from the judiciary and lawyers' associations.

This practice of collective deportation was theorised by experts from the Commission for the Evaluation of Removal Instructions (Commission chargée de l'évaluation des instructions en matière d'éloignement) established after the death of Sémira Adamu. Chaired by a retired professor of philosophy from Ghent University, the report of 21 January 1999, suggests that, in the event of a failed forced deportation, a special plane be chartered, and the deportation be organised on the European scale:

> For example, business plane type, which would make it possible to repatriate a small number of people under sufficient surveillance and to avoid the repression of shouting and other types of provocation, given that there is no public. [...] This procedure could moreover be applied in consultation and in collaboration with other European countries, so that agreements could be concluded more easily with the countries of return for the necessary landing rights. (Vermeersch Commission I 1999, 23)[30]

On the night of 13-14 March 1999, the government put this proposal into practice with the collective deportation of migrants to Cameroon accompanied by twelve gendarmes and a doctor at a cost of €50,000. The press revealed another collective deportation of 45 Albanians in February 2000 in an Airbus A310 chartered by the Belgian Army (Wibault, Van Meulder, Liebmann 2003). The practice has become commonplace and little information currently exists on these deportations.

4.2 Individual Deportations

Although Europe has 'relocated' part of its detention and deportation policy to certain third countries (Morocco, Tunisia, Libya) in return for financial retribution and political support for non-democratic regimes, States like Belgium maintain this practice which has a strong symbolic function with regard to the discourse on the "effective management" of migratory flows (Ouali, Chicha 2005).

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[30] This report triggered strong criticism from an inter-university group "Asile et expulsion" which condemns such collaboration: "We condemn the complicity of those among our colleagues who saw fit to legitimize the Belgian asylum policy and deportation, by actively participating in the commission created by the Minister of the Interior. [...] This report casts an unacceptable shadow on what can or should represent the participation of academics and intellectuals in social debates. [...] [The most shocking] is that certain academics are called upon to help reach objectives for which they have no expertise (types of handcuffs etc.) and to support recommendations of a technical nature which do not absolutely require their opinion" (cited in Wibault, Van Meulder, Liebmann 2003, 131). In January 2005, the Vermeersch Commission II (2005) will make 34 recommendations for a "humane and effective" removal policy.

The examination of the experience of Nancy Ntumba Kabongo, on which I now propose to dwell, is emblematic of the violence exerted on undocumented migrants both because of the repeated attempts at deportation before the actual deportation or the possible regularisation, and the stressful and humiliating ritual, before and after these attempts, of isolation, search and moral pressure. I followed Nancy's case during 1999 through visits to the Bruges detention centre – from which I was very quickly banned – telephone contacts and correspondence during the ten and a half months of her detention. The analysis of her story shows, on the one hand, the administrative imbroglio and the multiple obstacles deployed by the institutions and its agents which the most vulnerable people must face in order to stay in Belgium, and, on the other hand, very long-term deleterious consequences of this deportation policy in terms of the physical and mental health of undocumented migrants.

Nancy Ntumba was born on 10 August 1976, in the Democratic Republic of Congo and arrived in Belgium on 14 February 1999, at 9 a.m. in transit[31] to England where she was considering seeking asylum. Her arrest took place in the transit zone of Zaventem airport after her passport was checked because border police officers accused her of travelling under a false identity. She was sidelined for several hours and then these agents offered to return her to South Africa, where she came from, or to seek asylum in Belgium. One of them told her that she would receive help, which persuaded her to apply in Belgium. She was taken to the detention centre 127 (Melsbroeck) located next to the airport and the next day obtained an interview with an agent from the Office des Étrangers who rejected her asylum application: "I was downcast and confused. I did not know what to do. All of a sudden everything changed and I had to go back to where I had fled" (Ntumba 1999, 1)

On 16 February 1999, her lawyer lodged an urgent appeal with the Office of the Commissioner General for Refugees and Stateless Persons, which was also rejected on 1st March 1999. Nancy was then moved to the Bruges Detention Centre for Women, located 100 km from Brussels. The initial contact with the agents of the centre left her traumatised:

It was very strange; I was very scared. All these uniformed women screening officers searched my things, removed the dangerous items, and then did the body search. The agent is wearing medi-

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31 Dr Marchant's testimony evokes the distress she observed in people in transit to another country to join their families, who were arrested at Brussels airport for lack of document (visa) or on suspicion of detention of false papers. She points out that these situations affected black men and women more, and that led to numerous suicide attempts (Vanpaeschen 2000).

cal gloves: I was in support and underwear, and I was too scared. I was sobbing because I did not understand anything, I was lost. (Ntumba 1999, 1-2)

The consequence of her transfer to Bruges is twofold: contacts with her lawyer, NGOs and visiting citizens who support her are more difficult because most of them are located in Brussels. Then, the legal procedures for her release are in Dutch, while Nancy is French-speaking, and a large part of it escapes her.

Nancy arrived at the centre on 1st March 1999 and was quickly subjected to a first unforced deportation attempt to South Africa,[32] on 3 March. As she refused to leave, she was brought back to the Centre. Her lawyer filed an appeal with the Brussels Council chamber for her release, which was refused. Another appeal was filed with the Bruges Council chamber on 18 May 1999, which was also negative. Her detention in the Centre was extended each time by two months since the law had allowed, since 1996, detention for up to 8 months, but the frequent resetting of the counter following a failed deportation makes the detention indefinite.

On 8 June, she was subjected to a second deportation attempt, which she resisted:

I was at the airport for repatriation, I did not understand a thing. I was morally tortured to begin with and then I was tied up and brought aboard the plane. [...] The police asked me to go and sit in the last seat. As both my arms were tied behind my back, I turned around so that all passengers could see my arms. One last passenger came in and asked what was going on, and that's when I was taken off the plane. [...] I cried a lot that day because I was treated like a criminal. (Ntumba 1999, letter of 21 June 21)

The procedures to request Nancy's release followed one another and systematically received a negative response until the judgment of 30 July 1999, when the judge of the Bruges Council chamber decided to release her. Back at the Centre, an agent told her that the King's Prosecutor had appealed the release decision, but on 12 August 1999, the court confirmed it. It was followed by a further appeal:

It was the second time that I was released, I was happy and I was jumping for joy. When I got to the centre, I waited for someone to tell me to pack my bags. I kept it a secret to myself and was afraid I would be told again that the prosecutor had appealed. [...] The next day, I am told that the appeal has been filed and that I must

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32 Where she lived with an aunt for two years.

initiate new proceedings. The worst part is that the counter for the months of confinement resumes at zero. I was crazy and very sick. [...] It was very difficult. (Ntumba 1999, 4)

On 9 July 1999, Nancy was taken to Brussels airport for a third deportation attempt, which she resisted, and on 4 October 1999, she returned for a fourth attempt. Finally, the fifth deportation attempt took place on 9 November 1999: it failed thanks to the visit of the director of the Centre for Equal Opportunities and Opposition to Racism, present at the airport and who asked for an interview with Nancy:

> I was put in a small, very dirty cell and waited for the time [of her deportation]. Mr. Cornil was at the airport on a mission concerning detention centres. So, I was saved and was able to talk to him for a few minutes. I was lucky that he was there because I was sure they wanted to force me. (Ntumba 1999, 7)

Before and after each return from an aborted deportation, detainees and their baggage undergo a thorough and humiliating search. In addition, the agents and the management consider Nancy "strong headed" and a "leader" (Ntumba 1999, 7) who creates disorder in the centre. As a result of which she is the object of more and more pressure, in particular because she is greatly supported by activists of the Collective against Deportations, she receives visits from citizens and parliamentarians of Brussels, and that her case was the subject of several press articles. After the fifth deportation attempt, the gendarmes accompanying her tried to impress her:

> They started to intimidate me with the same song: that it was an order from the minister, that I had to leave and that if I did not leave today as a free woman, next time I will leave surrounded by two police officers. (Ntumba 1999, 8)

On her return to the centre, Nancy could no longer bear her detention and the body searches: she cried and screamed and lost control of her emotions. The situation was all the more painful for Nancy as women from the Centre with whom she had established links were released and she would stay there for a total of ten and a half months. She was forbidden to speak but she continued to speak Lingala (her mother tongue), she was then physically overpowered by several guards (plastic ties to the feet, suffocation): "I thought I was going to die. I was screaming, I was crying. Such suffering, I would have preferred death rather than living" (Ntumba 1999, 8).

She was then placed in isolation and at 11 p.m., the deputy director visited her and put pressure on her:

You again Nancy! You are turning the whole group on. I know you have influence in the group because you talk to Ecolo and the politicians. But associations and everyone else give you false hope. You are at the end of the procedure and you must leave. You are not allowed to speak here. [...] He had promised me that if anything else happened, I would be sent to "Z section" [isolation section] until the next repatriation. (Ntumba 1999, 8)

Finally, on 29 December 1999, the Ministry of the Interior freed Nancy from the centre with an order to leave the territory within five days. "According to the Government, this release was the result of a general end-of-year pardon" (ECHR 2009). She migrated to the United Kingdom as she wished in February 1999 and on 11 September 2002, she obtained a four-year residence permit and subsequently her final regularisation.

5 From the Legal to the Political

Putting into perspective the practices of confinement and deportation deployed since the end of the 1980s to control migratory flows in Belgium remind us of all the systemic violence of this policy with regard to undocumented migrants. Systematic violations of fundamental rights; the imposition of a prison regime; the harsh living conditions; multiple pressures and intimidation; the physical and mental energy invested in dealing with the profusion of administrative and judicial procedures to obtain asylum, release from the detention centre or prevent deportation; the indefinite extension of the period of confinement and the repeated attempts at deportation reveal the logic of a system which is a real ordeal aimed at punishing and discouraging any migrant and asylum seeker from coming and settling in Belgium.

This policy, which has been pursued for more than thirty years by successive governments and political parties (the Social Democrats, the Christian Democrats, the Liberals or Flemish nationalists close to the extreme right) is based on the alleged 'threat' that the foreigner represents for our jobs and our social security and on a powerful ideological discourse: "we cannot accommodate all the misery in the world" and the rhetoric of the "democratic and human" control of migratory flows which serves to justify and trivialise their deportation as a solution to our problems (Ouali, Chicha 2005, 25).

The constructed and intentional character of what the judges of the ECHR most often designate as "ill-treatment" through, on the one hand, an institutional organisation and the legitimisation of the violent practices of the agents, and, on the other hand, their indelible consequences on the mental and physical health of migrants (and their children) as powerful as those resulting from torture, would

they not suggest re-labelling and recognising these inhuman treatments as typical forms of torture (punishment, pressure, intimidation) specific to detention centres?

The challenge of this re-labelling lies in the need to shift the moral and legal debate to the political one in order to question the forms of governmentality applied to undocumented migrants rather than being limited to the individualised remedial dimension. Asking the questions from a political angle is the *sine qua non* for grasping the logic of the exceptional regime imposed on migrants and the discourse of criminalisation of undocumented migrants and for eliminating a policy unworthy of a democracy.

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Torturing Them out of the Country
The Israeli Asylum Seeker 'System' and Its Torture-Like Policies

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Abstract This essay will focus on the Israeli immigration policies relating to asylum seekers, showing how they can be qualified as a form of (mainly psychological) torture. Firstly an outline of Israel's employment of torture against political dissidents will be laid out, together with an analysis of why administrative detention can be understood as a form of torture too. The attention will then be moved to the treatment of African asylum seekers, describing the harsh conditions they have to endure while staying in Israel prior to their deportation from the country, emphasising the features which can qualify them as forms of torture.

Keywords Torture. Israel. Asylum seekers. Immigration policies. Administrative detention.

Summary 1 Introduction. – 2 Torture in Israel. A Brief History. – 3 Administrative Detention as a Form of Torture. – 4 Legally Sanctioned Entrapment. – 5 The RSD Procedure. Between Structural Faults and Violence. – 6 Breaking Their Spirits. Israeli Detention of African Asylum Seekers. – 7 Visa Renewal Process and Psychological Pressure. – 8 'Voluntary Return' and Deportation. – 9 Conclusions.

Punta della Dogana: Leonardo, Dino, Vladimir; You. An instant in time; now an empty space. To what is Lost. To Valeria Roma.

1   Introduction

Israeli society is founded on the immigration of Jewish people from across the world, who, on the basis of the *Law of Return*, have the right to come to Israel and to obtain Israeli citizenship. In spite of this, the treatment reserved to non-Jewish immigrants is not so open-armed, especially in the case of African asylum seekers.

Even if Israel ratified the *Convention Relating to the Status of Refugees* and acceded its *Protocol*, "it has not incorporated these treaties into its domestic law nor has it enacted primary legislation that sets eligibility criteria for 'refugee' status and regulates the treatment of asylum-seekers" (Ziegler 2015, 172). Moreover, in spite of the provisions set out by the *Convention*, asylum seekers in Israel are denied protection as a *group*, they have been characterised "as a threat to the existence, demography and character of the Jewish state" (ARDC, HMW 2013, 11), and they are labelled as 'infiltrators' via the application of the same laws employed to marginalise the non-Jewish population (i.e., Palestinians and Arabs).

With these premises in mind, this essay will analyse in which way the treatment that asylum seekers undergo upon and after their arrival in Israel can be understood as a form of (institutionally promoted) torture against them.

The first part of the essay will focus on the methodical use of torture against Palestinians and political dissidents almost since Israel's foundation and on administrative detention. The former element will make clear why Israeli authorities are so familiar with torture methods, while the latter will allow to understand the functioning of one of the tools mostly employed by Israel to deal with (and to get rid of) asylum seekers, and the way in which it can be considered a form of torture too.

The attention will be then moved to the legal framework shaping the destiny of the asylum seekers in Israel, showing how preexisting laws were modified during the years so as to foster their exclusion from the Israeli society.

The remaining part of the text will be devoted to a description of what happens to asylum seekers once they reach Israel, and will be divided in three sections. The first one will focus on the processing of asylum seekers' applications by government offices, describing the harsh treatment (both physical and psychological) that asylum seekers suffer while carrying them out, as well as the bureaucratic wrongdoings perpetrated by the State officers. The second one will zoom in

on the detention of asylum seekers, depicting the living conditions in the detention centres (using the now no-longer-operative Holot Open Detention Facility as an exemplary case) and the pressure put on the detainees to force them to leave the country. Lastly, the fate of those who are not detained will be examined, focusing on the visa-renewal procedures and Israeli deportation of asylum seekers policies.

2 Torture in Israel. A Brief History

Since the foundation of Israel, the use of torture in the State has not only been systematic, but also legitimised via domestic law (see Hawari 2019, § 6). It is proven that the majority of interrogations to Palestinian political detainees have involved some kind of ill treatment or torture, and that such practices were (and are) known by all the people involved in the management of the prisoners (see Tsemel 2012, 8).

Instances of mistreatments against Palestinian prisoners had been reported since 1968, but it was in 1977 that public opinion became aware of this custom, when an article containing the testimonies of several victims of torture in Israel was published on the *London Sunday Times*. Then-Prime-Minister Begin maintained he was unaware of that state of affairs, and some forms of torture (e.g., electrocution and hanging from the limbs) were abandoned in the wake of the scandal (see Tsemel 2012, 9).

It was in the aftermath of this and other ensuing incidents that the Israeli government set up the Landau Commission in 1987, so that a thorough investigation about the issue could be carried out. The findings and suggestions of the commission were crystal clear: even if lying about it when asked by a court was wrong, the use of torture was nonetheless deemed permissible. By basing their arguments on the concept of 'the lesser of two evils', the commission suggested that "The effective interrogation of terrorist suspects is impossible without the use of means of pressure" (Landau Commission 1987, 79), and that

> The means of pressure should principally take the form of non-violent psychological pressure through a vigorous and extensive interrogation, with the use of stratagems, including acts of deception. However, when these do not attain their purpose, the exertion of a moderate measure of physical pressure cannot be avoided. (Landau Commission 1987, 80)

Israel also did not incorporate into domestic law the provisions of the 1991 *Convention against Torture* (of which is a signatory), and the use of torture in case of necessity (the so-called 'ticking bomb situations')

is frequently authorised by the courts too. This was for instance the case of a 1991 ruling by the Israeli Court of Justice, which stated that even if the Israel Security Agency (ISA)[1] was forbidden to use 'physical pressure' during the interrogations, those who would have employed such methods in a situation of perceived imminent danger would not have faced legal prosecution. Something similar happened in 2017 too, when the Court ruled in favour of Shin Bet after some of its officials tortured a prisoner, by maintaining that, considering the situation in which torture was carried out, it would have been more precise to talk about 'enhanced interrogation', rather than torture.

As Tsemel writes, tortures employed nowadays are different from those of the past, for "We no longer see the more brutal methods of torture being employed as general practice. What we do see is something far shrewder, though it has not lost any of its efficacy" (2012, 10). This statement is confirmed by the very declarations of some torturers, as it has been reported by Levinson, who wrote:

> N., a former senior interrogator who was authorised to approve 'special means', insisted that it's not like Guantánamo; he and his colleagues don't make suspects stand naked in 10-below-zero weather, he added. He said the methods used are carefully chosen to be effective enough to *break the suspect's spirit*, but without causing permanent damage or leaving any marks. (2017, § 4, emphasis added)[2]

Moreover, even if interrogators must ask their superiors the permission to use such techniques, there are some methods which are not qualified as 'direct' torture, and therefore can be applied at the interrogator's will. Such mechanisms include threatening the prisoners and their families; shouting and spitting to the detainees; using lie detector machines to claim prisoners are not telling the truth so as to extend the interrogation sessions; isolating the prisoners so that they do not know what they can do and they cannot get in contact with anyone else but the interrogators (see Tsemel 2012, 11).

In short, the use of torture in Israel – especially when it comes to suspect terrorists and political dissidents – is more the norm, rather than the exception.[3]

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1 The ISA is also known as General Security Service (GSS), *Shin Beth*, and by the acronym *Shabak*.

2 N.'s remark about Guantánamo is quite interesting, for it has been proved that Israel has been internationally exporting its knowledge in the field of torture. Hawari writes that a former US interrogator in Iraq claimed that "the Israeli army trained US personnel in various interrogation and torture techniques" (2019, § 12).

3 Complaints about the use of torture have sharply increased with the passing of the years: whereas 860 of such complaints were filed in the 2001-2004 period, they multiplied by four between 2012 and 2014.

3   Administrative Detention as a Form of Torture

As per the definition provided by Art. 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, an act of torture is

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[4]

Several of the aforementioned features come also into play when analysing the living conditions of asylum seekers in Israel, especially in regard to administrative detention policy.

Even if it is focused on Palestinian prisoners, a 2016 report by human rights organisation Adameer contributes to better grasping the core features of administrative detention in Israel, thus granting a deeper understanding of the detained asylum seekers' status too.

Addameer's report is clear: given the proved consequences on the lives of those who are detained, the Israeli administrative detention policy meets the criteria for being considered a form of psychological torture according to international law, since it constitutes a form of punishment, intimidation and coercion, and also has a very strong effect when it comes to the psychological, physical and mental effects it has on the detainees (see Addameer 2016, 1).

Palestinians may undergo administrative detention according to the provisions of Article 285 of Military Order 1651,[5] which allows the military to detain any individual up to a renewable six-months-long period if they have reasonable grounds to presume that the security of the area or public security requires the detention. It is however interesting to note that no definition of what 'public security' and 'security of the area' mean, and therefore people may be deprived of their freedom even if no actual charges exist against them. The *International Convention on Civil and Political Rights* allows detention in case of a public emergency constituting a possible threat

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[4] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984. `https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading`.

[5] `https://www.militarycourtwatch.org/files/server/military_order_1651.pdf`.

to the nation, but it must be noted that according to that document administrative detention can be ordered only on an individual basis. Things in Israel are different, for this instrument has been historically used as a form of punishment and a means to control Palestinians as a *group*; a feature, the latter, which comes into play in the case of asylum seekers too.

Another important aspect characterising administrative detention as a form of (psychological) torture is linked to the amount of stress the detainees have to live and deal with when faced with the perspective of being indefinitely imprisoned without knowing which charges are brought against them, being therefore unable to defend themselves. This loss of control results in the detainees to develop anxiety, mental instability and a sensation of helplessness. Because of these elements Murad Amro, senior psychologist and supervisor at the Palestinian Counselling Centre, stated that

> Administrative detention can be characterized as psychological torture due to the detainee's dealing with dimensions of the unknown. For administrative detention you do not know why you're there, and you do not know when you will leave; time and space is out of the locus of control. (quoted in Addameer 2016, 2)

This rapid survey about administrative detention of Palestinians was by no means casual, for not only it was possible to better understand which of its features can be understood as a form of psychological torture, but also because a clear understanding of the legislation governing the administrative detention of Arabs and Palestinians can help in better grasping the nature of Israel's anti-immigration (and anti-asylum) policies.

4   Legally Sanctioned Entrapment

Since 2005, Israel has experienced a sharp increase in the number of African asylum seekers entering the country, a fact which resulted in the government and authorities to seek "a way to maintain asylum seekers in detention for prolonged periods, making it difficult to release them" (Guthmann, Rozen 2019, 33). As Anteby-Yemini wrote, in order to do so Israel began

> to tighten its geographic and political-legal borders in an attempt to contain the flow of non-Jewish African asylum seekers by resorting to processes of criminalization and illegalization, economic exploitation and abuse, and social and urban marginalization. (2017, 7)

Quite interestingly, both the geographical and political isolation of the African asylum seekers employed instruments which had already been tested on Palestinians, namely the erection of both physical and legal barriers.

With respect to the former, Israel built at its southern border a 245-kilometres-long, 5-metres-high 'smart fence' equipped with advanced surveillance systems. This contributed to the almost annihilation of migration fluxes from Egypt, which decreased also as a result of the harsh treatment reserved to migrants by Bedouin smugglers and Israeli authorities. A very telling example of this behaviour dates back to September 2012, when 21 African asylum seekers reached the fence and they were left there for about a week: not only Israeli authorities denied the access to the area to a delegation of human rights activists who wanted to deliver equipment to the group, but they also received the order to provide the asylum seekers with "as little water as possible". In the end, only three people (two women and a boy) were allowed to enter into Israel (where they were imprisoned), whereas the others were immediately sent back to Egypt (probably by the use of force). This was not an exceptional case, for several similar incident were reported in the same period (see ACRI 2012, 24-5).

When it comes to legal obstacles, it is worth noting that, as of today, no specifically designed policies exist in Israel regarding the status and the living conditions of asylum seekers, and the State rather relies on a group of domestic laws when it comes to their rejection from the country. Not only an actual policy regarding asylum seekers has never been laid out, but the Israeli government also declared, when discussing the matter in 2010, that it would have been ill-advised to develop a specific legislation on the issue (see Ziegler 2015, 174).

The most important laws regulating the access of immigrants into Israel are three: the *Law of Return* (1950), which maintains that every Jew has the right come to Israel as an *oleh* (Jewish immigrant), and was followed by the *Citizenship Act* specifying the criteria for obtaining Israeli citizenship; the *Law of Entry* (1952), regulating the rights of the non-*oleh* who want to reside in Israel, laying out the procedures required to obtain a visa and setting the bases for the deportation of those who are not welcome; the *Prevention of Infiltration Law* (1954).

Originally issued in order to bar the access to Israel to the so-called 'infiltrators', the *Prevention of Infiltration Law* has been amended several times in recent years so as to target asylum seekers from Africa, so that they could be detained with no time limits and no trial. Starting in January 2012, asylum seekers who travelled across the Israeli-Egyptian border could be imprisoned without trial for a period of three years or until their deportation was possible, *de facto* meaning, in some circumstances, for an indefinite period of time. Even if a High Court ruling ordered indefinite detention to be

withdrawn, a new amendment aimed at circumventing it was passed in December 2013, establishing that people who illegally entered Israel could be detained for one year in Saharonim prison, only to be then transferred to an 'open facility' where they would have to stay indefinitely, until they decided to leave the country. This amendment was voided by the High Court in September 2014, but three months later another modification to the law was passed, according to which administrative detention in Holot Open Detention Centre would have been limited to 20 months, with the purpose of 'convincing' the detainees to leave the country. Petitions against the amendment were submitted by several NGOs, which resulted in a 2015 ruling by the Supreme Court (later incorporated into the law) reducing the maximum detention period from 20 to 15 months.

After having described how basic laws are employed in Israel in a way to justify the discrimination, the margination and the suspension of rights and civic equality of a consistent part of the population (especially non-Jewish and African asylum seekers), the purpose of the following sections will be to provide a description of the asylum seeker's fate after they enter Israel, emphasising in which way the treatment they are subjected to can be understood as a form of torture.

5 The RSD Procedure. Between Structural Faults and Violence

As a UNHCR report maintained, Israel's handling of asylum procedures fails the standards for being considered "a fair, efficient and effective system" (2018, 2). The recognition of refugee status is not automatic even in the case of people meeting the internationally recognised criteria to be qualified as such, and it can only be conferred after people underwent a lengthy and complex bureaucratic procedure known as Refugee Status Determination (RSD).

Until 2009, it was the UNHCR which primarily reviewed the applications from asylum seekers in Israel, but starting form that year it was the Israeli Ministry of Interior (MoI) which started to process those requests instead. From then on, all the applications had to be submitted to the Population Immigration and Border Authority (PIBA, created in 2008 as a branch of the MoI), but until 2011 – when PIBA itself established them – no guidelines were set regarding the RSD procedure. In sum, PIBA is "the entity that conducts interviews with asylum seekers, makes recommendations regarding whether to grant them refugee status, and forwards recommendations to the National Status Granting Body" (Berman 2015, 43), and the entire process of determining the refugee status, issuing visas and the processing of the asylum seekers' requests is under the total control of the MoI.

Many faults can be identified when looking at the way in which the RSD procedures are carried out, the main concerns being linked to the processing time of the requests, the recognition rate of the refugees, the detention of asylum seekers and violations of the non-refoulement principle. Given the aim of the present essay, the following sections will specifically analyse the torture-like wrongdoings which are carried out in both in the course of RSD or visa renewal procedures and during the detention or deportation of asylum seekers, leaving aside the other issues.

Firstly, Israel grants protection to asylum seekers in the form of 'temporary group protection' or 'collective protection', a practice going against the provisions of international law, since asylum seekers are protected as members of a group, instead of as individuals. This kind of protection – which bars people from singularly access the Refugee Status Determination procedure – has no formal limit, and criteria establishing who is entitled to it have never been clearly laid out.

Second, the Israeli establishment deals with asylum seekers solely as a matter of public security, and, in accordance with the *Prevention of Infiltration Law*, any individual who has illegally entered Israel is deemed to be an 'infiltrator', until they prove the contrary. To do so, asylum seekers must undergo a series of procedures supposedly aimed at verifying the truthfulness of their accounts, mainly via a series of interviews and a subsequent check by the MoI of the information they provided.

The true aim of those interviews is however eloquently summarised by the fact that those carrying out the questionings define themselves as 'interrogators', rather than 'interviewers': instead of constituting a way to ascertain the actual status of the migrants, interviews are a tool employed by MoI officers to dispute the statements of the interrogated people, starting from the assumption that they are lying. The following is the case of A., an asylum seeker from Ethiopia:

> At the outset of the interview, and before he was even asked a single question, one of the interviewers made it clear to him that he is evidently lying, and that in his own interest he should confess immediately so as not to waste everyone's time. During the interview a second interviewer joined in and both interviewers took turns asking questions. Considerable parts of the interview were conducted in raised voices, with the interviewers accusing A. repeatedly of lying and pressing him to admit it. (Berman 2012, 30-1)

Aggressive behaviours are constantly displayed during interrogations, which are characterised by an atmosphere of distrust and pressure against those who are questioned. This in turn often results in the interviewees to change some elements of their previous state-

ments in order to please their interrogator, producing minor contradictions in their testimonies which are often used as an excuse to reject the recognition of asylum status. Furthermore, the criteria according to which applications are dismissed are not clearly laid out, making it impossible for people to challenge the RSD decisions.

The behaviour of MoI officers during the questionings and the grave consequences it has on the psyche of the asylum seekers can certainly be qualified as a form of psychological torture, but forms of more 'conventionally understood' torture happen in those circumstances too.

As reported by Amnesty International, "Complaints of torture and other ill-treatment by the Israeli police against asylum-seekers and members of the Ethiopian community [are] common" (2018, 209), and the employment of "unjustified and unreasonable physical violence directed at migrants and asylum seekers, both during and after arrest" is not unusual (see HRM 2019, 1). More specifically, in one attachment to a 2019 submission to the United Nations Committee against All Forms of Racial Discrimination (CERD), the Hotline for Refugees and Migrants (HRM) emphasises how "Physical violence, primarily beatings (severe enough to warrant hospitalization on occasion) as well as electric shock and intentional deprivation of food, are used by immigration officers during arrest, interrogation, or sometimes just on a whim during detention" (HRM 2019, 1).

Moreover,

> findings report incidents of verbal and physical violence during acts of arrest and deportation, xenophobic comments made by inspectors towards 'foreigners' and racial identification ('profiling') during arrests. These findings also report incidents in which 'suspects' surrounded by PIBA inspectors were hospitalized for medical treatment after being assaulted. They also report incidents in which the submission or review of complaints against inspectors were avoided by deporting the complainants of violence. (Berman 2015, 70)

In general, violence towards immigrants and asylum seekers includes beatings, slaps and verbal abuses of various sorts. All the aforementioned occur especially (but not limitedly) at the time of deportation, since many asylum seekers, fearing for their own lives in their countries of origin, refuse to cooperate to the procedures which will result in their expulsion from Israel. This behaviour is evidently taken to be an authorisation for the MoI officers to resort to violence in the form of humiliating treatments, verbal abuses, threats, beatings of various kinds, strangle holds, handcuffing and shackling people prior to boarding them on the plane to be deported. In some cases denounces were filed against the MoI officials, but even then things did

not change much, for not only people who filed the complaints were threatened, but in some cases the complaints were also dismissed by the courts. The Hotline for Refugees and Migrants once contacted the Detention Review Tribunal asking it to collect the testimony of A.S., an immigrant from Ukraine whose case was of particular interest, since he wanted to both report about the abuses he underwent during his first deportation attempt and about the existence of a video which was shown to him during his second deportation attempt, in which "a young African man was deported while shackled, screaming, crying and humiliated in a plane full of passengers" (HRM 2019, 2). However, not only A.S. had already been deported (preventing him to officially file his complaints), but he himself was also filmed, possibly to serve as a threat to future deportees.

6 Breaking Their Spirits. Israeli Detention of African Asylum Seekers

The aim of the detention of asylum seekers "is not punitive, but preventative, i.e., to insure the departure of a person from Israel after a deportation order has been issued" (Guthmann, Rozen 2019, 9). More precisely, detention is meant to works as both "a deterrent to potential 'infiltrators' by incarcerating those whom it is widely understood the state cannot deport" (Berman 2015, 64) and "a method of organisation, management and deterrence of migrants and asylum seekers from remaining in Israel, and as means to exercise pressure and coerce detainees to leave the country" (Guthmann, Rozen 2019, 54).

An infamous example of the dire living conditions and constant psychological pressure that asylum seekers endure while detained in Israel was the Holot Open Detention Facility, whose importance when it comes to understanding the many subtle ways in which asylum seekers are tortured in Israel will be at the core of this section.

Opened in the Negev Desert near the Israeli-Egyptian border, Holot started its operations in 2013, in the wake of the then-recently-approved amendments to the *Prevention of Infiltration Law*. Israeli authorities described Holot as

> a residence for infiltrators who received a detention order from a border control officer, where they are provided with appropriate living conditions and their needs are met with health and welfare services, voluntary employment, job training and educational and leisure activities. (quoted in Guthmann, Rozen 2019, 5)

The centre was closed in 2018, but it is still interesting to refer to the practices carried out in the facility, for they provide very telling examples of how asylum seekers are treated. In order to under-

stand what life was like in Holot, some key features of the detainees' lives will be sketched, proposing a refutation of the previously quoted statement.

First of all, even if Holot was an 'open detention centre' – rather than a 'residence' –, it was actually nothing but a prison in which people were detained until they agreed to be deported from Israel. Not surprisingly, albeit being defined an 'open centre', Holot was managed by the Israeli Prison Service and its characterising features were little different from those of an actual penitentiary.

The 'appropriate living conditions' to which the authorities referred to were that of a structure divided into blocks composed of 28 rooms each, each room containing five bunk beds and ten lockers without locks. Upon their arrival, prisoners were given a blanket, a roll of toilet paper and sometimes a towel. Detainees were also required to take part in three daily roll calls, reporting at their designed office in order to provide their identification card to an employee of the Israeli Prison Service (arbitrary sanctions were applied to those who missed a single one of them).

Asylum seekers were not allowed to work, and they received a monthly pocket money of 16 NIS (approximately €4) per day (about half the minimum hourly wage in Israel), with which they had to pay for buying basic goods and the bus tickets to go to the city.[6] Going out from Holot was nonetheless almost impossible, for the office in which requests had to be made for a temporary leave was often closed, and when operating it failed to provide the answers to many of them.

When it came to answering the needs of the detainees things were by no means better: there were serious problems concerning the quality of the food served (aliments lacked in both variety and freshness, they did not meet the basic nutritional standards and were sometimes served uncooked, raw or rotten), healthcare assistance was poor (a general doctor was on service only for five days a week, and detainees had often to personally travel to the city to receive the care they needed, paying for those expenses with their own money) and educational and social activities were insufficient and childish.

As stated in *The Labyrinth* report, "The true purpose of the facility, in addition to isolating asylum seekers from Israeli society, [was] to apply pressure on them to leave the country 'by will' by *breaking their spirits*" (Berman 2015, 68; emphasis added). While Holot was operational, asylum seekers who were summoned there received a paper proposal of a 'voluntary leave' programme, offering them a plane ticket to their home countries plus $3,500 if they agreed to leave the country. Those who did not accept and were detained in Holot re-

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6   Bus fares were as high as 19 NIS, and therefore it was very hard for them to leave the facility, given the impact of that expense.

ceived a 'voluntary leave' booklet instead, in which the possibility was offered to go to Eritrea, Uganda or Rwanda and receive $3,500. The booklet also warned them that if they still did not agree they would have faced open-ended detention (see Kovaliyov-Livi, Rozen 2014, 20).

Another kind of 'encouragement' came from the people working in Holot: inspectors from the Immigration Authority were reported by the migrants to be walking around the facility in July 2014 recommending the detainees to sign up for voluntary repatriation by the end of the following month, while it was still possible to do so and receive the money.

An asylum seeker detained in Holot described the following situation:

> During the interviews in prison, they put pressure on me to go back to my country, to sign. They insult us, saying "Israelis don't like you, they don't want to see you because of your color" and other things that I don't dare repeat. They call me to the office and start asking again and again if I want to go back. If not, they say I will stay in prison for ever. In Saharonim they called me for such "persuasion talks" about twice a week. I'm in Holot less than a week now and they already called me twice. (quoted in Kovaliyov-Livi, Rozen 2014, 19-20)

Violent behaviours against the detainees were also not infrequent against Holot detainees, one of the most famous episodes being the reaction of the police to the June 2014 protests of the asylum seekers held in the facility.

After the transfer of some detainees to Saharonim, approximately 750 asylum seekers walked out from Holot on 27 June 2014, declaring they would not return to the detention facility. The protesters reached Nitzana forest, where they built a camp after the IDF force prevented them to reach the Egyptian border. After two days, they were surrounded by Immigration Authority inspectors and members of the Police Special Forces, who ordered them to disband and to board the buses which would have carried them back to Holot. When they refused, their resistance was met with the use of excessive force by the police:

> The police and Immigration people started using force to put us on the buses. Four of them grabbed me and demanded I get on the bus. I refused and answered that I had not come all this way just to go back to Holot. I grabbed a big stone jutting out of the ground while two of them held my legs, two others my arms. Two other inspectors or policemen joined them to separate me from the rock and carry me towards the bus. They pushed me to the ground and sat on me. They clutched my arms and legs strongly, pushed their knees into my belly, and handcuffed me. They then started beating

me in the face, forehead and nose. They mashed my face into the ground with their knees. Others were kicking me in the stomach at the same time. Even now, a week after the assault, the signs of the beating are visible on my stomach, eyes, forehead, and arms. I still suffer also from harsh pain in my ribs. The officers put me on the bus and one of them slapped me hard in the face. I was saved from his blows by the people who were already on the bus and called out to him to stop beating me. My nose was bleeding furiously and I could feel that my ribs had broken. (asylum seeker testimony; Kovaliyov-Livi, Rozen, Malikovsky 2014, 22-3)

Several other asylum seekers were taken to the hospital, and legal hearings were hastily carried out against the marchers, who were sentenced – without even being able to state their claims – to three to six months of detention in prison for their participation in the protests (see Sabar, Tsurkov 2015, 16).

Even if Holot has closed, asylum seekers and refugees are still detained in Israel, and the living conditions they experience have dramatic consequences on their psychological health and well-being. The stressful environment in which asylum seekers are confined can result in the development of medical conditions such as generalised anxiety disorder, depression, post-traumatic stress disorder and psychosis (see Kovaliyov-Livi, Rozen, Malikovsky 2014, 32), even in people who never previously suffered mental health problems. The following is a testimony of an unnamed Holot detainee:

The most terrible thing in Holot for me is that I am in prison more than two years. The most terrible thing is that it is unlimited, this is the problem. I am a human being. I cannot spend my entire life in prison. This is indignity to people. Holot is located at the middle of the desert, we are being separated from our community in Israel and from anything that can enable us to communicate with society in Israel. This is hard. We are being downgraded to an inhuman degree; we cannot talk with other people. I am depressed, very angry. I feel that I am not a human being. I have done nothing in my life that justifies being in prison even for one second. This is what I think. I know where I came from and I think that everybody knows. I feel here that I am not a human being. If I would have been a human being they wouldn't have treated me like that. (Kovaliyov-Livi, Rozen 2014, 21)

Asylum seekers held in administrative detention are caught between a rock and a hard place: on the one hand they know that they could be indefinitely imprisoned if they do not agree to leave Israel; on the other they are aware that doing so would put their lives at risk. These feelings are exacerbated by the continuous pressure by Israeli immi-

gration inspectors to convince them to leave the country and the stories they hear about people who, having done so, disappeared or were arrested and tortured after their deportation. In spite of that, Holot's infamous reputation is one of the key factors which persuaded many asylum seekers to leave Israel, as proven by the following account:

> When I received the order I told them that there are two things I would not do: go to Holot, or go back to Sudan. *I knew Holot is not a place to be in. People in Holot are losing their minds; they get problems in their heads.* But I also did not want to go to court. This never changes anything anyway. I decided to leave so I can go and study somewhere. (IRRI 2015, 11-12; emphasis added)

As summarised by a report by Hotline for Refugees and Migrants,

> The inability to exit the detention center and forced idleness of the detainees leads to depression and hopelessness that can be felt upon entering the prison. From talking to prisoners, it becomes clear that the endless bureaucracy, the long hours of standing in lines, the lack of control regarding any aspect of their life, the inability to bring in most personal belongings, the lack of privacy, the uncertainty regarding the regulations of the place and the unlimited period of the prison time, crush the spirit of the detained asylum seekers. (Kovaliyov-Livi, Rozen 2014, 24)

7 Visa Renewal Process and Psychological Pressure

Life is not easier for those obtaining a conditional release from detention. Conditional release is granted only for a very short time, and consequently asylum seekers live in the constant fear that their papers may not be renewed, which would in turn result in their detention and ultimately in their deportation from the country.

Asylum seekers are therefore forced to periodically go to PIBA offices in order to renew their visas, but the process is extremely stressing and time-consuming: visas lasting only a few months require long hours waiting in queues outside MoI offices without the guarantee of being received, with people also testifying that they had to wait for hours only to be told to go to another less crowded office instead, or to come back at another time.

The renewal procedure seems also to be designed so as to deliver the greatest possible degree of abuse to the asylum seekers: in a report by the Hotline for Refugees and Migrants, the Association of Civil Rights in Israel (ACRI) and Physicians for Human Rights – Israel it is clearly stated that on those occasions

The treatment of asylum seekers […] is degrading, and the atmosphere is difficult, tense, and disrespectful. The various demands placed as conditions for renewing temporary stay permits include documents that are impossible to obtain, and responding to intrusive, vexing and deliberately confusing questions designed to trip them up. Hearings are conducted rudely and in a humiliating and offensive manner. (Berman 2015, 53)

Things are particularly harsh for married couples, for they are subjected to humiliating and pervasive interviews whose the stated aim to verify the 'truthfulness' of their relationship. People are interviewed separately but not privately, for different interviews are contemporarily carried in the same room, and questions are asked about minute details of the couple's life: even slight differences in the answer of the couple can result in the deportation of the male partner to a detention centre.

Moreover, many questions go far beyond any reasonable investigation standard, violating the interrogees' privacy to the point of asking them private details of their sexual life and humiliating them in front of other people (see Berman 2015, 53; Tsurkov 2015, § 5).

A very interesting article documenting all the aforementioned and other misbehaviours appeared on the newspaper *Haaretz* on 1st September 2014. After waiting for nine hours, the Author – an Eritrean asylum seeker – and her husband were admitted to the interview room where "All of the clerks were shouting simultaneously at the people opposite them, and inside that closed room there was nowhere to escape from the noise and the aggression" (Asylum Seeker from Eritrea 2014, § 5). During their several-hours-long interview racist comments were not spared, and pressure was made in order to convince the woman to return to Africa (the clerk offered to 'help' the Author by sending her "back to Africa with a lot of money – to Rwanda, Uganda, Sudan"). This dialogue, writes the Author, "took place at high volume, with fist-banging on the desk and threatening hand gestures. *The clerk did everything he could to scare, embarrass and humiliate me.* He did so *deliberately*, for hours, with all his might" (Asylum Seeker from Eritrea 2014, § 14; emphases added).

The woman had also the possibility to overhear other questioning sessions which were held at the same time, and the following excerpt is quite telling about the behaviour of interrogators:

"In what position do you have sex?". A clerk shouted at a woman sitting near me. "Is the woman on top or the man?". The clerk did not let up even when the woman began quietly to sob. He shouted that he did not believe that she and her husband were really married to each other. He told her he would be issuing her husband a summons to Holot. The woman burst out crying. (Asylum Seeker from Eritrea 2014, § 17)

This episode confirms the harshness of the treatment that asylum seekers have to undergo in order to renew their permits described by the reports of several NGOs, and it portrays a condition of constant stress and fear by the asylum seekers which has a profound impact on their lives. Even if one does not intend it as a form of torture, the psychological pressure exerted on the asylum seekers is nonetheless extreme to the point of surely resembling it.

8 'Voluntary Return' and Deportation

In order to permanently 'solve' the asylum seeker 'issue', the Israeli establishment has been enacting deportation-like policies for years, even in the subtle form of the so-called 'voluntary returns', according to which asylum seekers are 'invited' to leave the country on their own will. To promote this policy, Israeli authorities employ a series of 'incentives' to 'persuade' the refugees to act so: they can either decide to quietly leave the country or to be detained indefinitely until they are deported by the State.

That of South Sudanese nationals is a good example to understand how these policies work.

On 31 January 2012, a few months after South Sudan had declared its independence, PIBA released a document which read:

> [N]ow that South Sudan has become an independent State, it is time for you to return to your homeland. While this is not a simple move, the State of Israel is committed to helping those who wish to return voluntarily in the near future. (quoted in ARDC, HMW 2013, 6)

South Sudanese were then no longer entitled any form of protection by the State, and their visas were not renewed, resulting in the loss of their jobs. The consequent fear pushed many South Sudanese to leave Israel, and interviews carried out by the African Refugee Development Centre revealed that "living conditions, violence towards asylum seekers, and the rhetoric of Members of the Knesset [...] made most South Sudanese decide to register for voluntary return out of fear and uncertainty" (ARDC, HMW 2013, 10).

Meanwhile, the government stated that money would have been given to all the South Sudanese voluntarily leaving Israel prior to 31 March 2012, whereas arrest and deportation were awaiting all the others. When their collective protection policy definitively ceased, many South Sudanese asylum seekers submitted their protection request on an individual basis, but they were later informed by the MoI that they did not have the rights or the option to do so. Moreover, during this process

some [asylum seekers], already in the process of RSD, said that they were repeatedly called by an official from the MoI's Voluntary Return Department and told that if they signed up they would receive 1,000 Euro for each child rather than the 500 euros previously offered. Families claim that they were harassed by phone on several occasions and told to leave the country. (ARDC, HMW 2013, 21)

Those who managed to file their requests were no luckier, for their applications were dismissed after a very short interview, and they received rejection letters informing them that they had only seven days to leave the country. Starting from April 2012, a nationwide wave of mass arrest was carried out by the Israeli authorities, and the detained South Sudanese and were airlifted to their newly-born country as a part of the *Operation Returning Home*, during which several violations of freedom, dignity and property rights were reported by the arrested people.

In 2015 Israel also enacted a plan of forced deportation to third countries deemed to be suitable places for the asylum seekers to live a safe and dignified life. Even if the High Court expressed its opposition, the Israeli government declared that it would have enforced measures aimed at fostering the departure of Eritrean and Sudanese nationals from the State.

In spite of the reassurances by the Israeli establishment, many testimonies of deported asylum seekers prove that people did not receive the necessary support from the target countries and actually in many circumstances their money and papers were confiscated as soon as they arrived there, where they were once again not allowed to apply for asylum and did not receive employment or residency rights.

In short, the only clear thing is that

the promises made to those 'voluntarily' departing are not kept, and more so, the implementation of the 'Regulation of Removal to Third Countries' gravely endangers the mental health, safety and life of men, women and children, and has already cost of the lives of an unknown number of human beings. (Birger, Shoham, Bolzman 2018, 5)

But more importantly, the role that the conditions to which asylum seekers are subjected to while in Israel play in this respect is also undeniable, for

findings show that the two main factors that push asylum seekers to leave Israel are the country's detention policy and the inability of asylum seekers to acquire a status that will ensure their rights and give them stability. Almost two thirds of the asylum seekers who were interviewed by IRRI and who have left Israel

with the assistance of Israel's 'voluntary return unit' have done so as a result of their detention or upon receiving a detention order. (IRRI 2015, 2)

9 Conclusions

'Hostile' is perhaps the adjective which better describes the attitude of the Israeli political establishment towards asylum seekers; an attitude which has extremely strong consequences when it is translated into policies aimed at dealing with the recognition of refugee status.

Lacking any clear standards, the protection granted to asylum seekers lacks in transparency, and it also fails to comply to the minimum requirements of the *Refugee Convention* of which Israel is a signatory. Actually, it seems that the

> purpose of the [Israeli] refuge system is not to protect refugees, safeguard their rights and facilitate their rehabilitation, but rather to deport those who are not entitled to refuge (according to PIBA) expeditiously. (Berman 2015, 45)

Further on this point, it has been shown that one of Israeli Immigration Authority's main efforts is that of turning African asylum seekers into 'illegal infiltrators', so as to deal with immigration as a matter of domestic policy and circumventing the necessity to comply with international laws and agreements.

The political panorama outlined in this essay clearly portrays a situation of top-down illegalisation of the immigrants which nowadays represents a common trend all over the world. However, as Anteby-Yemini (2017) maintains, the process of illegalisation that asylum seekers undergo in Israel

> is even more iniquitous since they are legally entitled to protection by state-issued visas. This ambiguous policy of repression and humanitarian assistance has led to the emergence of right-less noncitizens who cannot be expelled [...] but who have no possibility of continuing their migration, leaving them *trapped* between the political borders of rights and the territorial borders of the State. (2017, 10; emphasis added)

It is precisely by focusing on the *entrapment* dimension that one can understand the subtle yet specific form of torture that asylum seekers undergo during their stay in Israel. Let us briefly reconsider the already quoted definition of 'torture' provided by the *Convention against Torture*:

[torture is] any act by which *severe pain or suffering, whether physical or mental*, is *intentionally* inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or *intimidating or coercing him or a third person, or for any reason based on discrimination of any kind*, when such *pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*[7] (emphases added)

It now becomes clear that, *in addition to being subjected to various forms of physical coercion, the main form of torture that asylum seekers endure in Israel is of psychological nature.*

The way in which asylum seekers are treated meets all the criteria to be qualified as torture: the violence they are victims of is carried out by officials appointed by the government, who aim at coerce them to comply to their (and the government's) will (i.e., the 'persuasion' to 'voluntary' leave the country) by creating extremely tense conditions (via "making they lives miserable" – as Eli Yishai, who was then Israel's Interior Minister, stated in 2012 (see Efraim 2012) – and "breaking their spirits") to achieve that goal. This is true both in the case of those who are held in detention waiting for their deportation and those who live under the constant fear of not having their visas renewed and therefore to be expelled from the country.

The unstable living conditions of asylum seekers are linked to the impossibility to acquire any official recognition of refugee status due to the ever-changing policies employed by the State, as it has emerged from several researches and reports:

The constant *changes in laws and regulations confuse many asylum-seekers*, who struggle to understand the dynamics between the different centres of power in Israel [...]. Following the abrogation of two laws and the passing of three different version of the Prevention of Infiltration Law, there is a growing sense of wariness, if not outright distrust, of Israel's democratic institutions. *A common perception among asylum-seekers is that the racist politicians control everything in the country and therefore that nothing can stop them from achieving their goal – expelling all asylum-seekers from Israel*. (Sabar, Tsurkov 2015, 14; emphases added)

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7 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

Unsurprisingly the capricious nature of official decisions and constantly changing policies *create*

> *considerable anxiety and insecurity among asylum seekers*. (Yaron, Hashimshony-Yaffe, Campbell 2013, 150; emphasis added)

This has in turn very harsh consequences when it comes to the physical integrity of asylum seekers too, and as Müller pointed out,

> *a common experience is depression and other psychological problems, ultimately rooted in the denial of a secure status*. Yodit, who has developed a number of psychosomatic illnesses, explains in this respect: "Even if I work I am always afraid I might be fired, because my documents do not allow work, it disturbs me, it makes my whole life very stressful". (2018, 140; emphasis added)

It is then evident that the last criterion for an act to be qualified as a form of torture is met too, for the actions carried out by the Israeli government and its representatives systematically result in an enormous suffering of those who are targeted by them.

In sum, the way in which Israel deals with asylum seekers not only falls short of the international agreements designed to protect them, but it also shows a number of features which are internationally considered core elements of what a torture act is. To tell the truth, one could argue that the entire set of Israeli policies affecting asylum seekers has been deliberately and scientifically shaped with the purpose of torturing them out of the country.

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The Predicament of the Rohingya Refugee, Between Violence and Expulsion

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Abstract   The Rohingya, a Muslim minority group in Myanmar, have been persecuted from their ancestral land. Most of them have taken shelter in Cox's Bazar, Bangladesh, where they face an uncertain terminus and no manifest hope of returning to Myanmar. The article focuses on civil rights, violence, repatriation, and underlying causes of the Rohingya persecution and explores geopolitics and economic issues from diverse outlooks in Northern Rakhine. Furthermore, the case study focuses on the Tatmadaw's brutalities during Operation Clearance in the Rakhine State against the Rohingya refugee.

Keywords   Rohingya. Rights. Repatriation. Violence. Tatmadaw. Myanmar.

Summary   1 Introduction. – 2 Methodology of the Study. – 3 Rohingya in Bangladesh and their Exodus. – 4 People without a State. – 5 Politics of Development and Expulsion. – 6 The Practice of Elimination. – 7 The Agony of the Survivor of Violence. 8 Repatriation. How Far? – 9 Conclusions.

1   Introduction

The Rohingya are a Muslim minority living in Myanmar's Rakhine State but are not recognised as Myanmar citizens. Since Myanmar's independence, they have been persecuted forcibly by the government. The majority of them have been forced to escape many countries, including Bangladesh, Malaysia, Saudi Arabia, and Pakistan, and a small number of Rohingya minorities in India and Thailand. Additionally, Rohingya have fled to several countries, including the

United Kingdom, Denmark, Sweden, Germany, the United States, New Zealand, Australia, and Japan. (Huennekes 2018). A group of Rohingya also lived in Indonesia, and some migrated to Canada.

Bangladesh is the home to the world's biggest refugee camp, Kutupalong, in Cox's Bazar, where more than 630,000 Rohingya refugees live (Skretteberg 2019). Myanmar's Rakhine State is adjacent to Bangladesh's Cox's Bazar. Historically, the Rakhine State in Myanmar and Chittagong and its surrounding area had been connected through trade and culture during pre- and post-British India (Karim 2000; Ibrahim 2016). Myanmar, India, Pakistan, and Bangladesh were British colonial territories. Following World War II, many countries decolonised from the British Empire. India and Pakistan gained independence in 1947, while Myanmar, known as 'Burma', became an independent country in 1948 from the British Empire. Bangladesh was formerly a part of Pakistan. Bangladesh became an independent country in 1971, following a nine-month war. These countries bear the colonial legacy. In the seventh century the religion of Islam reached this region through trade with India and the Arabs (Min 2012, cited in Ibrahim 2016). The history of Arakan province in Myanmar, now known as the Rakhine State, can be traced back to the eighth century and was associated with 'Bengal' through political, religious, and sociocultural ties (Bhonsale 2015). Until the tenth century AD, the Arakan region's dominant culture was Indian (Wilson 1817, cited in Ibrahim 2016). Gutman also endorsed ethnic links to Indian groups before the ninth century AD in the Rakhine State (Gutman 2001, cited in Ibrahim 2016). Historically, from the eleventh century began the Arakan ties with the Kingdom of central Burma (Ibrahim 2016). Since then, the Rohingya dominance ended upon the arrival of the 'Rakhine' from central Burma around 1000 AD (Gutman 2001, cited in Ibrahim 2016). Myanmar (Burma) was part of the British Empire from 1886 to 1948, and Burma ruled from 1919 to 1937 as a part of British India (*Facts and Details* 2008). During the British rule, many people came to Arakan for work from Chittagong and India (Ibrahim 2016).

In 1948, Myanmar became an independent State. Six months before independence, Myanmar's founding leader, Aung San, was assassinated on 19 July 1947, along with half his cabinet, who had led Myanmar against colonial rule and had been preparing to take power from the British (Rogers 2016). When the military government seized control in Myanmar in 1962, the Rohingya were viewed as 'Bengali Muslims' who migrated to Myanmar illegally from Bangladesh. They are also treated as 'Kalar', a derogatory term for the Rohingya (Habiburahman, Ansel 2019). As a result of the 1982 Citizenship Law, the Rohingya became 'Stateless'. Accordingly, the Myanmar military junta government issued three categories of citizenship in 1989, each with a distinct colour code: pink for full citizenship, blue for associate

citizenship, and green for naturalised citizenship, as well as a colour card for the Rohingya (Bari 2018; Ibrahim 2016; Farzana 2017; Akins 2018). Burma's Military rulers changed the country's name from Burma to Myanmar in 1989 (Bari 2018). In Myanmar, the Rohingya are not the only group discriminated against, and some other ethnic group such as the "Karen, Mon, Shan, and Chin have a long history of armed conflict against the State as these groups apprehend discrimination by the government. However, the State recognises these ethnic groups as Myanmar's national race" (Murshid 2018).

The Rohingya in Myanmar have been subjected to different types of misconduct by the Myanmar military junta, including gender-based violence, forced labour, torture, extortion, murder, expulsion from their land, unlawful taxation, mobility restrictions, and structural violence. The article highlights the rights issues, repatriation, violence, torture, and a brief historical and current circumstances of the Rohingya in Bangladesh.

2 Methodology of the Study

Using in-depth interviews and observation, the study was conducted at the Unchiprang Rohingya refugee camp, Teknaf, Cox's Bazar of Bangladesh. The in-depth interviews were conducted in January, February, and May 2019, and those who agreed to give the interview. were 21 (13 male, 8 female). Secondary data were collected from various sources, e.g., articles, books, reports, newspapers, and websites. The study aimed to understand the level of atrocities in the Rakhine State during 'Operation Clearance' launched on 25 August 2017. Also, the study explores civil rights, expulsions, geopolitics, and economic issues from different perspectives.

3 Rohingya in Bangladesh and Their Exodus

Bangladesh is the most densely populated country globally, except for a few small city-States like Macau, Monaco, Singapore, Hong Kong, Maldives, and Malta (Simpson 2020). The Rohingya refugee camps are situated at Ukihia and Teknaf Upazila of Cox's Bazar. The Rohingya refugee presence has created a socioeconomic and environmental adverse situation in Bangladesh, particularly in Cox's Bazar region, where the world's longest sandy beach is located.

There is also social disturbance in Cox's Bazar's host communities, and many Rohingya are involved in illegal drug trafficking, particularly 'yaba'. Many of the Rohingya people were detained by the Law Enforcement Agency for carrying yaba drugs in Chittagong and Cox's Bazar. According to *The Business Standard* report, at least 75

Rohingya refugees were killed by Law Enforcement Agencies during the gunfight (*The Business Standard* 2020a).

In 1978, the Myanmar government launched 'Operation Dragon King' (Naga Min) to register legal citizens and expel illegal foreigners, significantly impacting the Rohingya in the Rakhine State. In this period, approximately 200,000 Rohingya refugees fled to Bangladesh. However, most of them were repatriated by 1979, and around 100,000 died; the majority were children.[1]

In Arakan, operation 'Naga Min' had reached by February 1978; illegal arrests, vandalism of mosques, destruction of villages, and appropriation of lands were the main mechanisms that forced the Rohingya to exodus from the Rakhine (Akins 2018). In 1991, 'Operation Pyi Thaya' (Clean and Beautiful Country) was compelled again, like 'Operation Naga Min', to sack the Rohingya from the Arakan. Burma's government executed the 'Four Cuts' strategy, e.g., denial of land, shelter, food, and security for ethnic minorities, massively affecting the Rohingya in Rakhine (Akins 2018). Another massive exodus began in 1991-92 from the Rakhine State to Bangladesh; the Burmese Army's torture forced to flee more than 250,000 refugees. In the name of 'Operation Clean and Beautiful Nation', the Rohingya were forcibly displaced from 1991 to 1992, and between 1993 to 1994, nearly 230,000 Rohingya refugees were repatriated. The rest were living at refugee camps in Bangladesh. However, Bangladesh is not a signatory of the 1951 UN Convention on the Status of Refugees or its 1967 Protocol. On the other hand, the Bangladesh government has accepted the Rohingya people to take shelter for a long time (HRW 2000).

The situation began to worsen in the history of the Rohingya after the attack of 'ARSA' (Arakan Salvation Army) on 25 August 2017. The 'ARSA' attacked thirty more police posts in Northern Rakhine and killed 12 members of Rakhine's security forces, thus breeding a massive crackdown on the Rohingya by the security forces of the Rakhine and local Buddhist mobs (*BBC News* 2017). Bangladesh hosts 4.7% of the world's refugees, and 230,000 more live outside refugee camps with host communities (Palma 2020). Since August 2017, approximately 745,000 Rohingya refugees have fled to Bangladesh, including more than 400,000 children. As of March 2019, 9,009,000 more Rohingya refugees live in Ukhiya and Teknaf Upzillas of Cox's Bazar in 34 refugee camps in Kutupalong-Balukhali Expansion Site, which hosts nearly 626,500 Rohingya refugees (OCHA 2019).

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1 https://www.doctorswithoutborders.org/latest/timeline-visual-history-rohingya-refugee-crisis.

4 People without a State

Bangladesh is not a signatory of the 1951 *UN Convention on the Status of Refugees* or its 1967 *Protocol*. However, the Bangladesh government has accepted the Rohingya people to take shelter for a long time from a humanitarian standpoint. The Bangladesh Government used the term Rohingya as "forcibly displaced Myanmar nationals" in place of refugees (*The Daily Star* 2017).

The *Universal Declaration of Human Rights* (UDHR), Arts 15, § 1 and 14, § 1 ratify the right to nationality right to seek asylum from persecution (UNGA 1948). Furthermore, the *United Nations Refugee Convention* of 1951 also defines various refugee rights, including the right to education, shelter, employment rights, and some specific social, economic, and political rights endorsed as a human being (Betts, Loescher, Milner 2008). However, the Rohingya have been denied access to a number of rights in Myanmar, including the right to movement, the right to vote, the right to education, and the right to work. The State relentlessly oppresses the Rohingya; Myanmar's constitution denies them as citizens of Myanmar. Ethnicity, language, history, and religion all played a role in creating the Rohingya, a Stateless people. The State of Myanmar's geographical and political borders displaced them from the country they had called, and continue to call, home. The concepts of belonging and territoriality are entrenched in a people's existence. The Rohingya people have developed an identity for themselves due to different cycles of atrocities, exclusions, and displacements that have occurred both within and beyond Myanmar (Mohsin 2020).

Hannah Arendt doubted human rights resolution; she marked the dilemma of Statelessness, which continues to plague refugees or Stateless people, including the Rohingya. Also, Arendt denounced the nation-State system, where minority rights were neglected in the nation-State system. She pointed out that Stateless pain is the loss of citizenship; thus, the loss of homes meant the loss of the entire social texture into which they were born and the loss of government protection (Arendt 1973).

Oman (2010) considered Arendt's concept that

> right to have rights is simply a tool to ensure that individuals have access to the still-dominant institutionalized form of such membership in a politico-legal community – that is, citizenship in a state. (Oman 2010, 289)

Arendt's (1973) concept of statelessness and refugee misery are strikingly comparable to the plight of Rohingya refugees who are refused citizenship and persecuted by the government of Myanmar. The situation of the Rohingya became worse after the enactment of the 1982

Citizenship Law of Myanmar. Myanmar military government recognised 135 racial groups but excluded the Rohingya as one of Myanmar's ethnic groups; the Rohingya lost their citizenship rights and became Stateless; the Rohingya people live inside Myanmar as foreigners or illegal 'Bengalis' and are deprived of fundamental human rights, political, cultural, and economic rights (Bari 2018; Ibrahim 2016; Farzana 2017; Akins 2018; Mohsin 2020).

Moreover, two prominent Rohingya, Abdul Gaffar and Sultan Ahmed, had contributed to drafting Burma's Constitution, five Rohingya were elected parliament members in the 1951 election, and six were elected in the 1956 election. Sultan Mahmood, a Rohingya, was the health minister of the U Nu cabinet (EFSAS 2018). Even three Rohingya people had been elected, and some had the right to vote in Myanmar's 2010 national election (Ibrahim 2016). However, they were denied the right to vote in the 2015 and 2020 elections (Nu 2020). By enacting the Citizenship Law and State-sponsored violence, the Rohingya minority became Stateless.

5 Politics of Development and Expulsion

Why did Myanmar's government persecute the Rohingya minority in such a controlled setting? It is a big dilemma to find an answer. Many scholars have identified the crisis of the Rohingya issue from diverse perspectives, e.g., human rights, the refugee issue, nationalism, citizen right, geopolitics, religion, and ethnicity. Besides, international organisations, including the United Nations, have worked for a sustainable solution to the Rohingya crisis for a long time, but the Myanmar government has relentlessly ignored the Rohingya issue. Nonetheless, the Rohingya people have been oppressed in the guise of nationalism or citizenship. The Rohingya lost their land even in the name of development.

In the Rakhine State, the Rohingya became landless due to their land being expropriated by the local Rakhine and the Myanmar military (Tatmadaw) to build new houses or camps, making the Rohingya landless. The Rohingyas' exodus and expropriation of their land issues are more pertinent to Marx's concept of 'primitive accumulation of capital' (Marx [1867] 1990) elucidated the historical consequences of 'primitive accumulation of capital' and the emergence of capitalism in England after collapsing Feudalism. According to Marx,

> in the history of primitive accumulation, all revolutions are epoch-making that act as levers for the capitalist class in the course of its formation; but this is true above all for those moments when great masses of men are suddenly and forcibly torn from their means of subsistence, and hurled onto the labour-market as free,

unprotected and rightless proletarians. The expropriation of the agricultural producer, of the peasant, from the soil is the basis of the whole process. The history of this expropriation assumes different aspects in different countries, and runs through its various phases in different orders of succession, and at different historical epochs. (Marx 1990, 876)

Marx asserts that the State has acted as the agent of all systematic 'primitive accumulation processes', without exception. Under colonial administrations, European States plundered the rest of the world on a large scale, seizing means of production and labour power (Marx 1976, cited in Roberts 2020).

Foreign governments and foreign corporations acquiring local land is a centuries-old trend in parts of the world. However, particular phases can be traced in such acquisitions' diversified histories and geographies. A significant movement in this direction began in 2006, as seen by rapid growth in the volume and geographic distribution of foreign acquisitions and buyer variety. "Between 2006 and 2011, foreign governments and companies are estimated to have bought more than 200 million hectares of land globally" (Sassen 2014). In the names of citizenship, scrutiny of the national race, or different operations by the Tatmadaw, the Rohingya lost land livelihood, and were evicted from their home, deprived of civil and political rights, and materialising a 'primitive accumulation of capital' materialised in Myanmar with the plunder of the land and livelihoods of the Rohingya and other minority groups in Myanmar.

Habiburrahman, a Rohingya refugee and author of *First, They Erased Our Name*, noted how the Military of Rakhine State brutally confiscated the Rohingya lands.

Habiburahman and Ansel stated in their book,

across the whole of Arakan, the Army is establishing model villages known as NaTaLa, built on land confiscated from the Rohingya. Robbed of all their possessions, the Rohingya are forced to abandon their land and homes or to clear them to build new houses for the settlers from pure races, such as the Buddhist Rakhines and Bamars, who are often farmers, former Buddhist prisoners, or retired army officers and their families. Sometimes, these settlers are given kalars as slaves. (Habiburahman, Ansel 2019)

Sassen (2017a) expounded that the Rohingya problem is not only a religious and ethnic substance but also the interest of the business. She expounded that religion and ethnicity focused more on national and international media, but there is a limitation in clarifying recent violence against the Rohingya. Persecution of the Rohingya has primarily been motivated by religion and ethnicity. However, the under-

lying issue is also about seizing their land, which has already begun in other parts of Myanmar, and the ultimate victims of this land acquisition are impoverished minorities, including minority Buddhists.

According to Saskia Sassen (2017a),

> Myanmar has become a last Asian frontier for our current modes of development – plantation agriculture, mining, and water extraction. Its location makes it even more strategic. Besides being the largest country of south-east Asia, Myanmar is between the two most populous countries globally, China and India, both hungry for natural resources.

In 2016, the Myanmar Government selected three million acres of rural Rakhine land for allocation in 'economic development'. The Military of Myanmar has de facto control of managing economic development and land allocation. The Rohingya have greatly affected land allocation and economic development. The Military of Myanmar has organised land allocation for domestic and foreign actors for two decades in Rakhine and other Myanmar regions. In 2014 the Military attacked the Rohingya; thus, the affected Rohingya moved to government-controlled camps, ensuring them a safe return to their villages by the government, but this return did not happened (Sassen 2017b).

China, India, and Myanmar implement several development projects in the Rakhine State, regardless of the current Rohingya crisis. However, these countries are increasing their investment and influence in Myanmar's volatile Rakhine State, bordered by Chittagong to the northwest and the Bay of Bengal to the west. Myanmar has historically relied heavily on China for political and economic support and diversifies its portfolio through partnerships with India and other nations like Japan and Singapore (Islam 2017). China has established the Kyaukphyu Special Economic Zone and a deep-water port project in the Rakhine State; the first phase of the Kyaukphyu port project cost is estimated at $1.3 billion (*The Star* 2020). These projects allow China to enter the Bay of Bengal and the Indian Ocean, a substantial drawback for India. With the pretext of investment, India and China have vested interests in dominating the Rakhine State. Besides, the Rakhine State is strategically significant for both China and India.

Although India is expanding its grip to be a global leader, relations with Myanmar are also strategically vital for India, especially in the Rakhine State, to safeguard India's considerably peripheral state where the presence of the insurgent group in Northeastern India, mainly Sikkim, Mizoram, Manipur, Sikkim, and Nagaland (Khan 2018). 'The Kaladan Multimodal Transit Transport Project' in Myanmar, financed by India and Sittwe Port's construction, is also part of this project. The objectives are to create a multi-modal sea, river, and road transport corridor aimed at the shipment of cargo from India's

eastern ports to Myanmar through Sittwe port and India's northern Myanmar inland road (Chaudhury 2019), which project greatly benefited India's northeastern region. Both China and India have substantial geopolitical interests in Myanmar, especially in the Rakhine State, where the Rohingya minority forcibly flee to Bangladesh.

Furthermore, South Asian politics is spinning between the Chinese 'Belt and Road Initiative' (BRI) and 'Indo-Pacific Strategy' (IPS). Bangladesh, Pakistan, Nepal, and Sri Lanka have already been involved in Chinese BRI (Bhadrakumar 2020); in contrast, India is a part of the 'Indo-Pacific Strategy' and Bangladesh is offered to join it (*The Daily Star* 2020). It appears that for business, geostrategic interest, and regional power, India and China can play a role in the repatriation of the Rohingya refugees. Nevertheless, these countries closely work with Myanmar in trade, investment, and security.

Amnesty International has recently found substantial business ties with the Tatmadaw (Myanmar's Army), and retired personnel backed Myanmar's largest business conglomerate, MEHL, accused of financing the 2017 'Operation Clearance' against the Rohingya. There is a significant investment of local companies and multinational corporations in different countries with MEHL, including Kiring Holdings of Japan, RMH of Singapore, Wanbao Mining of China, and multiple South Korean companies, e.g., Inno Group, Posco, and Pan-Pacific (Amnesty International 2020).

The US is keen to repatriate Rohingya, but US imports from Myanmar soared from $366 million in 2017 to $821 million in 2019, and exports rose from $211 million in 2017 to $347 million in 2019 amidst the ongoing Rohingya refugee crisis (Palma 2020).

Remarkably, both Bangladesh and Myanmar are the second and third largest Chinese arms importer in Asia; the first one is Pakistan. China supplied Bangladesh with $1.93 billion in arms between 2008 and 2018, representing 71.8% of Bangladesh's military purchases during this timeframe. On the other hand, Myanmar is Asia's third biggest Chinese arms importer. From 2008 to 2018, China supplied $1.283 billion in arms to Myanmar (*China Power Project* 2020).

Furthermore, Bangladesh and Myanmar have strong relations with China and India. While Bangladesh and Myanmar share the Indian border, Myanmar has a border with five other countries, including China, India, and Bangladesh. China and India have geostrategic interests in South Asia and Southeast Asia, where they aim to lead. China and India's role is extensively vital for keeping peace and security in these regions, particularly during the Rohingya crisis in Myanmar. Although the Rohingya refugee crisis has had an adverse impact on Bangladesh, trade with Myanmar has continued despite the Rohingya catastrophe.

6 The Practice of Elimination

MacLean (2018) explained the Rohingya crisis as the practices of 'lawfare' and 'spacio-cide' In the former idea, he discussed Brooke Goldstein's concept of 'lawfare': the law is used as a weapon of war. The Rohingya became Stateless based on the Citizenship Law of 1982. The 'lawfare' approach was applied to Rohingya as Stateless persons. In the 'spacio-cide' idea of Sari Hanafi, MacLean elucidated the systematic destruction of the Rohingya's living space for security, development project, and model villages for the other parts of the region, which resulted in losing their ancestral land and adapted livelihood.

According to HRW, In Rakhine, 600,000 Rohingya remain in villages and IDP camps (Internally Displaced Person). They are subject to persecution and violence, live without freedom of movement, and are deprived of adequate food, healthcare, education, and livelihood in villages and IDP camps (HRW s.d).

7 The Agony of the Survivor of Violence

Since Myanmar's independence, the Rohingyas have been subjected to State-sponsored violence. The Rohingya situation in Myanmar's Rakhine State has deteriorated dramatically in recent years following the 'ARSA' attack. One of the survivors of Rohingya described the attack of the Myanmar Army on 25 August 2017:

> That day felt like the last day of this world, as if the whole world was collapsing. I thought judgment day had arrived. (HRC 2018, 8)

Myanmar's security forces launched an operation against the Rohingya after ARSA attacked on 25 August 2017. This operation targeted the Rohingya living across Maungdaw, Buthdaung and Rathedaung areas and violently destroyed the Rohingya villages. This operation was called 'Operation Clearance'. Not only Tatmadaw attacked the Rohingya but also other security forces; some Rakhine and ethnic minority people also attacked the Rohingya. In this circumstances, by mid-August, approximately 725,000 Rohingya fled Bangladesh (HRC 2018).

According to the Médecines Sans Frontières survey report, nearly 9,400 people died between 25 August and 24 September 2017, and approximately 730 children were killed under the age of five (Médecines Sans Frontières 2018). In Min Gyi (Tula Toli), a village of Maungdaw, during 'Operation Clearance' of Tatmadaw, many women and girls were raped and killed or severely wounded by the Tatmadaw. In Min Gyi and Maung Nu villages, the inhabitants were savagely killed to-

gether in a row (HRC 2018). According to the Independent International Fact-finding Mission Report on Myanmar (HRC 2018), at least 392 villages were partly or entirely demolished in the Rakhine State by the Tatmadaw. Over 1,000 Rohingya refugees were interviewed by the Public International Law and Policy Group (PILPG) in the Cox's Bazar camps, revealing shocking violence, abuse, and widespread human rights violations against them. Numerous killings, torture, persecutions, rapes, and other forms of sexual violence are included among the abuses (Michael, Williams, Sterio 2021).

I interviewed twenty-one Rohingya who were forced to flee to Bangladesh during Myanmar Army's 'Operation Clearance'. They left Myanmar with their family, without belongings, and most of them were empty-handed. The respondents I interviewed came from Buthidaung and Maungdaw areas. Everyone's journey to Bangladesh was dreadful. Many of them had walked almost 5-6 days to go to Bangladesh. During 'Operation Clearance', the Tatmadaw and the local Rakhine killed their family members, relatives, and neighbours. They also lost their accustomed livelihood in Myanmar, including livestock, agricultural land, shrimp farming, money, and business. All of the Rohingya wanted to return to their home country except one Rohingya woman who lost her husband, killed by the Tatmadaw.

According to the violence survivors I interviewed during 'Operation Clearance', the atrocities level was almost the same in the Rakhine State. Everyone said their houses were burnt, villages razed, unarmed Rohingyas were killed, men and women wounded, and some women and girls had been raped by the Tatmadaw and local 'Buddhists'.

Rahima Khatun (pseudonym), a 42-year-old widow, hailed from Nafpura of Maungdaw, Myanmar, mother of four sons and one daughter, is now living at the Unchiprang camp in Teknaf, Cox's Bazar. Myanmar's Army killed her three sons during the August 2017 crackdown in Rakhine State. Even though she could not get her son's dead body, her only living son is in another camp in Teknaf. Rahima is living at camp with her daughter. She is extremely isolated, and her existence in the refugee camp is dismal due to her family members' horrific deaths at the hands of the Tatmadaw and the loss of her livelihood. She was unable to forget the four goats she had left in Myanmar. Myanmar's military also torched her home. In addition, she could never forget the brutal death of her sons. She hopes that if the situation improves in Myanmar, she will leave Bangladesh.

Abul Kalam (pseudonym), a Rohingya refugee, was an affluent farmer in Jambunia, Maungdaw, Myanmar, and a father of three sons and four daughters. He lives with family members at the Unchiparnag refugee camp. He said that he had approximately 9-acre agricultural land and a cattle farm with fourteen cows and five goats. During 'Operation Clearance', his cows and goats were plundered by the Tatmadaw and the 'local Rakhine'. Moreover, they had looted his

house. After robbing his home, the Tatmadaw burned the house and murdered his younger brother. Kalam could not even bury him properly following a religious funeral practice. Now, he has to look after his brother's family. Once a wealthy farmer in Myanmar, now a refugee in Bangladesh, he said:

it is painful when we do not have anything to do except take relief.

He is striving to adjust to changing situations. However, Kalam desires to return home and seeks Bangladesh's government initiative for repatriation as early as possible.

On 3 September 2017, Nurul Alam (pseudonym) 47 year-old, a Rohingya man, fled to Bangladesh with his wife, sons, and daughters. However, after five days of walking, they reached the Bangladesh border. In Rakhine State, he worked on agricultural land in his village. The Tatmadaw burnt down his house. Alam said: "the Tatmadaw killed nearly forty people in my village, and the same troop raped four of my relatives".

Alam said:

Myanmar police arrested my uncle without any interrogation and killed him brutally. In my tiny life three times, I had to take shelter three times in Bangladesh, first in 1978, second in 1991, and lastly in 2017.

He said:

How could we survive in the Rakhine state with misery and torture by the Myanmar government?

Alam wants safe and sustainable repatriation, including civil rights and recognition of the Rohingya people. He said he has many unfulfilled dreams, but Alam does not know when his dreams will come true. Alam wants to return to his motherland, where he was born and buried his father, grandfather, great-grandfather, and many relatives. Alam said: "He could not go outside Maungdaw in Myanmar". In the Rakhine State, they could not go outside the Rakhine State.

Rabiul (pseudonym), a farmer, is the father of five sons and five daughters. On 1st September 2017, he arrived in Bangladesh from Myanmar. When all his family members came to Bangladesh, Rabiul's elder son remained in Maungdaw, Myanmar, and tried to sell his fourteen cows and goats. However, the son could not sell cows and goats, but his son was brutally fired by the Army and died quickly in front of his house.

Life's meaning is different from a different perspective; once the Rohingya have a familiar livelihood, now they have become refugees.

They are Stateless, but once, they had their own house, relatives, and villages in Rakhine. The Tatmadaw and 'local Rakhine' committed violence against the Rohingya in ways that were almost identical to those described by I interviewed, including burning homes, razing villages, robbing cattle, raping, killing, and wounding unarmed Rohingya civilians.

8 Repatriation. How Far?

Almost four years have passed since the Rohingya refugee influx in Bangladesh started, but not a single Rohingya refugee has been repatriated to Myanmar. Bangladesh and Myanmar signed an agreement for repatriation in November 2017, and later in 2018, the UNHCR and the United Nations Development Programme (UNDP) signed a multilateral agreement with Myanmar for the Rohingya refugee repatriation. Consequently, two dates had been fixed for repatriation in 2018 and 2019, but no single Rohingya returned to Myanmar. Bangladesh has sent information of 60,000 Rohingya and later sent verified information of 30,000 Rohingya, but no one goes back, and Myanmar Government is delaying a Joint Working Group Meeting due to the COVID-19 pandemics (Palma 2020).

When I interviewed the Rohingya refugees, I asked them about repatriation: twenty out of twenty-one refugees want to return with a durable solution, confirming Rohingya's civil rights and recognition as a national race. One Rohingya said:

> They will force us to stay in the concentration camp if we go without citizenship rights. It is like we will return from the Bangladesh refugee camp to the Myanmar concentration camp. Another Rohingya refugee said we want to return to our homeland, but the government has to ensure our security to live peacefully; we also want freedom of movement and the right to vote.

For repatriating the Rohingya, regional powers such as India, China, Japan, and Russia are not playing a pivotal role for the minority Rohingya of Myanmar. China wants a bilateral solution to the Rohingya issue. Furthermore, the UN Security Council could not issue any resolution supporting the Rohingya issue against Myanmar: although the British government drafted a resolution for the Security Council, China and Russia boycotted talks on the British drafted resolution (Nichols 2018).

The Myanmar crackdown against the Rohingya has been defined by the United Nations "a textbook example of ethnic cleansing" (Cumming-Bruce 2017). The Gambia filed a genocidal case in the International Court of Justice (ICJ) against Myanmar in favour of

the Rohingya on 11 November 2019, supported by the Organisation of Islamic Country (OIC). On 23 January 2020, the ICJ ordered Myanmar to take immediate action to prevent the genocide of the Rohingya Muslim minority. ICJ ordered four provisional measures requested by the Gambia. Myanmar must take all measures within its powers to protect the Rohingya under the *Convention on the Punishment of the Crime of Genocide*, Art. 11, guarantee that Military and other irregular armed groups do not commit genocide against them, and take adequate measures to prevent the destruction and ensure the preservation of evidence related to allegations. Additionally, Myanmar must submit a compliance report within four months and subsequently every six months until the case's final verdict (ICJ 2020).

The case is ongoing, and Canada and the Netherlands government have agreed to support the Gambia in this case (*Al Jazeera* 2020). Recently, two Tatmadaw soldiers directly involved in the Rohingya killing have given video statements on brutal atrocities during the 'Operation Clearance' in the Rakhine State against the Rohingya. Fortify Rights, an independent organisation, believed that these two soldiers are now under ICJ's custody in the Hague, Netherlands. They committed the crime against unarmed Rohingya in 2017 in different villages in Buthidaung Township. They are responsible for killing approximately 180 Rohingya minorities (Fortify Rights 2020).

According to Matthew Smith, Chief Executive Officer at Fortify Rights:

> these men could be the first perpetrators from Myanmar tried at the ICC and the first insider witnesses in the court's custody. We expect prompt action. (Fortify Rights 2020)

9 Conclusions

There is no country that will accept the Rohingya refugees as citizens, neither Myanmar nor any third country. Following the recent migration of Rohingya in Bangladesh, not a single Rohingya has returned to their birthplace. They wish to return to their homeland with a sustainable solution. However, due to Myanmar's reluctance, the process of repatriating the Rohingya from Bangladesh has been delayed. The core issue is Myanmar's recognition of the Rohingya as citizens, which is relatively overlooked in the repatriation dialogue. Bangladesh is home to over one million Rohingya refugees; this crisis has become a burning issue for Bangladesh due to the adverse effect of hosting them for a long time. In Cox's Bazar region, where the Rohingya refugees are sheltered, the host communities' livelihoods have been seriously disrupted. There is a growing conflict inside the camps with rival groups of the Rohingya. On 6 October 2020, four

Rohingya people were killed in a clash between two rival groups inside the Kutupalong Rohingya camps in Cox's Bazar, the world's largest refugee camp (*The Business Standard* 2020b). This clash between the Rohingya groups impacted the refugees' movement and created tension inside and outside the camps.

Most Rohingya survive either in refugee camps or in detention camps within and outside Myanmar; they lost their familiar livelihood, home, education, citizenship right, freedom of movement, and numerous problems as Stateless people.

This study examines the causes of the Rohingya problem from the perspectives of human rights, violence, development, geopolitics, and repatriation. The Rohingyas' miseries will not end until they get citizenship right in Myanmar, and the government of Myanmar structurally persecuted them using the law and the military force to commit genocidal crimes against them. Also, the repatriation progress of the Rohingya community has been overdue for Myanmar's unfeasible initiative.

Meanwhile, the role of regional forces, such as China and India, is relatively fuzzy in Rohingya's repatriation and settlement. Though these two countries have invested heavily in the Rakhine State, both countries still have commendable ties to Bangladesh. The repatriation of Rohingya needs decisive action from China, India, Russia, Japan, the United States, and several international organisations, such as the United Nations, ASEAN, the European Union, and the UN Security Council.

The Rohingya living in the camps in Bangladesh also try to cross the country illegally in dangerous boat journeys. The Rohingya refugees pass through an uncertain journey in the camp with agony but hope to return. They want to repatriate to their home country with a durable solution despite all those restrictions. Most of them said to fulfil their demands, including recognising Rohingya as a citizen, releasing the prisoner, freedom of movement, social security, right to vote, permission for business, employment rights, and access to formal education.

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Migration, Violence, Mental Health
Psychotraumatology, Health Policies and Protection

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Abstract   This chapter discusses psychopathological issues related to migration in general, and to the so-called 'forced migrants' in particular. The latter are those migrants who are forced to flee their countries to save themselves from violence. As a consequence, they are more at risk for mental health issues due to the lack of a migration project (which is a resilience factor in migrants) and to the psychotraumatic experiences they suffer. We will describe the psychopathological reactions in traumatised persons, the effect of re-traumatisation they suffer during the migratory trip, and the role of Post-Migration Living Difficulties occurring in Italy in worsening the mental health of asylum seekers. Moreover, a brief section on the effects of the COVID-19 pandemic on these persons will be added, focusing on mental health service utilisation. Finally, we will discuss the difficulties of the Italian National Health Service in adequately healing these persons, and the indication given by the Italian National Guidelines to create services dedicated to these topics.

Keywords   Migration. Violence. Mental health. Psychotraumatology.

Summary   1 Introduction. – 2 Traumatisation and Retraumatisation. – 3 Outcomes of Torture and Mental Health Violence. – 4 Welcome the Traumatised Patient. – 5 Health Policies and Guidelines for Welfare Protection in Italy.

Edizioni
Ca'Foscari

> The stranger separated from his fellow citizens
> and his family
> should receive more love
> by men and gods
> (Plato)

1   Introduction

Heimweh, this often fatal disease, has not yet been described by doctors… The German name indicates the pain of those who are far from their homeland, and who fear they will never see their homeland again. The French, observing the Swiss struck by this misfortune in France, coined the definition of *mal du pays* (disease of the homeland), and, since it has no name in Latin, I thought of calling it, from the Greek, *nostalgia*, from *nòstos*, the return to the homeland, and *àlgos*, pain and suffering.

This is how the Swiss doctor Johannes Hofer described, in his doctoral thesis of 1688, a disease that he observed among the Swiss mercenary soldiers, with whom he carried out his work as a doctor. Not only has he coined a term that since then has effectively described that particular sentiment of one who leaves a dear environment, but has also given what is probably the first psychiatric codification of a pathology of migration. Furthermore, as a therapy for a psychiatric disease, he proposed a social intervention: the transfer of the patient to his homeland. In Hofer's *Dissertatio Medica de Nostalgia* there are already *in nuce* the elements later recognised as essential in modern immigration psychiatry: a decisive role is played by the experience itself to migrate, and by the conditions in which migrants live; consequently, even curative and rehabilitative interventions cannot ignore the social aspects in order to be effective (Mazzetti 2008).

Apart from this Hofer's precedent, however, it is from the nineteenth century that clinical observations on the mental health of immigrants begin to find a regular space in scientific publications; however for many years they presented essentially anecdotal characteristics, and up to the mid-twentieth century they seem above all to have contributed to creating and maintaining stereotypes and prejudices against migrants, often presented as subjects with a certain tendency to psychic instability and vulnerability (Ranney 1850; Foville 1875; Ødegaard 1932). These ideas contrast, even before the subsequent scientific evidence, with common sense, if we consider that in the history of humanity the sedentary lifestyle is to be considered the exception, rather than the rule, given that the species *homo sapiens sapiens* has been, during the approximately 130,000 years of its history, mainly nomadic.

In recent years, the scientific literature has rather focused on identifying those factors capable of promoting, or vice versa endangering, the mental health of migrants, while, in parallel, an attitude of attention to different cultural sensitivities, which has gone by the name of "ethnopsychiatry" (Devereux 1970). This term refers to the treatment of psychic suffering contextualised in the patient's cultural references: it is a definition that we do not like very much, because we believe that no good psychiatry can neglect the patient's culture, and the term *ethnopsychiatry* therefore risks by one side to be a tautology, and by the other side to assume that there may be a psychiatry that does not take cultural references into account.

As for Italy, for example, which for about a century and a half became a land of emigration (between the nineteenth and the twentieth centuries) and then from the mid-1980s returned to its historical vocation as a place of attraction for populations on the move, clinical observations and scientific research are relatively recent, precisely because of the historical interval in which Italy has forgotten its immigration characteristic to become a country of emigration, for a period short in human history but long if compared to the average life of human beings, so as to forget a historical reality that is more than millenary.

The observations therefore began to develop from the 1990s onwards: the data collected in the course of numerous epidemiological investigations made it possible to define what has been called the "healthy-migrant effect" (Costa 1993; Geraci 1995). That is: immigrants leave their country healthy (which is quite obvious, considering how demanding the migration path is and how it requires good health to be faced), and healthy usually arrive in the host country. These observations, which are based on studies of the early 1990s, have been regularly confirmed later (WHO 2018): there are not significant pathologies import among immigrants in Italy. These figures, valid for the comprehensive immigration epidemiology in Italy, proved to be valid also in psychiatry: the rates of hospitalisation for mental diagnoses among immigrants have been particularly low, despite what we might have to suspect, considering the risk factors related to the migration experience.

With regard to health in general, the clinical-epidemiological observations have, if anything, made it possible to detect, based on the characteristics of hospital admissions of the immigrant population compared to the Italian ones, that the living conditions in the host country have the greatest impact on health. In other words, immigrants get sick in Italy due to the living conditions in which they live: for example, they show significantly higher hospitalisation rates than Italians for accidents, because they are more concentrated in the most dangerous working activities (Geraci 2001; Osservatorio nazionale sulla salute 2005-18; INAIL 2012).

Similar observations have also been made in the psychiatric field: the 'Post-Migration Living Difficulties' (PMLD) seem to play a role in the genesis and maintenance of post-traumatic reactions, maladjustment and somatisation, regardless of other risk factors, including traumas suffered at home before departure (especially with regard to forced migrants) or those suffered during the migratory journey (Aragona et al. 2011; 2012a, 2013; 2020a; Mazzetti 2008; Aragona, Geraci, Mazzetti 2014; Barbieri et al. 2021). These observations suggested researchers to focus primarily on understanding migratory dynamics, and how they affect the mental health of migrants, to identify protective and risk factors that can affect them.

These considerations, which have maintained a substantial validity for over twenty years, however, seem to need some adjustment linked to the phenomena that have occurred over the last few years, during which we have observed a change linked both to the socio-demographic characteristics of newcomers and to their migration processes. In 2011, with the 'North Africa Emergency' (after the Arab Springs), in Italy the usual economic migration movement changed, becoming essentially based on refugees, who arrived after a prolonged, often extremely hard, migratory trip (Idos 2012).

Those who work in the sector have also witnessed an increase in the number of coming people with a low level of education, often illiterate, and with histories not only of psychotraumatology but also sometimes of social marginalisation prior to migration. The reasons for this phenomenon are not yet completely clear, and we also lack data able to accurately compare, and on large numbers, demographic data as the education levels of new arrivals with which of the immigrants previously arrived in Italy, a population with medium-high education levels (Coccia, Pittau 2016). With all the necessary precautions, given the lack of systematic data, however, it seems to us possible that a lowering of the level of education in new arrivals could also constitute a health problem, being able to influence the "health literacy", a key factor in health protection (Sørensen et al. 2012; 2018; Karnick 2016; Paasche-Orlow et al. 2018; Ward, Kristiansen, Sørensen 2019).

In the same years, moreover, it was possible to record (Da Silva et al. 2016; Baglio et al. 2018; Aragona et al. 2020b) a change in the immigrants' admission rates in Italian psychiatric hospitals, which deserves some comment. In general, in fact, in Italy hospitalisation rates for psychiatric pathologies among foreigners were traditionally lower than those among nationals. This dynamic remains unchanged even in recent years regarding the global migrant population. If, on the other hand, the population of young males is selected from the countries from which forced migrants seeking asylum currently arrive, it can be seen that after 2011 the rate curve of this subgroup rises, greatly exceeding both that of other migrants and that of Italians. In essence, it is as if in this population there was a greater vulnera-

bility that leads people to hospitalise more often, and this coincides temporally with the disintegration of the Libyan Republic, with the consequent chaos that has led to an increase in departures (including people who had not planned to come to Europe) and an increase in severe traumatic experiences in that country (imprisonment, beatings, forced labour, malnutrition and dehydration, physical and sexual abuse and violence, torture). Furthermore, it has been seen that in the group of inpatients from the areas from which refugees leave, the most frequent diagnosis is not 'schizophrenia', as in the other groups, but 'unspecified psychosis', as if psychiatrists implicitly report that they are facing atypical psychotic presentation. Here too, the data do not allow a more accurate analysis, but it is reasonable to think that at least part of these psychoses may be part of a particularly severe post-traumatic reaction, as is often observed in tortured people (Aragona et al. 2020b).

The data from the Italian Ministry of Health (on which are based the quoted researches) do not report the educational level of the inpatients, or their status (asylum-seeker, refugee etc). However, the data are sufficient to suggest that something new is happening in that population, that the mental health profile is no longer as good as that of migrants who arrived in previous years, and that this poses a challenge to the national health system. This suggestion has been supported by a qualitative survey conducted on a sample of social and psychiatric workers in Italy:

> From the interviews carried out both with the NGO professionals, with long experience in the treatment of psychopathologies among migrants, and with psychiatrists operating in the national health system, a different typology of the current migrant has emerged who often presents with a psychic substrate already compromised, with a reduced resilience and without a clear migratory project. (Medici Senza Frontiere 2016, 11; transl. by the Authors)

2 Traumatisation and Retraumatisation

Migration itself is a complex event that can be experienced in a traumatic way (Mazzetti 2008). However in psychotraumatology when it comes to traumas, or rather potentially traumatic events, it is customary to refer to those events that the person directly undergoes or of which he or she is a witness, or of which he or she becomes aware if it concerns a relative or a close friend, characterised from "death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence" (American Psychiatric Association 2013, 271). This definition covers a very wide spectrum of possible events: natural disasters, accidents, episodes that occurred in battle, as-

saults, public and private violence etc. In these cases, migration, especially if it occurs in the difficult conditions mentioned above, can constitute, as we shall see, a retraumatising event.

Today, due to the geopolitical upheavals in many African and Asian countries, more and more each of these events may have occurred to applicants for international protection. In addition, there is often a specificity linked to the fact that the suffered violence (which prompted the person to flee one's country, the so-called 'forced migration') was intentional. This means that someone perpetrated brutal acts aimed at inflicting pain and/or death for defined purposes, on someone else, in a voluntary and conscious way. This entails a greater peculiarity of trauma, also defined as "extreme trauma" (Herman 1992; Van Der Kolk, Courtois 2005; Van Der Kolk et al. 2005; Viñar 2017): repeated interpersonal violence, practiced voluntarily by a person and/or a group, in a situation of deprivation of freedom.

The symbolic example of this type of experience is that of torture, defined by the UN as

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. (United Nations 1984, Art. 1, part I)

In addition to torture, the intentional violence that deeply undermines the dignity of the person (for example, enslavement or trafficking) is defined "inhuman and degrading treatment", even if not perpetrated by public officials. Many migrants who land in Italy and almost all applicants for international protection report having suffered events of this type, especially before leaving their country (in this case the trauma acted as a 'push factor', that is, a factor of expulsion and push towards migration), as well as during the passage in transit countries (violence, kidnappings, detentions, rape).

These events are potentially traumatic, because there has been a significant difference between exposure to psichotraumatic events and actual prevalence of Post-Traumatic Stress Disorder (PTSD). This means that if on the one hand the trauma event itself causes a complex of psychological reactions, on the other hand there is no relationship of necessity between trauma and PTSD. In other words, there is no direct cause-effect relationship, but another series of factors intervenes, including the characteristics of the person exposed to the

trauma, his psychological defences (resilience and coping capacity), his cultural, family and religious affiliations, the way in which he or she integrated the event into his or her own subjective and cultural experience, and the meaning it gave it.

Furthermore, the development of a real PTSD also depends on the context in which it occurred and on the events that followed the trauma: some of them can mitigate the traumatising aspects, while others instead constitute a dramatic chain, which further complicates the outcomes. Indeed, studies agree in suggesting that there is a quantitative effect linked to the onset of the syndrome, whereby the greater the number of traumas suffered, the greater the relative risk of developing PTSD (Mollica et al. 1998a; 1998b; Rasmussen et al. 2007; Turner et al. 2003; Aragona, Geraci, Mazzetti 2014). The nature of these traumas, linked to the ferocity (as perpetrated by another individual) and the will of violence, causes more serious effects and makes the victims more vulnerable to the aforementioned Post-Migration Living Difficulties (PMLD).

This introduces us to the concept of 'secondary traumatisation', by which we mean the reactivation of the traumatic experience through new events. Indeed, this is a recurring fact in the experience of traumatised migrants: they not only had to undergo severe traumatic experiences before departure and/or during the journey, but after their arrival in Europe their vulnerability exposes them to further traumatisation, both for the insufficient protection of the reception system (for example, immigrants housed in overcrowded centres where friction between groups of guests is more likely to occur), and for the traumatic situations linked to the new internal barriers (for example, the migrants, often families with elderly people and children, who on the Balkan borders have been shot rubber bullets and tear gas, or who are left in the cold without adequate support in unlivable refugee camps), and because some of the people leave the circuit reception (for example, who move away before being registered, or the holders of protection who at the end of the period of protection end up on the street in a condition of social marginalisation, which makes exposure to new abuses and traumatising experiences more likely).

These events, in addition to having a possible intrinsic psychotraumatic effect due to their severity (i.e., the violence against women victims of trafficking), are often pathogenic because they reactivate the original traumatic experience with which they are associated, for example the traumatic reactivation of the tortured person who has a *hyperarousal*: the hyperactivation of the sympathetic nervous system with the release of stress hormones when he or she has to go to the police station for administrative reasons, because the police uniforms remind him or her of the perpetrators of the trauma. These potentially retraumatising experiences are then associated with other vital post-migration difficulties (boredom, discrimination, poor access to services, bureau-

cratic delays, concerns for one's own life and that of family members, fear of expulsion, poverty etc.). All these events are parts of the PMLD.

Research shows that PMLDs have a defined pathogenic role. In particular, it has been demonstrated (Aragona, Geraci, Mazzetti 2014) that in refugees and asylum-seekers suffering for more PMLD there is an increased risk of developing a PTSD, with greater severity of symptoms, resistance to the therapeutic process and difficulties in the process of social integration.

In general, a trauma suffered in the country of origin, together with conditions of discomfort in the host country, tends to worsen the level of psychopathological suffering. And it should be emphasised that if reducing the risk of pre-migration traumatic experiences is complex, and requires a long work at international level against inequalities and conflicts in many areas of the world, it's simpler to intervene on post-migratory life difficulties. Given their high frequency and the impact exerted by them on the mental health of migrants (and consequently on the possibilities of social integration and on dangerous behaviours), it is important to act immediately on the reception policies, in order to reduce risk factors and possible secondary trauma. This would offer advantages not only to suffering migrants, but also to the host society, facilitating the integration processes.

3 Outcomes of Torture and Mental Health Violence

The intentional violence referred to in the previous paragraph has, as mentioned, an intrinsic and specific psychotraumatic effect. Through our experience we know that victims of torture hardly reach mental health services. They access medical assistance more easily as carriers of a discomfort that takes varied forms: unclear malaise, resistant headaches, somatic disorders without pathophysiological finding, insomnia, irritability. Even if sometime the most serious symptoms can be observed: depression, dissociative phenomena such as flashbacks, memory disorders (amnesia, difficulty in memorising new experiences), substance abuse, self-harming behaviours, suicide attempts.

The specific psychiatric disorders of victims exposed to a trauma is the Post-Traumatic Stress Disorder. According to the DSM-5 (American Psychiatric Association 2013, 271-4) the psychotraumatic reaction is characterised by a certain number (fixed in the manual) of the following symptoms:

- Painful, intrusive, involuntary and recurrent memories of the traumatic event. The person may appear to be absent at times, while inside there is a struggle between disturbing thoughts and memories, and the active and ineffective effort to reject them.
- Alteration of consciousness, with real dissociative reactions (like flashbacks) in which the individual feels or acts as if the

traumatic event were recurring. From the observer's point of view, in these cases the person appears freezed, as if he or she were no longer in contact with the surrounding environment, occupied by images or sounds, vivid or nuanced, in which the traumatic experience is re-acting in all its drama and with the corresponding emotional experience.

- Inability to remember important aspects of the traumatic event (a phenomenon which also falls within the dissociative alterations of the state of consciousness, in this case due to dissociative amnesia).

- Physical and/or psychological suffering facing stimuli that symbolise or recall the traumatic event or one of its aspects. It is often a source of secondary retraumatisation. This causes the person to try to escape this suffering by trying to avoid those external elements (people, places, conversations, activities, objects, situations) that can recall and activate memories, thoughts or feelings associated with the traumatic event. For example, for a person tortured by the military in detention centres, a trigger could be being in front of law enforcement or uniformed personnel, in situations where the person has to answer questions or an interrogation, which brings them back to re-live past experiences. This sometimes involves unexpected difficulties in the normal completion of procedures necessary for asylum-seekers: people who are unable to go to the police station (where there is the office in charge) to start the practice; others who get stuck during the discussion of their application because they feel they are being interrogated, and so on.

- Sleep disorders, with difficulty to initiate or maintain sleep, or almost complete lack of sleep, because of brooding or intrusive thoughts, unable to relax. When in the end, exhausted, they succeed, after a while there are recurring nightmares. Post-traumatic nightmares are characteristic, because the content and/or affect of the dream are directly linked to the traumatic event. Eventually these sleep disturbances deplete the person's energy, with important repercussions in daytime functioning.

- Negative beliefs or expectations about yourself, others or the world (e.g., "I am bad", "I cannot trust anyone", "The world is a very dangerous place", "My nervous system is ruined forever"). Sometimes these distorted thoughts relate to the causes and consequences of the traumatic event and lead the person to blame themselves or others (e.g., patients may feel guilty that they are the only survivors, or that they were the cause, perhaps with their own political commitment, of the suffering of their own family members).

- Persistently negative emotional conditions (e.g., horror, anger, guilt or shame); marked decrease in interest or pleasure in do-

ing things; feelings of detachment or estrangement from others; persistent inability to experience positive emotions.

- Hyperarousal, which is part of a normal and evolutionarily healthy reaction in situations of real danger, and which becomes pathological when the nervous system continues to be activated despite the fact that the dangerous situation is no longer present. In a more general framework of hyperactivity are inscribed various post-traumatic symptoms such as irritable behaviour and angry outbursts, dangerous or self-destructive behaviour, ongoing hypervigilance with excessive startle response (people who 'click' suddenly a negligible noise). It should be noted that apparently unmotivated outbursts of anger could be alarming manifestations that are often not recognised as a possible expression of post-traumatic suffering.
- Difficulty concentrating: a very important symptom because it negatively affects the integration in the host country (learning the language, a new job etc.), due both to the drowsiness resulting from the insomnia mentioned above, and to the fact that intrusive thoughts disturb cognitive processes.

However, it should not be assumed that PTSD runs out clinical psychotraumatology. In fact, there are other ways in which patients can manifest their suffering, with partial symptoms, that is, not such as to configure the entire clinical picture of PTSD, or with symptoms that may appear isolated, for example attitudes of social withdrawal and isolation; fear and anxiety crisis, or aggression and/or self-aggression; disturbances in concentration, thinking or memory (which can be suspected, for example, in case of difficulty in learning the language of the land of asylum); depressive syndromes that sometimes culminate in suicide attempts; somatisations, that is, non-specific physical symptoms not justified by a detectable organic pathophysiological alteration; paranoid attitudes and hallucinations. As mentioned above about psychiatric hospitalisations, psychotic symptoms often pose problems of differential diagnosis, because they can lead to the prescription of inappropriate and sometimes iatrogenic therapies. For example, a lack of differentiation between schizophrenic and post-traumatic hallucinations (Maggiora, Aragona 2020) can determine excessive and useless use of antipsychotics.

In recent years the question of recognising or not a particularly serious clinical picture that Herman (1992) had defined "Complex PTSD" has entered in the nosographic debate. It is the disorder observed in particular after intentional violence and in conditions of prolonged coercion, and which is characterised by a multiplicity of somatic, cognitive, emotional, behavioural and relational symptoms. In this case, severe somatoform disorders, marked dissociative phenomena, intense and prolonged depressive reactions, distrust and

suspiciousness in interpersonal relationships and disorganisation of personal identity are observed:

> All the structures of the self – the image of the body, the internalised images of others, and the values and ideals that lend a sense of coherence and purpose – are invaded and systematically broken down. (Herman 1992, 385)

With respect to the somatic expression of mental suffering, Italian research (Aragona et al. 2008; 2011; 2012b) shows that:

a. At least a quarter of patients (25.6%) visited in primary care services dedicated to migrants present a somatisation syndrome, with important consequences for the therapy. For example, mistaking a somatisation for inflammatory pain involves the inappropriate prescription of anti-inflammatories, with the risk of chronicisation and possible iatrogenic damage.

b. Not all migrant groups somatise the same way, there being a higher frequency among the South/Central Americans and Africans.

c. Contrary to expectations (that those with low education could have a greater difficulty in finding the words to express suffering on a psychological level, and therefore tend to express it through the body), in migrants no significant correlation was found between education and somatisation.

d. Women somatise more than men, but this does not seem to be linked to biological differences because this difference is not present in all the groups studied: this only happens in Caucasians and in South/Central Americans, while this gender difference does not appear to be detectable in Africans and Asians. Therefore it is not being a woman in itself, but being a woman in a certain geographical/ethnic/cultural group that influences the frequency and type of somatisation.

e. Patients are not clearly divided between those who somatise and those who express discomfort with mental symptoms (*somatisers* vs. *psychologisers*), because the data indicate that there is a high correlation between somatisation, anxiety and depression, which therefore tend to coexist.

f. Finally, and it is the most relevant data here, migrants who somatise are more likely to have PTSD, almost all PTSD symptoms are more frequent in somatisers, and the number of post-traumatic symptoms increases significantly the risk of having a somatisation syndrome.

Somatisations can therefore be a sentinel symptom of a hidden post-traumatic pathology: the traumatised person may not talk about his post-traumatic suffering (sometimes simply because he or she does not know that it can be cured, other times out of shame, or due to

the avoidance of which we have spoken above), which remains invisible, while he or she may ask for help for symptoms that experiences in their bodies. It is therefore important that the doctors, as well as the professionals who deal with assistance, are prepared to grasp in the somatisation the indicator of a possible violence suffered.

As somatisation, as well as alcohol and substance abuse can be connected to a deep malaise, the outcome of extreme violence: indeed, many migrants have told us that the alcohol is like a self-therapy to silence, in the intoxication's dizziness, the thought brooding or the *hyperarousal*, of which we spoke above.

Another area of great interest linked to post-traumatic symptoms, and typical of asylum-seekers and refugees, concerns cognitive functions. In fact, having undergone important intentional trauma leads to problems of concentration and memory, both of fixing and recalling autobiographical memories (Petta et al. 2018). In particular, in asylum-seekers and political refugees with Post-Traumatic Stress Disorder and depression, a difficulty in accessing specific memories of their lives was found (Graham, Herlihy, Brewin 2014). This phenomenon, referred to as "Overgeneral Memory", can result from the interruption of the recovery process of the memory trace, whose research is truncated at a general level without allowing access to more specific memories. A role can be played by ruminations and therefore also by intrusive thoughts, by information coding deficits, by the avoidance of painful emotions related to traumatic events or by executive control problems. Major discrepancies, especially in the peripheral details of autobiographical memories of asylum-seekers have been found, on the memory of two events, one traumatic and other nontraumatic (Herlihy, Scragg, Turner 2002). Finally, the mastering of executive functions also appears to be altered in asylum-seekers and refugees with PTSD (Ainamani et al. 2017; Kiaris et al. 2020). These experimental studies have the limit of testing patients with instruments that usually have not undergone a process of cultural adaptation, so it is possible that there are biases in the reported alterations. However, there is some consistency with what is reported in clinical-epidemiological observations. For example, Nosè et al. (2018) evidenced that concentration problems emerge among the most frequent symptoms in Italian reception system refugees (in 22% of the people admitted, and in 60% of those who report psychological difficulties), while Petta (2019) reports difficulties in attention, learning skills and planning respectively in 14.8%, 12.6% and 10.1% of the asylum-seekers and refugees hosted in reception centres.

4 Welcome the Traumatised Patient

A reception based on a favourable environment for the relationship with the patient has therapeutic value, because it allows the person

to recover his or her dignity by redescovering his or her capacity for interpersonal relationships.

The structures hosting traumatised people, either as a residence or as a place of assistance and care, should be quiet and comfortable, so as to suggest a domestic environment. In particular, the first reception activities should be carried out by people without uniforms, dressed in plain clothes; this choice can represent a first moment of reassurance for our patients because some of them, who have suffered violence from police or military forces, may have emotionally intense reactions in front of people in uniform, due to traumatic experiences and consequent *hyperarousal*.

The place where medical examinations, physiotherapeutic or psychotherapeutic treatments take place, waiting rooms and other spaces must be clean, well furnished, welcoming, reassuring, with a domestic and familiar atmosphere. It is necessary that the patients have the feeling of being in an environment they can control and therefore it is useful that the doors are open/openable and (especially at the first encounter) they are introduced in the various rooms, the toilet, places, have a drink etc. For everyone, but especially for those who have experienced traumatic experiences of forced confinement or of coercion, it is crucial to feel free to move around at ease.

Places with noisy stimuli can easily irritate patients, because of their high *arousal*, and in particular those noises that recall the experienced trauma, such as a suddenly opened door, that can recall the opening of a cell in prison, a prelude to a torture session. By night awakenings or anxiety crisis are frequent, especially if patients live in overcrowded and noisy rooms.

It is useful for the services to be 'low-threshold', that is, easy to access, with formalities and bureaucratic steps reduced to a minimum. It is necessary that not only the environment but also the relationship with traumatised persons is reliable, with a strict respect for timetables and commitments, asking for consent before any action (for example, semiologic manoeuvres in course of a medical examination, a phone call etc.) because these behaviours help to rebuild human relationships based on trust.

Staff must be effectively formed to handle even relational unpleasant stimuli, such as aggressive behaviour or fits of anger: the relationship with the patient must then be 'resilient', capable of tolerating attacks and frustrations, and at the same time welcoming, inclusive, empathic, delicate and with availability of time. It is necessary to offer support and encouragement to the patient, without paternalism, but in an equal relationship.

Such an attitude will become easier for us if we keep in mind that, despite their perhaps modest appearance, our patients are people who have been able to overcome extraordinary challenges, and who above all deserve our admiration for their courage, their determina-

tion, their tenacity. Asylum-seekers and refugees, in fact, have generally successfully coped with vicissitudes and difficulties out of the ordinary, which required courage and extraordinary fortitude.

Communication can be difficult both because victims of violence and torture may have impaired ability to concentrate and attention, and due to limited knowledge of the local language, with an understandably high risk of misunderstanding. Even for this it is necessary to offer ample time for conversation, explaining each step, giving information that is not required but which could be useful, verifying the interlocutor's understanding, actively offering space for questions and clarifications.

At the time of filling in the medical record it is necessary to inform patients about confidentiality of what will be said, that they are free to answer or not to the questions, that they are invited to ask for explanations, they can get up and even leave the interview at any time. They must feel of being free, and really be free. This initial process certainly requires a little extra time, but it puts at ease our patients and fosters a relationship of trust.

Drugs prescription often requires caution, because the victims of intentional violence (due to the difficulties in concentration and memory mentioned above) may present irregularities in the intake of drugs, due to forgetfulness or misunderstanding of the dosage. Sometimes creative solutions are needed by clinicians, such as writing with their own hand the dosage of the drugs on the packs, or preparing small single-dose packs with the date and time of each intake, or adapting the prescription to allow the drugs administration only once a day. The goal is to reduce the possibility that the patient gets confused and, for those who are guests of reception centres, to allow the delivery of therapy by the operators of the structure (so that compliance is improved, the risk of abuse or inappropriate way of taking the drug etc.).

That said, a psychopharmacological intervention has the limit of not being decisive but it can still be very useful in reducing the most disturbing symptoms. Thus, it may be helpful to prescribe drugs that help restore the sleep-wake rhythm, that decrease arousal and impulsivity in patients with irritability, that support mood and reduce the intrusiveness of post-traumatic thoughts. A separate discussion concerns the use of antipsychotics, potentially useful in cases of psychotic decompensation (often in the form of delusional *bouffée*), but at times with the risk of abuse by clinicians. It should be remembered that some post-traumatic phenomena may resemble primary psychotic symptoms, but their clinical characterisation, prognosis and their treatment are different, so inappropriate prescription of antipsychotics should be avoided.

We want to emphasise that the reception constitutes not only a delicate moment with refugees but also and perhaps above all an opportunity: the first approach with the team that will take care of them, the patients will feel welcomed and feel they are in the right place

to express their difficulties and find relief. A warm and respectful welcome is the sign of a hospitable and open attitude to the other, not only capable of promoting effective care, but also a rehabilitative function, because it means recognising and meeting the person as a precious and unique human being, with his or her history and dignity.

5 Health Policies and Guidelines for Welfare Protection in Italy

Italy has regulated and structured a system of protection for asylum-seekers of great political and social significance. Also, from the point of view of public health, Italy has a good tradition in the protection of immigrants and refugees. Since 1995, policies and regulations have taken into account the foreign population, even in conditions of social fragility and legal weakness, defining a highly inclusive legal body (Marceca, Geraci, Baglio 2012). In recent years, however, this focus on hospitality, protection and safeguarding has undergone a significant downsizing (Geraci 2018; 2020).

Following the increase in landings and evidence of significant numbers of psychologically traumatised people, on 24 April 2017 the decree of the Ministry of Health on "Guidelines for Assistance and Rehabilitation Interventions as well as for the Treatment of Mental Disorders of Holders of Refugee Status and Subsidiary Protection Status Who Have Suffered Torture, Rape or Other Serious Forms of Psychological, Physical or Sexual Violence" was published in the *Official Gazette* of the Italian Republic, with the related health interventions to be carried out (Ministero della Salute 2017). The "Guidelines" aim to protect those seeking international protection who are in particularly vulnerable conditions, creating the conditions for the health of the victims of traumatic events to be adequately protected.

Table 1 Early identification and taking charge of victims of intentional violence: *who*, *where*, *how*

Social workers of the reception structures	Doctors and psychologists reception facilities or the NHS	Psychiatric services or other structures recognised by the NHS
In everyday life	*In an appropriate setting*	*Integrated multidisciplinary interventions*
Observation of 'sentinel symptoms' after specific training	Interview possibly with the support of specific tools	Confirmation of diagnosis and treatment

The "Guidelines" emphasise that applicants and holders of international protection are a population at high risk of developing psycho-

pathological syndromes due to the frequent incidence of stressful or traumatic experiences. They are people forced to leave their country generally to escape persecution. They can also escape from contexts of generalised violence caused by wars or civil conflicts. Furthermore, during the migratory journey, they are often exposed to additional dangers and traumas: exploitation, violence and aggression (including sexual abuse), malnutrition, inability to be treated, psychophysical humiliation, detention and rejections. The traumatic events that affect them have serious consequences on their physical and mental health, with consequences on their well-being, their families and the community. According to the "Guidelines", in order to provide an adequate response, the Italian health system must pay attention to emerging needs, groups at risk of marginalisation, fairness of the offer to ensure healthcare in line with the necessity and in compliance with constitutional principles. It is necessary, therefore, to plan adequate tools in order to assist this new multicultural audience, heterogeneous, marked consistently by trauma. A reception adequate to the complexity of needs, and the protection of the rights of applicants for protection, requires a reorganisation of the health services, by defining procedures and competences and by training the staff, which is difficult given the limited resources available (in fact, dedicated economic resources are lacking).

With regard to mental health, the aforementioned ministerial guideline for taking charge of patients who have suffered torture or other serious forms of psychological, physical or sexual violence, identifies specific health interventions for the different phases of the process of protection. The document highlights some key aspects of reception and care, such as the early identification of mental health needs, the recognition and accessibility of rights, the adequacy of the setting and the development of skills through training activities aimed at the personal.

The Regions must implement the indications received and for this reason some ministerial projects have been proposed. At the time of writing these pages (March 2021), only the Lazio Region with Resolution no. 590, 16 October 2018, "Indications and Procedures for the Reception and Health Protection of Applicants for International Protection" (Regione Lazio 2018), took up the national document, following its formulation, recalling its principles and adapting its indications to the regional health system. Each health unit involved must monitor the implementation of multidisciplinary paths, drawing up an annual qualitative-quantitative report on the activities carried out and on the main problems encountered at the clinical, organisational and training needs level, to be transmitted to the Health Department of the Region, with particular reference to the issue of the health of victims of intentional violence and torture. From the other Italian regions, nothing.

The Italian scenario of mental health among refugees requires complexity of analysis and intervention. The demographic characteristics of the migratory movements in Italy seem to have changed in

recent years, and this inevitably requires data and analysis that we do not fully possess to understand in detail what is happening, how these changes are affecting the health of the applicants for protection and what could be the most effective protection interventions.

The first indicators show that the demand for psychiatric care by these immigrants is increasing, even if the qualitative characteristics of the phenomenon still appear not fully defined. However, the recognised risk factors for the mental health of immigrants seem to be on the rise, according to what is possible to know about recent flows.

As regards the offer of assistance, the psychiatric services appear to be in difficulty, for organisational and clinical reasons. A first problem is that the characteristics of the users make the need for competent translators particularly difficult to meet, because mediators in less known African languages are frequently needed, given that the low level of newcomers' education is often accompanied by a lack of knowledge of the official languages of their countries (English, French or Portuguese). Furthermore, in the psychiatric and psychological setting the mediator has a key role, for which skills are needed that are not limited to linguistic competence, for which mediators must receive adequate training. Finally, many healthcare unit still lack procedures that make the call of the mediator a fluid act, so that clinicians sometimes feel powerless in the face of linguistic-cultural barriers. It should be emphasised that often the lack of mediators has negative consequences on the modalities of assistance (Tarsitani et al. 2013), therefore it is necessary that these obstacles will be overcome.

A second problem is that the psychiatric services, already understaffed in many areas of the country, also suffer from a lack of specific expertise, both in psychotraumatology from intentional violence (a sector of relatively recent psychopathology), and for the cross-cultural competence. The Italian Ministry of Health "Guidelines" for refugees and asylum-seekers victims of torture and other forms of intentional violence should fill this void at the organisational level, supporting health units in creating appropriate treatment procedures. Training courses have to be organised for professionals, and must be appropriately funded. However, the fact that the law prescribes the implementation of the guidelines within the already lacking ordinary funding, i.e., without additional economic resources, make difficult to reach the goal, given the decreasing number of mental health operators in the Departments of Mental Health in many areas of Italy. Yet, even though the situation may appear difficult, and even frankly daunting, the firmness in looking with realism at the current situation can only increase the skills of the reception system in Italy. And, as it often happens, facing difficulties proves to be an opportunity for the growth of the overall assistance and health services involved, with potential positive effects on the whole system.

Finally, it should be emphasised that mental health services cannot operate as islands, detached from the social environment in which they operate. As we have seen, the post-migration living difficulties greatly worsen the mental health conditions of our patients. In many cases they even create stress and suffering that in the event of a less rough migration probably would not have arisen. All this was further exacerbated by the pandemic, which affected especially people who were already in disadvantaged social conditions (unemployed, precarious workers, illegal immigrants, asylum seekers still awaiting definition of their request or who has been rejected etc.). Networking with social support services to mitigate these difficulties and promote better living conditions is an essential aspect of mental health assistance, not only to treat sick people, but also to prevent the onset of suffering in those who, although arriving in Italy after very painful experiences, have shown good resilience skills and have not yet developed psychopathological symptoms.

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This book analyses torture, inhuman and degrading treatment towards migrants worldwide, integrating overviews from several contexts and disciplines. It highlights that today migrants' mistreatment is a global phenomenon, a frequent element of the migratory experience (in countries of departure, of transit, of arrival), an intrinsic component of state policies, and an extreme form of that structural violence which is inherent to the contemporary war on migrants at the global level.

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