

PROGRAMME OF THE SPECIAL WORKSHOP

Expulsion Under Scrutiny: Highlighting the Grey Zone

Date: 22 November 2019

Time: 14:00

Venue: Auditorium Skłodowska-Curie
College of Europe in Natolin

14.00-14.10

Introduction to the workshop

Jean-Pierre CASSARINO, College of Europe Natolin, European Neighbourhood Policy Chair,
Poland

14.10-14.30

Expulsion and Privatization: A Darker Shade of Grey?

Daria DAVITTI, Lund University, Faculty of Law, Sweden

14.30-15.00: Q&A

15.00-15.20

Traverser à rebours ou les finalités équivoques des accords de réadmission

Haykel BEN MAHFOUDH, University of Carthage, Faculty of Law, Tunisia

15.20-15.50: Q&A

15.50-16.10

Coffee break

16.10-16.30

Governing through Deals: The Creation of Grey Zones under the EU-Turkey Deal

Valeria HÄNSEL, Georg-August Universität Göttingen, Germany

16.30-17.00: Q&A

17.00-17.20

The Grey Zone of Readmission in the EU-Africa Context: Origins, Attributes and Implications

Jean-Pierre CASSARINO, College of Europe Natolin, European Neighbourhood Policy Chair,
Poland

17.20-17.50: Q&A

17.50

Concluding remarks

SPEAKERS



Haykel BEN MAHFOUDS is currently a Full Professor of International Law and Constitutional Law at the Faculty of legal, political and social sciences of Tunis (since 2009). He holds a PhD in international humanitarian Law from the University of Carthage, Tunisia (2005). He is also a visiting professor at various foreign universities and academic institutions, such as the University of Siena (Italy), University of Saint-Joseph (Beirut, Lebanon), University of Aix-Marseille (France), University of Lyon 3 (France). In addition to his teaching duties, he is also the Director of the Center for Research in International and European Law and Euro-Maghreb Relations at the same College of Law.

As a specialist in international humanitarian law, constitutional law and human rights-related issues, his research work focuses mainly on constitution-building processes, security sector reform, regional security issues, and democratic transitions in the Arab world.

He has extensive expertise (over 20 years) in security sector reform (SSR), acting as a senior advisor for a number of specialized international organizations.



Jean-Pierre CASSARINO holds a Ph.D. in social and political sciences. He teaches and conducts research on migration matters at the College of Europe (Natolin, Poland) where he works as Senior Research Fellow in the European Neighbourhood Policy Chair. Prior to this, he was part-time professor at the Robert Schuman Centre for Advanced Studies (European University Institute, Florence) where he supervised and managed interdisciplinary research projects on migration matters, mobilizing EU and non-EU partner institutions (Middle East, Africa and the Caucasus). In the course of his academic career, he has also worked for the ITC-ILO (Turin, Italy).

His research interests focus on patterns of international cooperation and modes of norm diffusion and policy transfers in dynamic regional consultative processes, especially with reference to the "management" of migration and borders. He is most interested in comparatively analyzing policy design and implementation as well as how policy transfers are administered (and often readjusted) through processes of bilateral and multilateral consultations between the EU and third countries.



Daria DAVITTI holds a PhD in Law and LLM (Master in Law, with specialization in Human Rights) from the University of Nottingham (UK), where she is currently Assistant Professor at the School of Law (on leave of absence) and the Head of the Human Rights Law Centre's Forced Migration Unit. She is currently a postdoctoral researcher at Lund University, Faculty of Law (Sweden) where she leads the Liquid Borders research project which examines EU migration policies of externalization, cooperation with third countries, privatization and development aid for migration. The project considers how these policies contribute to the 'liquidity' of the EU border, and the implications in terms of responsibility for breaches of international law. The theoretical framework underpinning this project is set out in her article 'Biopolitical Borders and the State of Exception in the European Migration 'Crisis'', published in the *European Journal of International Law*, issue 29(4) of 2019, and is further developed in various forthcoming publications.



Valeria HÄNSEL works in the EU Horizon 2020 research project *RESPOND Multilevel Governance of Migration*. She does her doctorate at the Institute for Cultural Anthropology/ European Ethnology at the Georg-August University of Göttingen, Germany on the reconfiguration of the European Border Regime in the Aegean. Since 2016, she regularly visits Lesbos Island for field research. Valeria Hänsel is a member of the *Network for Critical Migration and Border Regime Studies* and the board of the research association *deportation monitoring aegean.bordermonitoring.eu*. She graduated in the master programme Peace and Conflict Studies at the Philipps University Marburg.

ABSTRACTS

Traverser à rebours ou les finalités équivoques des accords de réadmission

Haykel BEN MAHFOUDH, University of Carthage, Faculty of Law

Les bouleversements politiques de 2011 qui sont partis de la Tunisie pour atteindre le reste des pays arabes ont été aussi à l'origine de plusieurs vagues d'immigrations irrégulières et de réfugiés vers l'Europe. Profitant des vides sécuritaires créés par la chute des régimes en place et des faiblesses institutionnelles qui les ont caractérisés, des dizaines de milliers de personnes ont fui leurs pays au péril de leurs vies pour rejoindre les rives nord de la méditerranée. Les départs de la Tunisie restent depuis lors concentrés sur les côtes italiennes. La jeunesse tunisienne est la catégorie la plus touchée par ces traversées périlleuses.

Si la Tunisie est directement concernée, c'est qu'au cœur de cette préoccupation se trouvent également les personnes qui ont quitté le pays par des voies illégales mais seulement pour rejoindre les groupes terroristes établis en Europe ou ceux opérant en Syrie et en Iraq. La Tunisie est confrontée donc aux mesures de refoulement forcé de plusieurs catégories inassimilables de nationaux en résidence irrégulière en Europe et dont le raccompagnement aux frontières ou la réadmission engage la responsabilité des parties des pays d'accueil et de celle de retour.

En général, les États membres de l'UE coopèrent activement avec les pays d'origine des migrants en situation irrégulière, en particulier à travers des "accords de réadmission". Ces derniers mettent en place des obligations et des procédures claires pour les autorités aussi bien des pays non-membres de l'Union que des pays membres, en fixant quand et comment ils devraient reprendre – accueillir – les personnes en situation de résidence irrégulière.

Toutefois, en pratique, il est clair que les cadres existants pour régler les questions de réadmission et les accords bilatéraux conclus dans ce sens ne répondent pas aux mêmes finalités et réalités économiques, sécuritaires et politiques des parties concernées. Les pays de l'UE déplorent le manque de coopération de la part de certains pays tiers, y compris la Tunisie, particulièrement sur les questions de refus d'identification et de réadmission de ses nationaux.

De son côté, la Tunisie déplore, la mise en perspective de la question migratoire dans un complexe essentiellement sécuritaire, mais aussi économique et politique, qui ne sert en définitive que les intérêts liés à l'Europe et ceux de ses pays membres. Cette méthode de séparer les questions, de conclure des accords de réadmission séparés, touche la cohérence même et les articulations internes et externes de coopération en matière migratoire.

Elle souhaite au contraire voir la coopération dans le cadre de la mise en place des accords de réadmission et de leur mise en œuvre être pris en compte dans un cadre plus général ne les dissociant pas des négociations sur la libre circulation des personnes et des services. Elle espère ainsi une solution négociée prenant en compte les besoins renouvelés et les écarts en termes de développement avec les pays de destination.

Dès lors, il devient primordial d'examiner les cadres juridiques et institutionnels existants non seulement au regard de leur effectivité, mais aussi de leur clarté en des termes plus cohérents reflétant le respect des principes et valeurs humaines qui structurent les politiques de partenariat avec les pays de destination et de ce qu'impliquent les engagements réciproques d'intégration de la Tunisie dans l'économie européenne.

The Grey Zone of Readmission in the EU-Africa Context: Origins, Attributes and Implications

Jean-Pierre CASSARINO, College of Europe, ENP Chair

Today, the drive for flexible and “practical arrangements” constitutes a common feature of the Member States and the European Union in the field of readmission. This contribution is aimed at uncovering the domestic and external factors that have been gradually conducive to the drive for flexibility at both intergovernmental and supranational levels.

Since the introduction of the 2016 New Partnership Framework, including its “compacts”, an array of non-legally binding, tailor-made informal arrangements linked to readmission have proliferated. This New Partnership Framework draws on the political declaration of the November 2015 Valletta Summit which, in its action plan, identified five priority domains on migration management with African countries including the need for “mutually agreed *arrangements* on return and readmission.” Since then, various types of EU-wide non-legally binding arrangements have been agreed or are being negotiated. For example, Standard Operating Procedures (SOPs) for the identification and return of persons without authorization to stay are aimed at swiftly improving cooperation between national consulates in order to accelerate procedures for identification, redocumentation and readmission. Joint Migration Declarations (JMDs) on migration management deal with, among others, readmission and enhanced cooperation on the “timely delivery of travel documents”. Common Agendas on Migration and Mobility (CAMMs) are described as non-exhaustive flexible frameworks for cooperation of mutual interest based on the principle of voluntary participation of the EU Member States. Joint Ways Forward (JWF) are not legally binding in the sense that, formally, they do not create legal rights or obligations for the contracting parties which cooperate on migration issues, especially on readmission. Finally, and similarly to SOPs, Good Practices (GPs) for the efficient operation of the return procedure define joint actions on identification, the delivery of consular laissez-passers and the transfer (namely the removal) of irregular migrants.

Having highlighted the expansion of a grey zone, the second part of the presentation will demonstrate that the manifest reification of law-enforcement authorities and decision-makers to control legal and irregular migration, as well as flexibility and the deniability of *modus operandi* are useful concepts for capturing the attributes of the aforementioned EU-wide atypical arrangements on readmission. Such policy developments have resulted in the emergence of a grey zone whose expansion invariably reflects a reconsideration of the EU’s approach to its common readmission policy. Such a reconsideration may heighten inconsistencies and jeopardize the credibility of the EU in its claim to ensure and coordinate common and harmonized removal procedures in line with the EU Treaties. All the more so when realizing that the drive for flexibility implies turning the EU into a mere *facilitator* (not a *leader*) who lays the groundwork for highly variegated bilateral cooperative patterns.

Governing through Deals: The Creation of Grey Zones under the EU-Turkey Deal

Valeria HÄNSEL, Georg-August Universität Göttingen

The term *grey zone* has been assigned various different meanings in social sciences. Drawing on findings from the anthropological field of border studies and a field research on the impact of the EU-Turkey statement, I will conceptualize *grey zone* as an exceptional space of governance in the following, characterized as highly fragmented and ambiguous, assembling multiple sovereignties causing exclusion, neglect or even death.

Contrary to the notion of Agamben, which conceptualizes the “state of exception” as absence of any valid legal order where people are reduced to “bare life”, the current notion draws on empirical findings on the situation created under the EU-Turkey deal on the Greek Hotspot Islands and beyond. The *grey zone* is understood as a space of legal overdetermination, where different regimes of rights, assemblages of actors, institutions and organizations intersect and overlap in complex forms of governance. Furthermore, it is understood as a space of ambiguities, lacking accountability and creating hierarchies of rights. For certain groups, it can be described as necropolitical spatial arrangement, not actively causing death but creating violent spaces, producing the condition of possibility of death.

Securitization and long-lasting state of exception

While these aspects can be understood as general characteristics of different border spaces, I argue that they are especially vivid in highly internationalized as well as humanitarianized spaces of long-term confinement as created on the Greek Hotspot Islands. In the hotspots, the *grey zone* becomes visible as a state of limbo regarding legal guarantees, responsibilities, time frames and spatial restrictions.

This situation primarily arrives from the EU-Turkey statement, a two-page press release issued by the EU Council on 18th March 2016. It outlined a common approach of the EU and Turkey on governing migration into Europe, creating the basis for deportations of migrants from the Greek Islands to Turkey. The deal is a result of the securitization of the migration movements of 2015/16 and frames deportation as a “temporary and extraordinary measure which is necessary to end the human suffering and restore public order”. However, the precarious situation created through the EU-Turkey Deal has prevailed over four years.

Overlapping regulations and deals, lack of accountability in international humanitarian space

The EU-Turkey Deal does not only overlap and partly contradict the EU Hotspot Regulations but also comes on top of two other former readmission agreements. When lawyers tried to challenge the legal basis of the Council statement, the General Court of the EU dismissed the claim in February 2017, arguing that the EU could not be held responsible since the statement was allegedly only concluded by individual member states. Similarly, in case of harm, illness, or death resulting from the inadequate living conditions, deportations or refolement, there is no accountability, although – or rather because – national, international, EU, governmental- and non-governmental organizations are working side by side on a variety of humanitarian or security tasks.

They create a state of limbo and systems of differential exclusion: People are filtered and pre-selected even before the start of their asylum procedure according to categories such as nationality, gender and vulnerability. This determines their living conditions and chances of survival: Some asylum-seekers are allowed to leave the geographic confinement of the hotspot islands; others are subjected to detention and deportation to Turkey. Although Turkey has been labelled as “safe third country”, the grey zone expands into Turkey, where most deportees are again detained and deported further on to their countries of origin, without the possibility to apply for protection.

Expulsion and Privatization: A Darker Shade of Grey?

Daria DAVITTI, Lund University, Faculty of Law

When we look at current expulsion policies and practices adopted by the Global North in the context of migration control, the lack of legal and policy clarity is striking. In this contribution, I argue that this lack of legal and policy clarity is not accidental. To substantiate this claim, I examine the way in which the outsourcing of migration enforcement to private non-state actors has both enabled and accelerated the normalization of expulsions as an acceptable and preferred form of migration management.

I analyse the problematic involvement of for-profit non-state actors (especially private military and security companies), in the business of privatized migration enforcement. First, I will chart the origins of this phenomenon, focusing in particular on the privatization of detention and expulsion, in order to examine their nature, scope and normalization at both legal and policy level. I will then discuss their human rights implications in light of applicable international legal instruments, including the 2014 International Law Commission Draft Articles on the Expulsion of Aliens.

The focus on privatization of migration detention and expulsion sheds light on other concerning trends of current migration control policies, outlined in the contributions by the other participants. Such policies are in fact characterized by externalization and containment measures which revolve around the use of development aid to control migration; informal cooperation on readmission; a wide-spread discourse on ‘voluntary’ returns; and ultimately the reliance on detention and expulsion as normalized migration management tools.