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DEDICATION

To my mom.
ABSTRACT

This paper will describe the multi-levelled, polymorphic nature of the European Union’s migration management. Beginning with an examination of the key institutions and decision-making bodies which have contributed to the regulation of migration at the EU level, this analysis will go on to demonstrate how, in its failure to create a common framework for the management of migration flows, the EU is left instead with a patchwork of policies as a result of other actors coming in to fill that vacuum. This lack of uniformity allows for the abuse of vulnerable third-country nationals and undermines the Union’s ability to manage migration at the supranational level.
# TABLE OF CONTENTS

INTRODUCTION........................................................................................................................................................................4

CHAPTER I: MIGRATION MANAGEMENT AT THE EU-LEVEL.................................................................8

CHAPTER II: MIGRATION MANAGEMENT AT THE INTER-STATE LEVEL......................27

CHAPTER III: THE ROLE OF NON-STATE ACTORS IN MIGRATION MANAGEMENT.................................34

CONCLUSION & BIBLIOGRAPHY.........................................................................................................................37
Who comes to this house, may God help you. 
Libya is a market of human beings. 
Where is UNHCR?
Three people were sold here.

These are some of the messages that can be found on the walls of the Triq al Sikka detention facility in Libya’s capital Tripoli. Al Jazeera reporter Sally Hayden’s extenuating correspondence with migrants detained in the facility have detailed a multitude of disturbing accounts from inside, but her findings were particularly consistent on one point: “When asked what was the worst thing they saw in Sikka, former detainees were unanimous. They said it was when guards sell detainees to smugglers. ‘These Libyans only think of you as an industry,’ one said,” (Al Jazeera December 2018). A compilation of field interviews of 1,300 detainees of the migrant detention facilities across Libya by the United Nations Support Mission in Libya (UNSMIL), produced findings that read like Hayden’s interviews writ large. In its entirety, it is a damming testament to the discrepancy between the rhetoric and the reality of the EU’s external migration policies, but a few points of the report stand out as the most harrowing:

During visits to DCIM\(^1\) detention centres in 2017-2018, UNSMIL staff have consistently observed severe overcrowding, lack of proper ventilation and lighting, inadequate access to washing facilities and latrines, constant confinement, denial of contact with the outside world, and malnutrition. Conditions lead to the spread of skin infections, acute diarrhoea, respiratory tract-infections and other ailments, and medical treatment is inadequate.

\(^1\) Libya’s Department of Combating Illegal Migration
Children, including those separated or unaccompanied, are held together with adults in similarly squalid conditions. UNSMIL has also documented torture and other ill-treatment, forced labor, rape and other forms of sexual violence perpetrated by DCIM guards with impunity …

(UNSMIL p. 5)

In addition to these findings, *Al Jazeera* has reported a crisis-level breakout of tuberculosis among detainees, citing that in 2018, the International Rescue Committee (IRC) withdrew its medical personnel for concerns of their safety when several of their staff tested positive for the virus—and reports surfaced of guards refusing to go near detainees for fear of contracting the disease. By October 2018, an IRC representative cited the possibility that all male detainees had tuberculosis in Triq al Sikka (*IRC* 2018; qtd. *Al Jazeera* October, 2018). Later that month, a 28-year-old Somali man Abdulaziz set himself on fire in the facility after pouring petrol on his clothes. The UNSMIL report goes on to corroborate some of the messages written in arabic on Triq al Sikka’s walls:

The overwhelming majority of women and older teenage girls interviewed by UNSMIL reported being gang raped by smugglers or traffickers or witnessing others being taken out of collective accommodations to be abused […] UNSMIL continues to receive credible information on the complicity of some State actors, including local officials, members of armed groups formally integrated into State institutions, and representatives of the Ministry of Interior and Ministry of Defence, in the smuggling or trafficking of migrants and refugees. These State actors enrich themselves through exploitation of and extortion from vulnerable migrants and refugees […]
Migrants held in the centres are systematically subjected to starvation and severe beatings, burned with hot metal objects, electrocuted and subjected to other forms of ill-treatment with the aim of extorting money from their families through a complex system of money transfers […] (UNSMIL pp. 5-6)

Eight years after the revolution and the deposition of Qaddafi, Libya continues to be ravaged by civil war. State capacity, as well as state legitimacy, remains fractured between the competing political factions of Serraj and Haftar, and a host of other militant groups. The detention centers are thus outsourced to an array of actors, state and non state; from private defense contractors to armed groups and criminal gangs (Hayden 2018; UNSMIL pp. 5-7).

The creation of an external migration policy depends on a perception of the migrant as universally illegal. Traditionally, a migrant’s legal status is determined at a state’s border, wherein they should be given the chance to make a claim for asylum or other forms of protection should they qualify². The determination of a migrant’s legal status means conducting admissibility and eligibility assessments, which nearly always require translators, and the interviews can take place over weeks or years. It is decidedly not a seamless process, plus the spectrum of eligibility for asylum, and how few that spectrum covers, leaves many people trapped in desperate situations.

Despite the faults of this process, what happens to migrants when they arrive to the border of any EU member state is still regulated by international law. Depending on the state, one may find policies toward irregular entry of migrants which range from stringent to zero-tolerance—but all Member states are signatory to a number of treaty obligations which

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² Regulation EU 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [hereinafter Dublin III].
require them to provide this minimum window of opportunity: the claim to asylum.\(^3\) Externalized migration policies play an important role in the way states use extra-legal means of derogating from that responsibility.

The Union’s inability to exercise competence over areas such as the Common Foreign Security Policy (CFSP) and its subset, the Common Defense and Security Policy (CDSP), has enabled Member states to outsource their border security to less accountable actors—both state, non-state. Italy’s partnership with Libya in preventing the movement of migrants across the Mediterranean may be most emblematic of this paradigm; regardless of their legal status, any migrant that becomes trapped in Libya’s securitized border regime is automatically criminalized. Unlike EU member states, Libya has not ratified the 1951 Convention relating to the Status of Refugees (UNSMIL p. 5), nor does it recognize the United Nations High Commissioner for Refugees (UNHCR). According to UNSMIL,

Libyan law criminalizes irregular entry into, stay in or exit from the country with a penalty of imprisonment pending deportation, without any consideration of individual circumstances or protection needs. Foreign nationals in vulnerable situations, including survivors of trafficking and refugees, are among those subjected to mandatory and indefinite arbitrary detention.

\((UNSMIL\ p.\ 6)\)

In chapter one, the supranational legal framework of the European Union’s management of migration flows will be outlined, and analyzed in terms of formality and objectives: by comparing formal, multilateral approaches to the (largely preferred) informal means of

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addressing the issue, this chapter will shed light on why the EU’s migration regime is more akin to patchwork than an actual framework. Chapter will outline the concept of the “extraterritorial” migration policies, and review some of the existing scholarly work in regard to the increasingly normative policy instrument. Then, by looking at Italy’s external migration agreements with Libya, the second Chapter will provide a case study of how Member states capitalize on the EU’s passivity in the area of migration policy. Finally, Chapter 3 will discuss how migration policies are entangled in a vast and complex web of geopolitical interests and enterprises. This Chapter will account for the non-state actors that have insinuated themselves into the realm of migration management, and enriched themselves with the growing trend of extra-territorialized and privatized border security.

CHAPTER I:

Migration management at the EU-level

The European Union’s treatment of migration casts a light on the its failure to develop from an economic to a political project. The EU’s relative success in de-nationalizing its economic space has been compounded by an increasing nationalization of its political space (Weber & Bowling; qtd. Cetti pp. 10-11). Migration had long been a contentious policy realm for the EU, but the events of 9/11, along with U.S.-Iraq war’s precipitation of irregular migrant entries into southern Europe via the Central Mediterranean, marked the beginning of two major trends: first, the EU began spewing a cannon of policy instruments which sought to address the issue of migration externally, rather than the developing a common migration policy for all
member states (Schütze 36). Second, individual member states scrambled to establish their own bilateral accords with migrant-sending states (Angeloni & Spano 478-479).

There is, of course, an inherent difficulty in developing a workable migration policy for twenty-seven member states, each subservient to their own domestic politics and fiscal preoccupations; but states are far from the only actors at the table when it comes to the regulation of migration into the EU. Instead, states are entangled within a much larger network of public and private interests, and the conversations being had about migration are bridled by opportunistic actors; the prevalence and politicization of these conversations may undulate in correspondence with national elections. They may be commandeered by one popular politician. They can be hindered by the ailments of bureaucracy–or transformed overnight by strongmen. The framework for the regulation of migration of persons from third countries is laid out in the Schengen Treaty, the Treaty of Maastricht, and the Treaties of Amsterdam and Lisbon. In addition to these treaties the Dublin Regulation (1997) and its subsequent amendments (2003; 2013) have established the procedural requirements for assessing applications for asylum.

Although these agreements are far from being the only tools the Union has created in an attempt to address external migration–being binding agreements, they are certainly the most formal, democratically accountable, and supranational examples of EU efforts to legislate in the field of migration. The European Council, however, wields a disproportionate amount of decision-making power on migration, due to the provisions of Article 218 of the TEU which established the Common and Foreign Security Policy (CFSP) as a domain ill-suited for exclusive competence of the Union. As a result, the respective strategies of the European Council, the European Security Strategy (2003) and the European Global Security Strategy (2016), are
equally important in understanding the Union’s response to migration from the fall of the Soviet Union, to the respective migrant influxes wrought by the Iraq and war, the Arab Spring, and the civil war in Syria.

The Single European Act (SEA) of 1986 was the first time the European Economic Community, (precursor to the European Union) made any reference to toward migration of persons from third countries⁴ (hereinafter external migration). In the EEC, there was little momentum behind policies within the area of external migration for a number of reasons; primarily because the Community was still an economic project, and lacked the political and legal character it envisages today. Member states hardly viewed the Community as an institution with the remit to guide such policies; migration, the control of borders, the power to decide who enters and who does not–issues intrinsically linked to state sovereignty–seemed an inappropriate policy realm for the European Economic Community (Angeloni & Spano pp. 476-477). Notwithstanding, the SEA was tantamount to the first step toward a policy on external migration, because it included measures for the joint patrol of the Community’s external borders (Bindi & Angelescu p. 24; Kostas pp. 137-141).

Although the SEA advanced the idea of the EU as a political project, as Margheritis and Maldonado (2007) observed, it made few gains in the way of realizing an actual policy toward external migration: “...in general, immigration policies have been case-driven, ad hoc temporal responses to specific political situations,” (qtd. Kostas p. 136). The management of external migration as a matter of national competence was a paradigm that only began to shift with the full implementation of the Schengen Agreement in 1995.

Many of the relevant treaties, strategies, policies and instruments aimed at managing migration were developed concurrently, within different institutions and bodies of the Union; as such, this chapter will trace the evolution of the EU’s external border regime by analyzing its legal developments through two foci: first, on the level of formality of the measures taken. second, by comparing the Union’s attempt to address migration internally versus those made to address migration externally.

The first Schengen Treaty (1985) was not actually struck through the ECC; the multilateral agreement was formed by several member states within it: Belgium, Luxembourg, the Netherlands, France and Germany. The agreement outlined a plan to eliminate the internal border controls between each member state, and to enable the free movement of people within its zone. In 1990, Schengen II made important changes to its predecessor, painting a picture of a “Fortress Europe”, and paying unprecedented attention to its ‘external border’. This emphasis, however, was not product of a concerted effort to develop a common migration policy–instead, the initial push for coordination on foreign policy and the patrolling of external borders was a cornerstone of the EU’s enlargement strategy (Schütze pp. 30-32; Bindi & Angelescu pp. 28-30).

With the Maastricht Treaty, or the Treaty on the European Union (TEU), the EU introduced the Common Foreign and Security Policy (CSFP) as part of its new three pillar system, along with the the European Communities, and cooperation in the field of Justice and Home Affairs (JHI). Intergovernmental cooperation, intelligence sharing, coordination among

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national border agencies, and new criteria for immigration policies were introduced with the CSFP (*Europarl Fact Sheet: Treaty of Lisbon* 2018; Kostas p. 146; Schütze p. 30-32). Despite the major changes proposed by the treaty, few were actually enacted due to, for the most part, procedural disputes: in particular, what constitutes a qualified majority in parliamentary votes. The other was more about semantics; member states fervently debated the philosophical difference between the words “defense” and “security”, as well as priority of “security of the Union” versus that of its member states (Bindi & Angelescu p. 26).

With the Treaty of Amsterdam, a few of these quarrels were laid to rest; going in, the two concrete objectives of the treaty were aimed at streamlining decision-making mechanisms to make them more efficient, and fortifying the EU’s relevance as a foreign relations actor—granting it new powers and responsibilities (Bindi & Angelescu p. 34; qtd. Westendorp 1997). The other priority, which was actually listed first by the reflective group lead by Spanish Minister of European Affairs going into negotiations, was to make the European Union matter to its citizens ahead of its third enlargement (Bindi & Angelescu p. 34; Kostas p. 139).

Subsequent to the EU’s final enlargement, the Treaty of Lisbon, or the Treaty on the Functioning of the European Union (TFEU) substantially restructured its formation; with the elimination of the pillar system, the new competences of bodies within the Union were solidified. These competences fell under three distinctions: *exclusive competence* was defined as policy areas over which only the EU had power to legislate, whereas member states can only implement; *shared competence*, instead, gave member states the remit to “legislate and adopt legally binding measures [where] the Union has not done so”. Lastly, *supporting competence*—wherein the Union

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can adopt and implement measures to support or augment any member states’ policies (Europarl Fact Sheet 2018).

Apart from the establishment of competences, the Lisbon Treaty gave the European Union full legal personality; it acquired the ability to sign treaties in those areas of exclusive competence, as well as to join international organizations. The scope of the Court of Justice of the European Union, meanwhile, was broadened to cover all activities of the Union—save one: the Common Foreign and Security Policy.\(^8\)

The isolation of the CFSP from the European Parliament, Commission, and the adjudication of the Court of Justice of the European Union had profound implications on the trajectory of the EU’s handling migration. Although they are not permitted to legislate, the European Council holds the power to conclude international agreements across the CFSP.\(^9\) With the Council being the primary decision-maker in respect to issues which fall under the CFSP\(^{10}\) (migration being one such issue, the patrol of external borders being another), Council members (each heads of state and government officials from their respective member states) have time and time again resorted to informal rather than formal agreements, through intergovernmental rather than supranational decision-making (Schütze pp. 36-37).

The CFSP underwent enormous growth under the Lisbon Treaty, integrating new organs with the advent of the European External Action Service (EEAS)\(^{11}\). New actors, including a new permanent President of the European Council, and the High Representative of the Union for Foreign Affairs and Security Policy, were established under the Treaty\(^{12}\). In addition to all of

\(^{8}\) TEU supra note 6, art. 24[1]; (ex TEU [Maastricht text] art. 11).
\(^{9}\) TEU supra note 6, art. 37 (ex TEU [Maastricht text] art. 24).
\(^{10}\) TEU supra note 6, art. 31[1].
\(^{11}\) TEU supra note 6, art. 27[3].
\(^{12}\) TEU supra note 6, art. 27[1].
these structural changes, the Lisbon Treaty introduces bold measures in the new Common Security and Defense Policy (CSDP), laying out three clauses:

A *mutual defence clause* which provides that all Member States are obliged to provide help to a Member State under attack. A *solidarity clause* provides that the Union and each of its Member States have to provide assistance by all possible means to a Member State affected by a human or natural catastrophe or by a terrorist attack. A *‘permanent structured cooperation’* is open to all Member States which commit themselves to taking part in European military equipment programmes and to providing combat units that are available for immediate action.

(Europarl 2018)

The binding nature of CFSP decisions, according to Wessel (2016), “[Have] puzzled academics and practitioners alike. The main reason would be the very limited role of the [Court of Justice] in relation to adopted CFSP Decisions.” The result has been a concentrated decision-making power of Member states, while other institutions and bodies try to govern *around* them.

The fragmentation between EU institutions at the time of the first Dublin Convention (1997) were not completely dissimilar to those of today. Much of the debate was centered around how to achieve a workable system of burden-sharing among EU member states in respect to the processing of asylum seekers.

The chief objective of the Dublin Convention of 1997 was to inhibit those seeking asylum from submitting applications in multiple member states. One of the main provisions of the policy was that whichever member state first receives the application for asylum is the member state that must process that claim. Detelin Ivanov (p. 2) of the European Parliamentary
Research Service (EPRS) elaborated on this overarching attitude with which the policy was formed in an EPRS assessment of the Dublin Regulation and its subsequent revisions, stating: “The Dublin system was never designed to achieve solidarity and the fair sharing of responsibility; its main purpose from the very beginning was to assign responsibility for processing an asylum application to a single Member State.”

Under the legally binding provisions adopted by the Dublin Convention, member states are able to ‘transfer’ asylum seekers back to the member state of their original entry, a practice that was shortly thereafter criticized for its lack of attention toward human security, and the protection of vulnerable foreign nationals, particularly unaccompanied minors:

[...] Various problems have appeared in the operation of the Convention. The scope of the Convention does not include applications for humanitarian protection, the conditions for family reunification are too strictly defined, and most importantly the difficulty of providing strong evidence of illegal entry into one of the Member States renders the Convention useless in many cases … The application of the «opt-out» clause, which creates a derogation to the criteria determining responsibility, is therefore quite common in humanitarian and family cases, but is also used by the authorities of the Member States to ensure the swift expulsion of asylum seekers.

(Hurwitz 1999)

One of the major flaws of the Convention was that its provisions relied on a level of member state cohesion that simply did not exist. The determination of responsibility between member states was the major focal point through which the entire framework of the Dublin Convention was written, which translated into processes that were bound to not only elongate, but undermine
the asylum process. In an external consultancy on the Dublin Regulation and its implementation, conducted by ICF international, the inherent weaknesses of the system in place are illustrated:

Without a method to determine responsibility, ad hoc negotiations would take place between Member States, potentially resulting in no Member State taking responsibility. Indeed, in the 1990’s prior to the Dublin Convention coming into effect in 1997, some applicants were, for this reason, ‘left in orbit’ (i.e. when no Member State accepts responsibility for an application, delaying access to protection).

(Hayward et. al p. 2)

To qualify the criteria on which a transfer should be made, the European Commission made revisions to the 1997 Convention with the Dublin II Regulation in 2003 (Regulation [EC] No 343/2003), and subsequently, Dublin III in 2013.

The most substantive change made by Dublin III Regulation was the adoption of a ‘hierarchy of criteria’ on which asylum transfers should be assessed; the major criterion of consideration including: “family unity, possession of residence documents or visas, irregular entry or stay, and visa-waived entry.” (Regulation [EU] No. 604/2013; qtd. Ivanov 2). With these revisions, member states were required to take more than just the point of irregular entry into consideration when making determinations on responsibility for asylum applicants; family unity, for example, was considered higher priority than point of entry–as such, that member state in which an asylum seeker’s family member has already been processed for asylum is the member state that would assume responsibility (Dublin II Regulation 2003; Dublin III Regulation 2013).
Instead of making the asylum process more comprehensive, the Dublin regulations have pushed asylum seekers to resort to desperate measures in order to not be processed in their countries of arrival:

Dublin III Regulation may have helped to reduce the incidence of multiple asylum applications by introducing stronger provisions on the right to information for asylum applicants. However, the impact of this is slight and the Regulation may have also served inadvertently to increase the incidence of other types of secondary movements. In particular, the Dublin system is said to have had a negative impact on border management, as potential asylum seekers circumvent border checks in order to avoid fingerprinting and being registered as having entered a Member State where they do not wish to ask for asylum. (Hayward p. 9)

For all of the criticism garnered by the Dublin regime, at the very least, it is an example of multilateralism within the Union, and is the principal regulation aimed at addressing migration internally, with a focus on the responsibilities of Member states. As we will see, the EU’s institutions have increasingly opted to manage migration externally.

The European Neighborhood Policy (ENP) was first proposed by the Commission in 2004. The policy, along with its subsequent amendment in 2011, are laid out in two principal documents: first, the European Neighbourhood Policy Strategy Paper, in which the framework for the ENP was drafted (COM[2004] 373). The second, in concurrence with the Arab Spring, was the Joint Communication by the High Representative of The Union For Foreign Affairs and Security Policy and the European Commission released a report assessing the progress, challenges and future strategy of the ENP (COM[2011] 303).
There was an obvious difference in language between the strategy released in 2004 and that which was released in 2011: the early ENP strategy was marred with liberal triumphalism. Although many ENP partners had no prospects of EU candidacy, the policy operated on nearly identical lines of the EU’s enlargement policy. After the fall of the Soviet Union, a contagious narrative promulgated throughout the entire realm of policymaking: the liberal world order was on an irreversible path—and before long—the everyone would follow suit. This was a prevailing influence on the tone of the 2004 strategy, and more than ever before, the EU Commission sought to push the Union as a political, rather than an economic project.

The European Neighborhood comprised sixteen countries near or surrounding the Eurozone. Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, the Republic of Moldova, Morocco, the Occupied Palestinian Territories, Syria, Tunisia and Ukraine (COM[2004] 373 p. 2). In essence, the policy was aimed at the stabilization of the region surrounding the EU; economically, politically, and in terms of security (COM[2004] 373 pp. 2-3). Additionally, the eastern enlargement of the EU in 2004 was partnered with calls to develop a policy with the neighbors of each of the EU’s respective new member states. Among the countries considered neighbors, there were, initially, two groups with distinct objectives within the “neighborhood”: one group was made up of the countries which had aspirations to accede to the EU—such as Turkey, Ukraine, and Belarus; the other, instead, were those that sought to infiltrate the EU’s market. The latter group included most of what is called the Southern Neighborhood, which stretches across the Maghreb and the Middle East, whereas the former was exclusively countries within the Eastern Neighborhood (COM[2004] 373; COM[2003] 104).
The particular objectives of these partnerships with neighboring countries were two-fold; to the East, the ENP was a response to calls for a policy instrument that would foster friendly trade relations between the EU the former Soviet states which had aspirations for EU accession (or, at the very least, to not create new causes for division). To the South, the objectives were more multifarious in nature. The ENP was framed as an instrument through which political reforms were incentivised by the EU in exchange for varying levels of “inclusion” into its market.

In 2011, the EU Commission’s tone had changed from one of optimism to one that was markedly more reflective of the geopolitical environment it faced: from the global recession and the Eurozone crisis, six years after the initiation of the ENP, the crisis of legitimacy faced by the EU internally rendered any external action an increasingly challenging policy realm.

The introduction of the 2011 ENP strategy addresses the array of challenges within the European neighborhood–from the increasingly oppressive regimes in Egypt and Tunisia, to the struggles for constitutional reform in Belarus and Moldova (COM[2011] 303 p. 1), the reorientation of the ENP’s strategy sought to immediately acknowledge the rising instability within the eastern and southern neighborhoods. After having been heavily criticized both within and outside of the EU; for its vagueness, its overly ambitious objectives that lacked the clear proponents of a strategy, and its glaring neglect for the political realities within the broader region, the new ENP had significantly reigned in the idealism that informed the first drafting of the policy. The renewed strategy outlined the following interests as the paramount priorities of the ENP’s new direction:
“[To] provide greater support to partners engaged in building deep democracy – the kind that lasts because the right to vote is accompanied by rights to exercise free speech, form competing political parties, receive impartial justice from independent judges, security from accountable police and army forces, access to a competent and non-corrupt civil service — and other civil and human rights that many Europeans take for granted, such as the freedom of thought, conscience and religion;

[To] support inclusive economic development – so that EU neighbours can trade, invest and grow in a sustainable way, reducing social and regional inequalities, creating jobs for their workers and higher standards of living for their people;

[To] strengthen the two regional dimensions of the European Neighbourhood Policy, covering respectively the Eastern Partnership and the Southern Mediterranean, so that we can work out consistent regional initiatives in areas such as trade, energy, transport or migration and mobility complementing and strengthening our bilateral cooperation.

[To] provide the mechanisms and instruments fit to deliver these objectives.”

(COM[2011] 303 p. 2)

The area of security, specifically as it pertains to migration, underwent the most change in 2011. Security interests had always been an integral part of the ENP—that is to say—the pursuit of common interests such as combating terrorism, irregular migration and various other threats to human security such as the smuggling and trafficking of persons, were no less important to the Commission in 2004. There is, however, an marked change of language between the ENP of 2004 versus the redraft in 2011: the first policy championed multilateral cooperation, market integration, incentivised political reforms, and the proliferation of democracy as the main
vehicles through which the policy would fulfill its objective of securitization of the neighborhood. In the early 2000’s, there was sufficient optimism to float that sort of narrative— that liberalized economics and democratization went hand-in-hand. The stipulations of the new policy made an important revision to the 2004 ENP:

Looking beyond conflict resolution, the EU will make full use of the Lisbon Treaty's provisions in addressing other security concerns and specific common interests, e.g. energy and resource security, climate change, non-proliferation, combating international terrorism and trans-border organised crime, and the fight against drugs. It will engage with ENP partner countries to undertake joint actions in international fora (e.g. UN, international conferences) on CFSP issues, as well as other global issues.

(COM [2011] 303 p. 6)

The very first words, “Looking beyond conflict resolution,” represented a complete transformation of the means by which the EU sought to fight the threats that not only persisted, rather, grew within their “neighborhood”. Conflict resolution, human rights, the promotion of democracy and free and fair elections, as well as regional cooperation (toward which the entirety ENP was oriented), were considered the means to create stability. The new strategy was a pivot toward Realpolitik by the institution most emblematic of the liberal world order. In 2011, step one became stability, whereas the civil society, sustainability and development objectives of the ENP were deprioritized.

Comelli (2011) and Rouet (2014) have made two interrelated claims regarding the ENP’s hubris: the effects of the European Commission’s focus on the widening versus the deepening of the European Union as a political project. Rouet discusses the turbulence faced by the ENP due
to the crises of identity and legitimacy within the EU, and the challenges of defining a neighborhood outside of Europe given the lack of cohesion within the Union.

Comelli elaborates on this crisis of identity, but takes a heightened focus on the pursuit of the ENP in the Southern Neighborhood. His analysis starts by outlining the expectations versus the reality of the ENP’s Southern dimension (pp. 56-57), then, he discusses how the events of 9/11 led to a complete reorientation of the European Union’s engagement with their southern neighbors (pp. 58-61), leading to the ENP’s prioritization of stability and resilience over regional cooperation; general over specialized expertise; top-down, technocratic solutions over process based problem solving; and the support of authoritarian regimes over the promotion of democracy (pp. 64-66).

In Turbulences, the European Neighborhood Policy, and European Identity, Rouet addresses first and foremost the problems with conceptualizing a European “neighborhood”: “The construction of EU is in progress both inside and outside because our neighbours are like our mirrors and our relationships contribute to the evolution of our European feeling,” (p. 9).

For Rouet, defining the European neighborhood presupposes a European identity that has yet to develop, but beyond that, the term “neighborhood”, in a policymaking context, is excessively vague. Where does a neighborhood begin and end? What is more important, proximity, or shared values and sensibilities? Are EU member states also neighbors among themselves, or does the term only apply to non-EU states? The ambiguity attached with those core questions, Rouet argues, is the primary impediment to the ENP as a whole (p. 14).

Indeed, this new means for partnerships available for the European Union must be legitimized by its citizens. While the citizenship of the European Union is still a project,
and while the feeling of belonging deteriorates, this project that allows building a neighborhood, to recognize the neighbor, both internally and externally, seems down. Any thoughts about the neighbors, the neighborhood and its borders can therefore only refer to the problems of citizenship of the European Union and of European identity. (p. 15).

In this sense, the neighborhood is a bold proposition of the EU as political project; with an internal, an external, and a proximal facet (p. 18). The problem is that across this supposed neighborhood, there are several “concentric circles” of interests and influence. (fig. 1).

**Figure 1:** Concentric circles of belonging in the European Neighborhood

The circles of inclusion within Europe represent, on the surface, different levels of regional cooperation and market integration; but Rouet argues that “politically polymorphous space” which stretches across Europe and its proximity encompasses vastly different, and often conflicting political ambitions and sensibilities. The ENP, then, betrays the deeper issues the faced by the Union: “Between federalism, integrationism and sovereignism, between political
project and economic project, it is difficult for the EU to define its project, and therefore its limits.” (p. 18).

Both Balibar and Cetti’s analyses also talk about European neighborhood as the juncture of many “global concentric circles” (p. 7; qtd. Balibar 2004) both within and beyond the EU’s physical border and posits that these circles are replacing “traditional colonial, and therefore racial patterns of exclusion,” (pp. 7-8). Cetti goes on to posit that the EU’s external functions, much like its internal functions, rely on a “fluidity” between the legal, the extra-legal, and the illegal.

The model neo-liberal agenda of European border control–detrerritorialization, privatization and outsourcing–betrays the fact that the region is an articulation of this wider neo-liberal global system and thus shares in its paradoxical nature: the fight against “illegal” mobility depends on the idea of a norm of regulated movement and the clear dichotomy between “legal” and “illegal” mobility, yet both premises appear to have little purchase in reality (p. 9).

Comelli’s analysis (2011) of the use of the ‘neighborhood’ shares Rouet’s scrutiny of the EU’s breadth-over-depth approach with the Neighborhood Policy, and argues that the construction of the Southern Neighborhood might be the clearest demonstration of how that approach has failed. Within the ENP, the relationships are based off of positive conditionality, which, according to Comelli, prove genuinely effective in part of the Eastern neighborhood following the last EU enlargement. Not coincidentally, it was Eastern neighbors like Georgia, Moldova, and Ukraine–candidates for accession to the EU–with whom the approach of positive conditionality worked (pp. 56-57). In these cases, the EU had sufficient leverage, and was able to
offer an attractive incentive. Southern neighbors do not have this prospect of EU accession. Instead, what they are offered is Eurozone-lite: limited access to its commercial benefits for being a cooperative neighbor (p. 59).

At this point, two pathologies of the EU’s political project in the south can be defined: first, triumphalism. The EU gravely overestimated its transformative power in its Southern neighborhood after having met their objectives through the ENP in the East. Second, Eurocentrism. Along with the overestimation of its power and influence, the EU’s Southern Neighborhood Policy was guided by what Comelli cites as a “presumption of being the only key actor in its neighborhood… ” he goes on to say: “... the EU has traditionally tended to see the Mediterranean as a sort of ‘mare nostrum,’ where it could have a specific presence and influence, also because other actors, such as the United States, did not conceptualize the Mediterranean as a region of its own.” (p. 57).

Unpacking how the ENP figures into the EU’s border regime warrants an examination of what the policy was aimed to do, versus what it actually achieved. The Union has historically championed the promotion of democracy through the bolstering of free and fair elections, the engagement of civil society; as repetitiously these objectives were cited in the ENP, little evidence suggests that they were actually pursued (Comelli pp. 7-10). The security-related objectives of the ENP, however, became a sort of stand-in EU migration policy, in lieu of any formalized plan. The “ring of prosperity” envisioned by the ENP at its foundation never materialized. Nor did the ring of stability and resilience, the compromised aim of the amended Neighborhood policy. By 2013, the Union was surrounded by democratic backsliding, increasing legitimation of authoritarian regimes, civil war, and regional instability.
By 2015, the saturation of images coming out of Lesvos and Lampedusa—of frenetic search-and-rescue operations, of panic-stricken women thrashing to stay above water, of groups of men all swimming for the same buoy, of drowned children; social media platforms were combusting with heated debate on Europe’s migrant crisis, and all eyes were fixed on the EU. This, with the concurrent rise of far-right parties whose platforms ranged from populist, to nativist, to anti-democratic, exacerbated the crisis of EU legitimacy.

In response to the crisis, the Commission released the European Agenda on Migration (2015), in which they proposed emergency measures to alleviate the pressure on Member states hit hardest by the influx of asylum-seekers, which they defined as:

A temporary distribution scheme for persons in clear need of international protection to ensure a fair and balanced participation of all Member States to this common effort. The receiving Member State will be responsible for the examination of the application in accordance with established rules and guarantees. (COM[2015] 240).

The proposal, often referred to as “the quota system”, was largely ignored by Member states—further betraying the Union’s crisis of legitimacy.

In 2016, amid intense polarization between the Member states and institutions of the Union, the European Union Global Strategy (EUGS) made external action the nucleus of the EU’s strategy toward managing migration. Its opening statement imbues a pragmatism that is undoubtedly aimed to acquiesce some of its loudest critics:

We need a strong European Union like never before. It is what our citizens deserve and what the wider world expects. The European project which has brought unprecedented peace, prosperity and democracy is being questioned (EUGS 2016).
With the introduction of new instruments such as the New Partnership Framework, the Union has opted to provide support for Member states in their bilateral accords with third states.

CHAPTER II:
Migration management at the State level

Externalized migration policies are often the combination of readmission agreements with the extraterritorial control of borders—by way of maritime interception, or relying on third countries for cooperation. Extraterritorial border control has been the subject of great discourse among the academic and policy-making community as the EU increasingly turns to ‘external action’ as means of managing migration flows.

Angelo & Spano (p. 479) have claimed that “immigration interdiction based on border militarization displays several limitations: it increases the price of smuggling, worsens the suffering of persistent illegal border crossers and results in more deaths at the boundary.” Cetti’s analysis (pp. 2-4) of extraterritorial border controls makes the case that the policy allows for member states to derogate from an array of treaty obligations which protect migrants, asylum seekers, and other vulnerable foreign nationals in the region. The externalization of migration control and the deterritorialization of its border controls, according to Cetti, amount to state crime. Through the hybridized tactics of extraterritorial policing and surveillance, and the privatization of Mediterranean security—the EU has undermined not just access to asylum, but a path to legal migration outright (pp. 3-9).
Eisele et. al discuss the nature of extraterritorial border control, particularly in respect to its compatibility with international law, claiming that the way readmission agreements grant preferential treatment to different third-country nationals (also referred to as Association agreements, Cooperation frameworks, and Mobility Partnerships) violate the principle of non-discrimination (p. 193). Furthermore, according to Eisele, the cherry-picking of third country nationals to fulfill skilled and low-skilled labor shortages is in violation of Article 18 of the TFEU; Article 6(1) of the TEU; along with Articles 21(1-2) and 51 of the EU Charter (pp. 189-195).

Trevisanut (pp. 669-675), instead, discusses how the emerging practices of de-territorialized border control conflicts with the principle of non-refoulement, or, “the practice of not forcing refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution.” A key protection for individuals within the 1951 Convention Relating to the Status of Refugees¹³ (along with its 1967 Protocol). Additionally, non-refoulement is a part of customary international law—and as such, the principle is universally applicable. Furthermore, as Droege (p. 178) rightly notes, “Third, the principle of non-refoulement may prohibit transfers to countries where not only the receiving state’s authorities constitute a potential risk, but also non-state entities or individuals if the receiving state is unable or unwilling to protect the transferee.” This is of particular relevance to the practice of Italian repatriations of migrants to Libya.

Anja Palm (2017) of the Observatory on European Migration Law has written at length about how the EU has moved toward ‘external action’, and in her assessment, she highlights its unbalanced approach:

In what has been defined as the ‘externalisation of migration control’, the EU has increasingly outsourced tools of border control to third countries and ‘externalized the barriers against irregular migratory movements to areas outside the physical territories of the States or of the whole of the European Union’, creating a ‘buffer zone’ and integrating third States into the EU border control apparatus. Agreements with third countries have been focusing mainly on joint police operations and the enhancement of migration control instruments through funding and capacity building of the border control ability of countries of origin and transit. Another priority has been identified in the conclusion of readmission agreements, as to ensure the return of any irregular migrant through accelerated procedures and presumptions, which often risk coming at the cost of asylum and human rights protections (p. 2).

The various readmission agreements Italy has entered with Libya are the most emblematic of how EU member states short-circuit international law (Eisele 2014; Giuffré 2012; Paoletti 2010). In a process that began with the 2008 Treaty of Friendship, Partnership, and Cooperation between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya.\(^\text{14}\)

The 1988 bombing of US Pan Am Flight 103 over Lockerbie, Scotland had prompted both the European Union and the United Nations to pose sanctions on Libya, after having found sufficient evidence that the attackers were provided support by the Qaddafi regime (Paoletti

\(^\text{14}\) Hereinafter the Friendship Treaty of 2008.)
A decade and a half later, Qaddafi claimed partial responsibility for the attacks, and agreed to pay out damages to the families of the Lockerbie bombing victims. Additionally, the regime took a new, invigorated stance against terrorism with a crackdown on Al-Qaeda, and agreed to completely abandon the development of Weapons of Mass Destruction. Between 2003 and 2004, the EU and the UN dropped their sanctions against Libya, and with Italy’s assistance, so followed the EU and U.S. arms embargoes that had barred Qaddafi from purchasing weapons and other military technology from member states since 1986 (Sarrar 2008).

“We don't know what will be the reaction of the white and Christian Europeans faced with this influx of starving and ignorant Africans ... We don't know if Europe will remain an advanced and united continent or if it will be destroyed, as happened with the barbarian invasions.”

-Muammar Qaddafi in an address to the European Commission, 2010.

In the summer of 2008, ex-Colonel Muammar Qaddafi pitched his bedouin tent in a clearing encircled by the foliage of black poplar trees of Villa Doria Pamphili. It was his first trip to Italy as leader of Libya (Sarrar 2008; Paoletti 2010), and upon arriving in Rome, he was greeted with all of the fanfare and pageantry that despots are known to be fond of. The visit, coordinated by Italy’s former Prime Minister Silvio Berlusconi, came at the conclusion of Italy’s decade long endeavor to integrate the Colonel, who was often characterized as ‘mercurial’ and dubbed an ‘international pariah’, into the international community (and more importantly, its market).

The ostentatious welcoming in Rome was not Berlusconi’s way of greeting just anyone. The two heads of state had more in common than most: both were mavericks within their respective regional organizations, even outsiders; both had antagonistic relations with France; both employed unconventional (to say the least) methods of diplomatic tradecraft; and, most of
all, both men preferred a life of luxury. The rolling out of the red carpet to Qaddafi was more than just flattery—it was a message from Berlusconi, in a language they both spoke. It was the introduction of a new modus operandi. The relationship between the two peculiar international figures featured everything lacking in the stale, bureaucratic political theatre of the EU. Berlusconi’s courtship of Qaddafi was not simply put in terms of commercial profit, of international legitimacy, or repaired reputations. It was a spectacle worthy of the optics-obsessed despot.

Berlusconi travelled to Benghazi a few months later to sign the Friendship Treaty (2008), and thus began what promised to be a very lucrative relationship (Paoletti 2010; Sarrar 2008). The pact detailed a wide range of ambitious objectives: perhaps the most eyebrow-raising aspect of the deal was its stipulation that Italy would pay out a sum of €5 billion in colonial reparations to Libya (La Repubblica 2008; Ronzitti p. 126-127). Far from being known for his humanitarian passion for Africa, the timely nature of Berlusconi’s remorse—coming just after the lifting of EU and UN sanctions—raised some mumbles among EU member states. The rest of the measures included in the pact only further highlighted the not-so-veiled motives of the business mogul turned politician.

The quid-pro-quo took place for the whole world to see. Qaddafi got access to the rich market of Fortress Europe and an exorbitant sum in reparations from the Italian government, a short-term gain. The timeline of Berlusconi and Qaddafi’s dealings are important when taken into the larger context of investment in Libya—coming from both the European Union and individual member states. With the Friendship Treaty, both countries were given the greenlight to pursue an array of shared geostrategic interests: from migration and security policies,
energy and defense contracts. Meanwhile, a systematized practice of pushing migrants travelling by sea back to Libya emerged.

In March 2006, two members of Italian parliament witnessed something out of the ordinary at a migrant reception center in Lampedusa—Italy’s southernmost island. While one parliamentarian was leafing through the center’s documents, which listed the names of migrants which had been sent back to Libya to be repatriated, they came to a disquieting realization:

[...] We realized that these people were collectively repatriated under the same name. We saw long lists repeating the same name. Hence, we believe that they were not properly identified. Moreover, these people were not given the possibility to apply for asylum […] We raised this issue during a parliamentary interrogation, asking the Government how it could send back to Libya people that had not been identified. The response was that those people had been identified. Yet, when we asked if we could have the lists [with the names of those repatriated proving that they had been identified], we were told that for privacy reasons this request could not be met (qtd. Paoletti 2010).

Herein lies the core issue with the way Italy has implemented its readmission agreement with Libya: from the very start, reports were coming out detailing the Italian authorities’ brazen pushbacks, which were undertaken with no regard to the legal statuses or eligibility for asylum among migrants on board (Ghezelbash pp. 316-320; Giuffré pp. 728-733).

A year after the 2011 Libyan Revolution, Italy’s extra-territorialized border control resulted in the adjudication of the European Court of Human Rights (ECHR). In Hirsi Jamaa & Others v Italy, the ECHR ruled that Italy’s maritime interception and subsequent pushback to Libya of the twenty-three foreign nationals from Somalia and Eritrea was a violation of several
laws within the European Convention on Human Rights, namely: the prohibition of torture and other inhuman or degrading treatments;\textsuperscript{15} the right to an effective remedy,\textsuperscript{16} and the prohibition of collective expulsions of aliens (qtd. Giuffré pp. 728-729).\textsuperscript{17} But Friendship Treaty had already been suspended anyway–with the fall of Qaddafi, so too went any semblance of an enforcement mechanism for the agreement on Libya’s end (Palm 2017).

In 2017, however, the a readmission agreement was set back into motion with a Memorandum of Understanding (MoU) between Italian Prime Minister Gentiloni and Fayez al-Serraj, Head of the UN-backed Libyan Government of National Accord. Between 2017 and 2018, 22,031 migrant arrivals by sea to Italy via the Central Mediterranean route were recorded (\textit{Guardia Costiera Italiana} 2018; qtd. \textit{IOM} 2018). As of October 2018, 14,372 of those arrivals have been returned to the Libyan shore by the Italian Coast Guard (\textit{IOM} 2018). Italy’s practice of sending migrants back to Libya has fluctuated with administrations in the past decade, but the way this policy fits into the larger framework of the EU’s direction toward migration shows the way in which the Union strategically abstains from exercising its competence over areas of migration.

Italy has succeeded in side-stepping its obligations through the use of readmission agreements, while also limiting accountability: through readmission agreements, the Italian government veered toward increasingly dubious practices to stem migrant flows in the Central Mediterranean through practices such as maritime interception and interdiction (Ghezelbash pp. 320-322). Assessments of these readmission policies have concluded that they are incompatible with international law, most evidently the principle of \textit{non-refoulement}. This all amounts to an

\textsuperscript{16} Id. Art [13].
\textsuperscript{17} Id. Art. [4]; Protocol [4].
enormous obstacle to the access vulnerable foreign nationals have to request asylum (Eisele 190-193).

CHAPTER III:
The role of non-state actors in EU migration management

The various policies and decision-makers within the EU, numerous as they may be, do not account for all the actors with a stake in the Union’s external border regime. Guiraudon (p. 154) contends that: “Like a coral reef, EU immigration, asylum and borders policy attracted a range of new actors... ” As previously stated, the EU’s migration management is a polymorphous arena, wherein multiple overlapping state and non-state efforts are pursued within one common space. Nowhere is this more apparent than the Central Mediterranean, where relevant non-state actors range from international organizations; NGOs and other ‘para-public’ actors; corporations; private security firms; and national defense industries (Guiraudon p. 154).

Not one full year following the initiation of the 2008 Friendship Treaty between Italy and Libya, the €5bn payout in reparations ordained by ex-PM Silvio Berlusconi already seemed to be paying off. In a statement following the deal’s signing, Qaddafi pledged that 90% of its foreign investment would be in Italian enterprise (Ronzitti 132; Reuters 2009). Between 2008 and 2010, the Libyan Investment Authority either acquired or significantly increased its existing stakes in Italian companies such as oil and petroleum company Ente Nazionale Idrocarburi S.p.A. (ENI), Telecom, and Leonardo S.p.A (formerly Finmeccanica S.p.A.); as well as Italian bank UniCredit S.p.A. (La Repubblica 2009).
Amidst a EU-wide decline in defense spending between 2008 and 2012, the border security industry was soaring (SIPRI 2010). Market analysis group Frost & Sullivan assessed the value of the global border and maritime security industry at $29.3 billion in 2012, and in 2013, Fortune reported that Leonardo S.p.A.’s annual report indicated that “…rising demand for border security and surveillance has been offsetting losses in traditional military orders.” The LIA bought a 2% stake in the Italian aerospace and defense company Leonardo S.p.A. the fourth largest stakeholder (the first being Italy, with a 30% stake). Following the acquisition, The Wall Street Journal (2009) reported that: “[Leonardo S.p.A.] and the Libyan Investment Authority, or LIA, will invest in ‘a wide range of industrial sectors’ where [Leonardo S.p.A.] is present, including helicopters, signal systems, railway systems, aerospace and energy.” Later that year, ex-CEO Pier Francesco Guarguaglini boasted an additional 541 million railway contract struck between Leonardo and the LIA (Reuters 2009). AgustaWestland, an Anglo-Italian aerospace industry and subsidiary of Leonardo, opened a helicopter assembly and maintenance factory 60 km South of Tripoli, a foray that cost 18 million euro. The center was ran by Libyan Italian Advanced Technology Company (LIATEC), of which Leonardo and AgustaWestland each held 25% shares.

The investments that Italian defense companies made in Libyan border securitization were by no means unique to what was happening within the broader region; according to Gammeltoft-Hansen (2013), “…the migration industries approach argues that the commercialisation of migration management has been fed by the activities of private firms which are unaccountable.” Others have purported that private security companies have enormous sway over the direction of EU policy, introducing “securitized logics” into EU decision-making by
framing migration as in need of technological solutions, supplying border security technologies which generate their own demand through logics of risk management and promotion of technologies as a ‘fix’,” (Lemberg-Pedersen p. 161). The French company Thales, the U.K.’s BAE Systems, Sweden’s Ericsson, and the German company Siemens play equally significant roles in the agglomerate that makes up global border industry (Lemberg-Pedersen p. 160).

The stake these companies have in border security has direct ramifications on its policies toward migration. With their prominent influence, Guiraudon notes that defense companies “compete to influence how a problem is defined, and their preferred policy frames an issue and prevails for long periods of time,” (p. 154).

The actorness of defense companies within the larger patchwork of the European Union’s management of migration adds an entirely new, and scarcely studied issue.
CONCLUSION

The patchwork of The European Union’s migration management casts a light on the its failure to develop from an economic to a political project. The EU’s relative success in de-nationalizing its economic space has been compounded by an increasing nationalization of its political space (Weber & Bowling; qtd. Cetti pp. 10-11). The multi-level management and policing of migration as enriched actors ranging from human trafficking networks to aerospace and defense industries (Lemberg-Pedersen p. 163), while providing a maximalist protection for the state (Bulley p. 67). Meanwhile, the ‘poor and globally mobile’ (Cetti. p. 4) have become globally criminalized. The practice of outsourcing and deterritorializing the management of migration and the control of its ‘external borders’, continues to have grave implications on human security: the short term concessions the European Union has made to securitize its borders are corroding its legitimacy.

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