ODYSSEUS SUMMER SCHOOL PHD PRESENTATION

INTERCEPTION AND ARBITRARY DETENTION OF TRANSIT MIGRANTS IN LIBYA AND TURKEY: A CRITICAL ANALYSIS OF THE RESPONSIBILITY OF THE EUROPEAN UNION (EU) AND ITS MEMBER STATES

IYANULOLUWA IFEOLUWA KOLAWOLE

SUPERVISORS: DR NEIL GRAFFIN, DR AVI BOUKLI & DR ANDREW GILBERT

FACULTY OF BUSINESS AND LAW

THE OPEN UNVIERSITY

MILTON KEYNES, UNITED KINGDOM

EMAIL ADDRESS: **iyanuloluwa.kolawole@open.ac.uk**

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PRESENTATION OUTLINE

- Background to Research
- Terminology Analysis
- Research Questions
- Contribution to Knowledge
- Research Methodology
- Research Structure

BACKGROUND TO RESEARCH

My research is concerned with whether the EU and its member states or their organs can be held responsible for the arbitrary detention of transit migrants on the territory of Libya and Turkey. And how it can assign responsibility to the EU and its member states.

This research builds on the existing literature by examining the misrepresented narrative on the movement of migrants across the Mediterranean routes. It explores the historical perspective of European migration from the movement of migrants across the Central Mediterranean route of Libya leading to Italy and the eastern Mediterranean route of Turkey leading to Greece. It critically examines how European nations conduct migration control on the Mediterranean by pushing by migrants to third countries and facilitating their detention on the territory of third countries.

Migration Routes focus: Central and Eastern Mediterranean Routes

HUMAN RIGHTS VIOLATION

- **ARBITRARY DETENTION BREACHES: ARTICLE 9 ICCPR, ARTICLE 5 ECHR AND ARTICLE 31 REFUGEE CONVENTION 1951.**
- **ARBITRARY DETENTION**: THE VIOLATION OF THE RIGHT TO LIBERTY. IT IS DEFINED AS THE ARREST AND DEPRIVATION OF LIBERTY OF A PERSON OUTSIDE OF THE CONFINES OF NATIONALLY RECOGNIZED LAWS OR INTERNATIONAL STANDARDS.
- ARBITRARY DETENTION EXPOSES THE VICTIM TO MORE HUMAN RIGHTS VIOLATIONS SINCE THEY ARE DEPRIVED OF MEANS TO DEFEND THEMSELVES FROM COLLECTIVE EXPULSION, INVOLUNTARY RETURN, TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT.

AGREEMENTS ON MIGRATION CONTROL

My research will analyze the Memorandum of Understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the state of Libya and the Italian republic and the 2015 EU-Turkey statement

STATISTICS BEFORE THE AGREEMENTS BETWEEN THE NATIONS AND AFTER THE AGREEMENTS

RECENT STATISTICS ON THE MEDITTERANANEA CROSSING

- **ITALY 25,946**
- **GREECE 5047**

- data by UNHCR updated 26th June 2022
- https://data.unhcr.org/en/situations/mediterranean

CHOICE OF TERMINOLOGY

- I am using the term transit migrants as against illegal or irregular migrants to depict the pattern of movement of migrants from an intermediary nation to the destination state.
- This thesis investigates the set of people who travel to Libya and Turkey to migrate to Europe. It considers that the term transit migrant is more suited to analyse the migration trend in the central and eastern Mediterranean because of its general association with people trying to reach Europe through these routes
- It considers that transit migration is relevant to the classification of migrants and migration patterns when migration is viewed as a process.

RESEARCH QUESTIONS

- THIS THESIS SEEKS TO ANSWER THE FOLLOWING RESEARCH QUESTIONS:
- 1) How do international laws influence the interdiction of transit migrants on the Mediterranean sea?
- 2a) do the bilateral agreements between Italy and Libya, EU and turkey on migration control create legal obligations for EU and Italy?
- 2b) does the bi-lateral agreements create an avenue for the human rights of transit migrants to be violated on the Mediterranean sea and in detention centres in Libya and Turkey?
- 3) are the detention conditions of transit migrants in Libya and Turkey following international law and international human rights norms?
- 4) can Italy, Greece or the European union be held responsible for the human rights violations against transit migrants in Libya and Turkey?
- 5)what mechanisms are employable to ensure that Italy, Greece, Libya, and Turkey comply with international law obligations while enacting immigration control policies?

CONTRIBUTION TO KNOWLEDGE

While NGO's and several international organisations have given awareness on the human rights violations occurring during interception and in the detention centres in Libya and Turkey. Several academic publications and courts have addressed the breach of the **principle of non-refoulement under art 33 (1) of the 1951 refugee convention**. However, limited academic publications have investigated the responsibility of destination states for the arbitrary detention of transit migrants on the territory of a third country. Academics such as;

- **LISA HAFERLACH AND DILEK KURBAN (LESSONS LEARNT FROM THE EU-TURKEY REFUGEE AGREEMENT IN GUIDING EU MIGRATION PARTNERSHIPS WITH ORIGIN AND TRANSIT COUNTRIES 2017)** Examined the collective expulsion of the migrants from Greece to Turkey and how the EU uses Turkey to avoid responsibility for accessing asylum claims.
- **AZADEH DASTYARI AND ASHER HIRSCH (THE RING OF STEEL: EXTRATERRITORIAL MIGRATION CONTROLS IN INDONESIA AND LIBYA AND THE COMPLICITY OF AUSTRALIA AND ITALY 2019):** Discussed the similarities between the migration control agreement between Italy and Libya, Australia and Indonesia. They concluded that Italy and Australia could be accountable for the treatment of migrants in Libya and Indonesia.
- **VIOLETA MORENO-LAX, DANIEL GHEZELBASH AND NATALIE KLEIN (BETWEEN LIFE, SECURITY AND RIGHTS: FRAMING THE INTERDICTION OF 'BOAT MIGRANTS' IN THE CENTRAL MEDITERRANEAN AND AUSTRALIA 2019):** Argue that the influence of the EU in coordinating the interdiction of migrants on the central Mediterranean sea could make the EU responsible for the human rights violations that occur at sea.

CONTRIBUTION TO KNOWLEDGE CONT.

MY RESEARCH WILL APPROACH THE SUBJECT MATTER IN A DIFFERENT MANNER COMPARED WITH EXISTING ACADEMIC LITERATURES.

- MY RESEARCH WILL INVESTIGATE ARBITRARY DETENTION AS OPPOSED TO OTHER HUMAN RIGHTS VIOLATIONS THAT HAS BEEN EXTENSIVELY EXPLORED. SUCH AS THE RIGHT TO LIFE, THE PRINCIPLE OF NON-REFOULEMENT AND COLLECTIVE EXPULSION OF MIGRANTS.

- MY RESEARCH FOCUSES ON THE AGREEMENTS BETWEEN THE EU AND TURKEY, ITALY AND LIBYA AS OPPOSED TO OTHER JURISDICTIONS THAT HAVE BEEN EXAMINED BY OTHER ACADEMICS SUCH AS AUSTRALIA AND INDONESIA. IT LOOKS AT HOW THE JURISPRUDENCE OF THE ECtHR CAN BE APPLIED TO EVENTS HAPPENING ON THE TERRITORY OF NON-EU NATIONS.

THE IMPORTANCE OF THE RESEARCH:

The recommendations that will be made in this research could impact how immigration control is approached globally. The research has a global impact. The two agreements with Libya and Turkey could represent a model of cooperation between the EU member states and third countries to implement non-departure and non-entry policies for transit migrants. This research is also important to show that states need to be held responsible for their actions towards a vulnerable group.

Part of the recommendations this research aims to make is on the establishment of an independent monitoring team that continues to investigate the treatment of transit migrants in detention centres. It will also mention the creation of mechanisms that will ensure the compliance of EU and its member states to the human rights of transit migrants. This is because international human rights law doesn't provide guidance on issues of complicity. It only covers the failure to comply with positive and negative human rights obligations. Positive obligation which is the failure of the EU and its member states to prevent the rights of the transit migrants from being breached. Negative obligation refers to how the EU and its member states directly contributed to the human rights violations.

RESEARCH METHODOLOGY

Doctrinal research methodology involves reconstructing and understanding a legal system and creating a rationalised body of information from that which has been produced by legal academics, courts, legislators and international bodies. This research will analyse

- CASE LAWS
- LEGISLATIONS
- AUTHORITATIVE WORKS OF SCHOLARS
- POLICY DOCUMENTS ETC.

Research Structure

MY THESIS IS STRUCTURED INTO SEVEN CHAPTERS. EACH CHAPTER WILL ANSWER THE ENUMERATED RESEARCH QUESTIONS.

CHAPTER ONE: Introductory chapter on the research immigration detention and migration in the central Mediterranean

CHAPTER TWO: Argues the use of terminology to justify those that are taken to detention centres

CHAPTER THREE: Analyse the agreement between the EU's member states, Turkey and Libya, on transit migration. It will discuss the legality of the 2017 MOU between Italy and Libya and the 2016 EU-Turkey deal. It will discuss how the agreements between these countries enhance the externalisation of border control and immigration detention. IT will draw comparisons with agreements framed elsewhere globally

CHAPTER FOUR: The chapter will highlight the interception of transit migrants that occur under the bilateral agreements between the EU and its member states, Turkey and Libya. It will explain the obligations of states under the search and rescue operations under international law. It will discuss the human rights violations occurring on the central and eastern Mediterranean sea during the interception of migrants.

CHAPTER FIVE: Focus on state responsibility for human rights violations

CHAPTER SIX: Discuss the mechanisms available to transit migrants to seek redress for the breach of their rights.

CHAPTER SEVEN: The final chapter of the thesis will draw on the arguments made in chapters one to six and make relevant conclusions.

Thank
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