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WEAPONIZED MIGRATION AS A TOOL OF CLANDESTINE AGGRESSION IN CONTEMPORARY INTERNATIONAL LAW**

Although the crime of aggression is expressly defined by the Rome Statute of the International Criminal Court through seven criminalized types of activities, it seems that a special form of aggression has begun to appear as a new instrument of influence in international relations. Namely, several states have been exercising a particular tool of aggression: causing a swift influx of migrants or refugees into neighboring countries, in order for the latter to be politically or economically destabilized.

Even if “indirect” aggression, such as spy-flights over foreign territory, is a well-known, though illegal, practice in international relations, aggression by the means of using migrants contains a special new component—unarmed human beings (and with foreign nationality) being forced to cross national borders, unwillingly taking risks of being inhumanely treated or physically endangered by the other side as well. Also named “refugee aggression,” this type of illicit activity of a state or its agents can cause severe political and security effects by a mere threat that it will be carried out.

Keywords: migration, aggression, hybrid warfare, international law.

1. INTRODUCTION

One of the most iconic characters in the history of cinematography is Antonio “Tony” Montana, more or less impressively portrayed by the young American actor Al Pacino.

Tony is a refugee originally from Cuba, with a criminal background, but also awkwardly distinguished by an honest and brave character. Claiming that he had long been forced to work for free within the confines of an inhumane and authoritarian regime,

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Tony, as it turns out, brought with him into the asylum state, the United States of America (USA), some dangerous habits inherited from his previous life. The host country hardly profited from his presence at its soil, and at the end of the movie (probably not a spoiler alert), it turns out that Mr. Montana didn't live his short life the way he planned. A potential implicit conclusion is that only the Cuban regime benefited from the whole story.

The opening scenes of "Scarface" (directed by Brian de Palma in 1983) are dedicated to the 1980 *Marief Boatlift*, a mass migration movement during which the Cuban dictator Fidel Castro coerced Jimmy Carter administration of the USA "into foreign policy concessions after sending more than 100,000 Cuban migrants, including criminals and the mentally disabled, to Florida" (Steger, 2017, p. 1). One of them, at least in fiction, was Tony. Not many people knew in 1980 (or at the time of the distribution of the movie) that *weaponized migration* would in fact turn out to be a new, special form of aggression, notably distant from classical types of breaches of international law. More movies on the subject will be directed (or not), but the weaponizing of migrants *in real life* is here to stay (although the Microsoft Word still puts the notion through the spell-checking mechanism, even in 2024).

Instrumentalization of migration crisis is not particularly new method which international actors use, but it catches new sorts of attention. Yet, the accelerated pace of its use (or *threat* of its use) manifests that many authoritarian regimes will not fail to discover its damaging potential. In the aftermath of the Belarus refugee crisis,¹ even such a developed and influential international actor as the European Union (EU) was, in 2021, "unprepared for such a vicious game where displaced people were used as pawns in a coercive geopolitical strategy" (Miholjčić, 2022, p. 7).² Greenhill, who has coined the phrase of "weaponized migration" (Başer, 2022, p. 169; Schoemaker, 2019, p. 364), sees this hybrid weapon, aimed at producing, sustaining, or deepening political instability, as nothing less than a "new crime of refugee aggression" (Greenhill, 2022, p. 157). State-sponsored influxes of refugees create an additional threat to international security, particularly on the borders of the EU,³ which is already going through the process marked by serious institutional problems and political upheavals, owing a lot to demagoguery and xenophobia (practically because of the practical non-existence of state borders in the EU). Apart from traditional military incursions or other conventional types of influencing foreign states, weaponized migration violates the international law

¹ "In the fall of 2021, the leaders of several European countries announced that they were being confronted by an entirely new security threat: weaponized migration" (Greenhill, 2022, p. 155).

² The EU, however, reacted soon. "A highly worrying phenomenon observed is the increasing role of State actors in artificially creating and facilitating irregular migration," as is stated in the European Commission adopted in December 2021 the "Proposal for a Regulation of the European Parliament and of the Council addressing situations of the instrumentalization in the field of migration and asylum" (the 2021 Proposal). Belarus "showed how little Western governments (...) understand the tactic and the ways it plays on the inherently contradictory and hypocritical politics surrounding migration in many advanced democracies" (Greenhill, 2022, p. 157)

³ "More and more governments may seek to turn migrants and asylum seekers "into bullets," as the political scientist Mark Leonard warned— especially to target the EU, a coveted destination that is surrounded by impoverished, repressive and unstable states" (Greenhill, 2022, p. 156).

in new, hardly conceivable but dangerously risky ways. Migration exploitation has risen to become a “very important modern foreign policy instrument” in the international relations (Miholjčić, 2022, p. 3).

At the beginning of the paper types of abuses of refugees and migrants by the state and non-state actors are presented, mapping a true trend present throughout the globe. Next, objectives of weaponized migration are exposed, regardless of whether political, military, or economic motives are in place. Before concluding remarks are summarized, the fourth part of the paper summarily deals with normative framework on the weaponized migration.

2. TYPES AND EXAMPLES OF WEAPONIZING THE REFUGEES AND THE MIGRANTS

Purposely displacing people over borders for political aims can be defined in various ways. It “refers to those instances in which a perpetrating actor attempts to exert power by strategically creating or exploiting migration outflows, threatening to overwhelm the capacity of the target state to accommodate the inflow and to destabilize the target state” (Sie Dhian Ho & Wijnkoop, 2022, p. 1), or to “the creation, exacerbation, or instrumentalization of people” (Petty, 2022, p. 134). Weaponized migration, from one point of view, occurs when a challenging state or non-state actor exploits human migration—whether voluntary or forced—in order to achieve political, military, and/or economic objectives” (Steger, 2017, p. 6). In accordance with one rather extensive categorization, there exist no less than seven types of weaponization of migrants: “the coercive, dispossessive, extortive, economic, fifth-column, militarized, and political/propaganda variants” (Başer, 2022, p. 170).

From only the recent historical point of view, there have been more than a bunch of examples of engineered migration and refugee crises. An authoritative author identified more than 80 cases of resorting to the tactic since the adoption of the Convention Relating to the Status of Refugees (the 1951 Convention) (Greenhill, 2022, p. 157). Probably the earliest noted cases included Pakistan creating conditions for “refugee aggression” against India in 1978, from what was then East Pakistan (nowadays the country’s name is Bangladesh), while the Libyan leader Muammar al-Qaddafi in his time threatened the EU to “turn Europe black” and “Muslim” if Libya does not receive financial assistance (Greenhill, 2022, p. 159; similarly: Başer, 2022, p. 170). In the 1980s, Thailand hosted a quarter million Cambodian refugees, using them as a human buffer zone to protect itself in the ongoing conflict with Cambodia (Başer, 2022, p. 177), and, in the 1990s, the Albanian government threatened to do the similar thing against the interests of Italy (Greenhill, 2022, p. 158). President of Haiti Jean-Bertrand Aristide persuaded the US in 1994 “to reinstall him in office in part by threatening to mobilize large numbers of Haitians to “take to the sea” and head for the [US]” (Greenhill, 2022, p. 158). Back in 2007, “Iran exported 80,000 Afghans in protest to Afghan President Hamad Karzai allowing an official NATO presence in Afghanistan” (Başer, 2022, p. 175), and has since continued to threaten its Afghan refugee population with expulsion (Steger, 2017, p. 8).

More recent examples of employing this type of unconventional means of influencing international relations include activities in which the authorities of Belarus, Russia, and Turkey were engaged.

In 2021, Belarus artificially generated a migrants' crisis in the border areas with Latvia, Lithuania, and Poland (Miholjčić, 2022, p. 3). Belarus announced that it will allow migrants to enter more easily its territory than earlier, liberalizing its visa regime, organizing the migrants' entry, and financing their accommodation and transport to its western borders (Sie Dhian Ho & Wijnkoop, 2022, p. 20). In response, the three endangered EU countries declared a state of emergency and deployed army forces on their borders with Belarus (Miholjčić, 2022, p. 7), while Poland and Finland introduced new emergency legislation as a response to possible further similar threats (Sie Dhian Ho & Wijnkoop, 2022, p. 32).

Russia was also accused of forcibly sending migrants into its neighbouring European countries, maybe as a part of a deliberate strategy (Schoemaker, 2019, p. 361). It has also been suggested that Russia intentionally targeted civilians in Ukraine since February 2022 to influence the political situation in the EU (Petty, 2022, p. 113), in order to provoke "hybrid instrumentalized migration" (Sie Dhian Ho & Wijnkoop, 2022, p. 21). This was also the main point of the accusation made in 2016 by General Philip Breedlove, head of NATO forces in Europe, who accused Russia of working actively to exacerbate the refugee flows in an attempt to destabilize and destroy the EU (Schoemaker, 2019, p. 361).

Finally, the world witnessed the 2020 migration crisis on the Greek-Turkish border, when during a single month there were more than 50,000 registered attempts to enter the territory of Greece illegally. According to one study, most of the migrants did not come from Syria, but from Afghanistan, Pakistan, Somalia and sub-Saharan countries, and they "have lived in Turkey for years, as their knowledge of Turkish language shows" (Kotoulas & Pustai, 2020, pp. 6-7), which implied a classic example of an engineered migration.

3. OBJECTIVES OF REFUGEE AGGRESSION

Intentions of state actors resorting to weaponized migration are not always identical. They may range from financially-motivated activities to raising levels of terrorist threats, provoking political instability and threatening liberal and democratic order of target states, obtaining national military objectives, or framing the most efficient ambient for enabling authoritarian regimes to stay in power.

Financial (economic) extortion appears to be the first motive for abusing the vulnerable position of displaced people by means of weaponized migration. Mechanisms for extracting political or economic concessions can be noted in several examples. In its negotiations with the EU in 2016, Turkey succeeded in its financial demands by "utilizing the fear of a new refugee influx" into the EU (Miholjčić, 2022, p. 4; similar conclusions are drawn by: Kotoulas & Pustai, 2020, p. 11). Turkey threatened to lease the migrants from the Middle East "unless Brussels provided certain concessions", which resulted in Turkey receiving promises of ample financial assistance, a revival of talks on the accession of the country to the EU, as well as visa-free travel for citizens of that

country (Greenhill, 2022, p. 159). The agreement concluded with the EU was “a direct result of the dramatic mass migration event of 2015” which meant that, “according to the deal Turkey continues to receive generous EU funding,” assuming “the obligation of stopping the mass influx in Europe” (Kotoulas & Pusztai, 2020, p. 10). Indeed, the Turkish government was “able to use Syrian refugees as a bargaining chip in extracting billions in payments and political concessions from the EU” (Petty, 2022, p. 122). Extracting aid from wealthy targets had also presumably been the main course of action by other actors. Thus, “the Moroccan government’s financial and political pressure on Spain to solve illegal border crossings” (Miholjčić, 2022, p. 3), whilst the Belarusian President of the Republic publicly proclaimed in 2002 and 2004 that, “if the Europeans don’t pay, we will not protect Europe from these flows” (Greenhill, 2010, p. 118).

Potential terrorist infiltration is another objective of coercive actors in the field of weaponizing migrants. This goes on by the means of “terrorism by violent extremist organizations creeping into migration and refugee flows and conducting terrorist attacks in the country of asylum under the guise of refugee status” (Başer, 2022, p. 170), and by “efforts (...) to infiltrate refugee flows and to facilitate terrorist operations in states offering asylum” (Steger, 2017, p. 1). Furthermore, terrorist attacks in Europe “have implanted a daunting idea that potential terrorists might penetrate the EU territory using the migration influx” (Miholjčić, 2022, p. 4).

Strategic engineered migration can also be motivated by the idea of threatening democratic model of government of target states, while, in addition, it may serve to merely weaken these states politically. Such is the case with “the attempts (...) threatening to overwhelm the capacity of the target state to accommodate the inflow and to destabilize the target state” (Sie Dhian Ho & Wijnkoop, 2022, p. 5), particularly because surveys demonstrate that migration have obtained the status of “a highly politically salient issue in potential target countries” (Sie Dhian Ho & Wijnkoop, 2022, p. 13). In addition, “influencing public opinion and destabilizing society are not side effects but rather central objectives of the perpetrating actor, in cases of instrumentalized migration crises” (Sie Dhian Ho & Wijnkoop, 2022, p. 18). Weaponizing migration can also raise interstate and international (regional) distrust, and thus endanger the genuine national security interests of neighbouring countries. It can “create instability in border areas” (Kotoulas & Pusztai, 2020, p. 13), as, for example, Belarus sought to “discomfit, humiliate, and sow division within the EU” by its actions in the 2021 crisis (Greenhill, 2022, p. 155).

Forced migration is also aimed at provoking anti-immigration sentiments. Thus, “challengers [can seek] to influence the behaviour of potentially vulnerable targets disinclined to accede to their demands under normal circumstances—powerful advanced liberal democracies” (Greenhill, 2010, p. 123). By strategically creating these migration outflows, the perpetrators aim to weaken and destabilize the target country, create unrest and popular dissatisfaction, and erode the power base of the target government (Sie Dhian Ho & Wijnkoop, 2022, p. 9). The immigration has for long been seized upon as a particularly attractive issue by far-right political options throughout the world. It can be claimed that, in a particularly cunning way, weaponized migration might “trigger more restrictive immigration policies within the [EU] and thus call in question the

fundamentals of liberal democratic ideology and tolerance entrenched in the core of the EU's existence" (Miholjčić, 2022, p. 2; similar: Greenhill, 2022, p. 158). Thus, refugee aggression deliberately endangers the very core of the political visions of a targeted society, creating and strengthening xenophobic sentiments at the same time.⁴ This happens because "accepting large numbers of refugees *en masse* is often a politically charged and domestically divisive issue" (Petty, 2022, p. 114-115), while "the most heated debate concerning migrant control is over the constitutionality of repressive measures" (Turanjani, 2023, p. 411). Mass migrations can serve as a tool of foreign policy, constituting an important component of *migration diplomacy* (Kotoulas & Pusztai, 2020, p. 14; Sie Dhian Ho & Wijnkoop, 2022, p. 2), notably because intensifying diplomatic discord with foreign (neighbouring) countries is in the interest of populist authoritarian governments.

Secondary military objectives can also be achieved by introducing weaponized migration into the arena of foreign relations (Steger, 2017, p. 5). Quasi-aggressive actors can thus "check the operational readiness and abilities" of a potential adversary, which "functions as a simulation of war" (Kotoulas & Pusztai, 2020, p. 13). As for a historical example, "in the early 1980s, the Pakistani leader Muhammad Zia-ul-Haq agreed to continue to host three million Afghan refugees then residing in Pakistan (...) in exchange for a variety of concessions from Washington, including the cessation of U.S. opposition to Pakistan's nuclear weapons program" (Greenhill, 2022, p. 158). The Turkish government have recently used the similar method, *inter alia*, to gain "tacit approval for its military interventions in northern Syria" (Miholjčić, 2022, p. 3).

Refugee aggression can be aimed at maintaining repressive regimes in power, serving at the same time as an unconventional tool of political retaliation. Such was the case with the Moroccan government very recently, which enticed "thousands of people [smuggled into Spain following] the news that a Spanish hospital had accommodated the Polisario Front's leader, Brahim Ghali, for COVID-19 treatment." An enormous influx of refugees was "a result of an increasing diplomatic tension between Madrid and Rabat over the question concerning Western Sahara status," and Moroccan officials were irritated by the Spanish decision to hospitalize the leader of a rebel group fighting for the independence of Western Sahara from Morocco and responded with opening fences to the Spanish enclave" (Miholjčić, 2022, p. 5). Similarly, by staging the refugee crisis of 2021, "the Belarus regime wanted to punish the EU for previously imposed sanctions and concurrently discourage them from further sanctioning" (Miholjčić, 2022, p. 8).

4. LEGAL FRAMEWORK ON THE WEAPONIZED MIGRATION

International regulation of immigration weaponization is not quite missing, although the subject remains an "ungoverned domain" from the international law perspective (Petty, 2022, p. 128). The 1951 Convention, and its 1967 Protocol Relating to the Status of Refugees both define a state's obligations and responsibilities towards protecting refugees

⁴ "The Belarusian engineered crisis included around several thousand people, which is an insignificant fraction of overall EU asylum statistics, however, the distress effect that migration influx has on communities within the bloc presents a bigger issue than the figures themselves" (Miholjčić, 2022, p. 9).

on their territory. The right to liberty and security of person is also guaranteed by Art. 6 of the Charter of Fundamental Rights of the EU, while Art. 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that “in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.” However, the core principle underlying the 1951 Convention (Art. 33) and its Protocol is the *non-refoulement principle* (Başer, 2022, p. 173; Turanjanin, 2023, p. 413). Namely, Art. 33 ensures that no Contracting State shall expel or return (*refouler*) a refugee to any territory where his (her) life or freedom would be threatened in a discriminatory fashion.

Weaponized migration represents a novel domain of the law of the war. As such, it cannot easily be treated under the law of armed conflict, partly because “principles of the laws of war that were set down in an era that could not possibly have considered the ways in which states now compete against each other” (Petty, 2022, p. 116). It may be assessed as an indirect aggression, out of the scope of the right of a state to resort to armed force, guaranteed by Art. 2 Para. 4 of the Charter of the United Nations. Traditionally, as a notorious form of proscribed behavior, aggression refers, in broad terms, “to an illegal, unjustified, improper or immoral attack or intervention by one state, or its agents, upon another” (Evans & Newnham, 1998, p. 10).

However, as a tool of warfare, weaponized migration “is far closer to bombs and bullets than to electronic jamming or dropping leaflets” (Petty, 2022, p. 134). For example, massive influx of migrants from Turkey into Greece in March 2020 represented nothing less than “outright violation and state aggression against Greece and the EU” (Kotoulas & Pusztai, 2020, p. 11). Comparably, Ylva Johansson, EU Commissioner for Home Affairs strongly suggested in 2021 that the Belarusian refugee strategy represented a novel way of “using human beings in an act of aggression” (Greenhill, 2022, p. 156). Within the same context, the President of the European Commission Ursula von der Leyen “described the situation as ‘not a migration crisis’, but as a ‘hybrid attack’” (Petty, 2022, p. 114).

One of the sources for making a legally appropriate estimation on whether weaponized migration is in fact aggression is the Rome Statute of the International Criminal Court of 1998 (the Rome Statute). Its Art. 8bis Para. 2 Sect. “g” explicitly states that one of the types of aggression is represented by “sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.” The same list of activities—including the *ad verbum* wording of the Sect. “g”—is outlined by the Art. 3 of the United Nations General Assembly Resolution No. 3314 (XXIX), adopted in 1974. Thus, no direct link is formally established between *aggression* and *refugee aggression*.

It may be useful to remind that, in the boundaries of international criminal law, *criminal intent (mens rea)* is necessary for establishing criminal responsibility (Art. 30 of the Rome Statute). Thus, in order to establish a solid case of “weaponized migration,” intentional refugee flows should not be a side effect, but a clear, specific intent

additional to the general intent of harming non-combatants through indiscriminate targeting (Schoemaker, 2019, p. 371). In the current state of the international legal framework, weaponized migration cannot be clearly identified with aggression in the sense of international public law, or international criminal law (humanitarian law).

Certain authors have proposed suggestions to improve the current sorrowful normative state of affairs. On one side of the line of arguments, a mechanism (although politically less attractive and therefore not much probable), is to be developed to create policies aiming at “accommodating and integrating the migrants,” which could create “a window of opportunity for the EU to continue developing more effective asylum and integration systems rather than an occasion to waste resources on border fortifying and detention systems” (Miholjčić, 2022, pp. 8-9). Similarly, particular states should construct “sustainable migration partnerships with third countries (...) to find the collective will to conceptualize, build and defend fortresses with *gates*” (Sie Dhian Ho & Wijnkoop, 2022, p. 3). Another liberal-minded research claims that “an effective response of potential target states requires (...) a collective identity, involving: (1) raising public awareness; (2) collective will and narrative power; (3) countering disinformation; and (4) mobilizing international allies (Sie Dhian Ho & Wijnkoop, 2022, p. 38). In addition, it is necessary “to invest in information campaigns and other preventative community measures” which can “raise awareness among potential migrants that they should be suspicious of promises of perpetrators that they can help them enter the target country and inform them that institutions to deal with instrumentalization of migration are in place and effective” (Sie Dhian Ho & Wijnkoop, 2022, p. 26). On the other hand, there is a conservative call for a wake-up in the direction of firmly resisting refugee aggression. Hence, the *deterrence* line of thought suggests that “if competitors know that [weaponized migration] will be held out as a violation of the law of war and that as a type of “armed attack”, it may legitimately provoke retaliation, they may be less likely to engage in this sort of conduct in the first place” (Sie Dhian Ho & Wijnkoop, 2022, p. 116).

5. CONCLUDING REMARKS

As long as “there are more people in the world who want to leave their countries than there are other countries willing to accept them” (Petty, 2022, p. 123), exporting migrants will be a powerful type of quasi-aggression. Put quite bluntly by the cited General Breedlove, weaponized migration remains an action basically concentrated on actions aimed “to get people on the road and make them someone else’s problem” (Schoemaker, 2019, p. 362).

However, combating irregular migration as a warfare instrument needs to be based on perfecting international legal regimes in the direction of creating a more efficient definition of aggression (violation of any given country’s sovereignty). Due to the fact that it represents a new type of covert violation of the political and economic integrity of a sovereign country, aggression conducted by the weaponization of migrants or refugees cannot be easily identified. The omission of refugee aggression in the Rome Statute is historically relatively understandable, but this legal gap must be filled. The basic concern remains that the mentioned type of aggression appears to be gaining momentum, which may bring excessive dangers to international security.

In the field of refugee aggression, a porous legal context—or, to put it in a more direct way, a true *vacuum*—merely attracts new dangers. In particular, engineered migration can be perilous for the very survival of smaller countries, in which “migrant flows of significant size could be perceived as a threat to cultural or the social fabric of the country, regardless of any potential economic benefit or humanitarian imperative” (Petty, 2022, p. 126). Such is the case with Lebanon, which has approximately six million inhabitants but hosts over a million of Syrian refugees (Schoemaker, 2019, p. 365), and this example could easily be applied anew in any smaller country in Europe, or elsewhere. There will hardly be any space for extended patience if the weaponized migration becomes directly confronted with a more electrified international atmosphere. In this field, as in any other, time is of the essence.

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