

Sicily/Italy/EU/Africa: EU and Italian authorities accused of “system crimes” as court calls for the recognition of migrants as a “people” and as holders of rights

The People’s Permanent Court held a session on the rights of migrants and refugees in Palermo from 18 to 20 December 2017 following a request to do so, and submissions of evidence by over 100 international associations and organisations in Barcelona on 7-8 July 2017. The session focused extensively on issues including deaths at sea, policies denying hospitality and rights and the externalisation of the EU’s and Italy’s immigration policies to the African coast and mainland, particularly in Libya, with the violence, abuses and deaths this entails. After detailing the composition of the jury and the nature of this popular court arising from civil society as a “court of opinion” since its creation in 1979 and its basis in the 1976 Algiers Charter, the Universal Declaration on the Rights of Peoples, the ruling highlights the damaging effects of treating migration as a crime for European political, juridical and cultural tradition. “Security-led policies dominated and dependent on economic and financial interests” are giving rise to conflicts and emergencies which explain the crisis Europe is experiencing in terms of the “reversal of hierarchies of values and operative actions” and the “marginalisation of categories which are recognised in national and international law.” Migrants, it continues, can no longer be treated as an occasional, fragmented reality comprising people without identity or who may be identified on the basis of different administrative categories, but rather, they must be recognised as a “people” and as carriers of an identity which cannot be limited to the lack of membership of a state, and as subjects of positive law which must develop with the times and phenomena it seeks to regulate. The session comprised a sequence of hearings and the acquisition of documentation, the submission of a sheet of charges of which the relevant authorities were informed in order to be able to respond.

What follows is an abridged translation of the reasons for the court’s ruling. The next session of the Peoples’ Permanent Tribunal focusing on the responsibilities of the EU’s migration policies has started in Paris on 4 January 2018.

REASON FOR THE DECISION

III. From the facts examined and the testimonies heard, what emerges is the progressive denial of the rights and dignity of people which takes place throughout the migration route, from conditions in the place of origin, to the journey, to their stay in camps before they fall into the hands of traffickers, and then during the sea crossing. Those who are turned back enter the hell of legal or informal detention camps. Those who finally reach Italian territory end up in a hotspot, where their possibility of requesting recognition of refugee status is left to chance or fate.

What has been explained above clearly shows how responsibility is fragmented. This fragmentation is often used in order to profit intentionally from it. This makes it difficult to accurately point out who is responsible and must answer for what happens. Public opinion is disoriented by this. The series of events, the sequence, is so long, complicated, concealed, that the links between them are almost always lost. This does not allow the identification of those who are most responsible, leading, on the contrary, the buck to stop at the level of the most manifest and obvious persecutors, for example the Libyan guards,

the “traffickers” or “drivers of vessels”, figures acting in that grey area that migrants are often unintentionally a part of. The testimonies on people “forced to captain vessels” were especially significant. Therefore, citizens of European countries feel entirely relieved from any responsibility. Through a perverse mechanism whose use is becoming frequent, the roles of victim and persecutor are inverted. Migrants are presented as the first culprits, to whom the original guilt is attributed, simply because they are on the move, thus disturbing the order of states. In practice, migration is viewed as deviance. If need be, the culprits are their Libyan, Egyptian, Tunisian or other persecutors. Yet, this guilt is stopped at the African borders or in international waters. As if to reiterate that they are the only guilty parties. Beyond those borders, it appears as if nobody is guilty. Even less so, the governments of European and EU countries. Yet, leaving people to die at sea, in internment camps, allowing any sort of violence to be inflicted on people, amounts to guilt.

The role played by the media in such a context is decisive. Although many have contributed to inform accurately, to reveal violence and abuses, nonetheless, in the political-media discourse migrants are portrayed as “illegal” (clandestine), dangerous, invaders and potential terrorists. Often emptied of their meaning, words have been bent to designate the opponent. “Hospitality” only appears to have maintained its meaning in terms of private morality or religious faith. Stripped of its political value, it has been turned into a symptom of a naïve “do gooder” attitude, whereas the “policy of reception” has been twisted to designate the opposite, that is, a policy of exclusion and refusal of entry, the police-led management of migration flows, and border controls. While the Other is portrayed as a contagion, infection and contamination, fear is the bond holding the community together and hospitality becomes impossible. The time has come to change direction and to reaffirm the right to emigrate, “*ius migrandi*”, and the right to reception as fundamental human rights.

IV. For the right to migrate, for a right to hospitality

The European Union and its member states provide continuous justifications when they are accused of hypocrisy and incoherence as the West when, on the one hand, they proclaim the universality, the indivisibility and the interdependence of fundamental rights while, on the other, they adopt policies which ignore or trample on such rights.

For the global South (and we should also get used to observing ourselves through the eyes of migrants who set off on a journey towards Europe) it is intolerable that European political and economic power forgets that it brutally used the great construct of the rights of peoples (Francisco de Vitoria, Alberico Gentili) – in which a place of absolute prominence was granted to the *ius migrandi*, *ius commercii* and *ius communicationis* of Europeans - to legitimate the Conquest of the Americas and the Indians’ genocide. Today, the principles which were affirmed at the time are overturned and, against migrants from Latin America, from Africa and Asia, the thoughts of Bartolomé de las Casas are rediscovered, whose “Treasures of Peru” - in opposition to de Vitoria to counter the legitimacy of the Conquest and genocide – wrote that “every people or nation or the king representing it may, by natural right, forbid foreigners from any nation access to its territory if it deems them a threat to the fatherland”.

Beyond the strictly juridical problem over the existence or otherwise of symmetry between the right to emigrate and the right to immigrate, one cannot overlook the hypocrisy of affirming the right to leave one's country of origin at the same time as denying that of being received in the destination country, which ends up condemning migrants to a paradoxical destiny of a permanent odyssey around the world's waterways. Nor, on an ethical and political plane, can we forget that those to expatriate, move and reside, after being recognised as natural rights for centuries, were proclaimed as fundamental human rights in constitutions and in international treaties in the mid-20th century.

If "every person is free to leave any country, including their own" (art. 12.2 of the International Covenant on Civil Rights), if the right to employment "implies every person's right to have the opportunity to earn themselves a living" (art. 6.1 of the International Covenant on Social and Economic Rights), how can the closure of borders be deemed justified, as it resoundingly contradicts the inalienable right to leave one's country as a free choice or, even more so, due to a need to survive in order to provide oneself possibilities for one's own life?

There is no policy of closure by Europe, whose opulence (like that of all the developed West) was built through a predatory economic system targeting resources in the global South, which could be deemed legitimate, nor politically and ethically justifiable, until the European Union commits to create a different global economic model which may enable the development of the countries from which, at present, migrants flee, consciously accepting the risk of drowning in the Mediterranean rather than the certainty of starvation in their own land.

The need, which is often forced, to migrate must be recognised as an undeniable right which must correspond to an adequate reception. Securitarian cynicism and the chauvinism of wellbeing, like uncompromising stands on sovereignty, nourish populist xenophobia and end up undermining democracy from below. A walled and immobile citizenship closed within borders is no longer possible. It is time to open up, not just to an ethics of proximity, but also to a politics of coexistence.

Claiming freedom of movement in an abstract form does not mean reducing migration to the flat routine of mobility, but it also entirely disregards the decisive issue of hospitality. Then, it would suffice to remove the barriers so that everyone may be able to move in a planet understood as an easy-going place of exchange, an immense market of choices and opportunities to which everyone has access. Those who have suffered the mistreatments of war, those who have withstood hunger, or poverty, do not ask to move freely anywhere they choose; rather, they hope, at the end of their journey, to reach a place where the world may be shared again. They do not seek to join the community of citizens of the world, but they do expect to be able to coexist with others. Another way of understanding community is possible.

Migrating is a political and existential act. *Ius migrandi* is the human right of the new millennium that, with support from militant associations, international movements and a public opinion that is increasingly informed and vigilant, will require a struggle equivalent to that against slavery. But there is no right to migrate without hospitality, understood not in the reductive sense of a simple right to visit, but as a right of residence.

VI. Migrant crisis or crisis of Europe?

Migration management appears paradigmatic of the more general tendency that is underway towards a substantial modification of the model of democracy that is in force in the West, based on the division of powers and parliamentary control of the executive branches. This is because it has been primarily in this field that there has been a consolidation of the practice of decisions made by a wide range of bodies which are not accountable to anyone in spite of their work having considerable importance, because it concerns indispensable human rights, international treaties and military interventions that can give rise to armed conflicts on a large scale.

The deterioration of the democratic system guaranteed by the post Second World War constitutions is a process that has been underway for several decades, since the start in 1973 of the first long post-war crisis which brought the convertibility of the dollar into gold to an end, and to the modification of the equilibria set through the Bretton Woods agreements. It was precisely the emergent difficulties of the system, and the changes induced by an increasingly emphatic deregulated globalisation that followed, which led to the explicit assertion of the need for quicker and more efficient decision-making, removed from the slowness which characterises parliamentary democracies (see the Manifesto of the Trilateral Commission, founded in Tokyo in the same year). This led to the growing transfer of decisions, including ones of great relevance, to executive bodies, to experts who are formally “neutral”, divested from politics, that is, from debate and the democratic parliamentary control which should oversee every choice made by governments. Slowly, a growing number of them was replaced by what a now widespread term calls “governance”, which is the term that designates the management of banks or private businesses, very different from the term government, which bases the legitimacy of its acts on the popular sovereignty of which it is an expression.

The conflict between universal human rights and the division of the world into nation states marks our epoch. The principle of the state’s sovereignty still lays down the law, making the nation the norm and migration deviance and irregularity. Migrants’ rights, starting from their right to move, clash with the state sovereignty exercised over the nation and based on territorial dominion. Thus, migrants are portrayed as intruders, outlaws, illegals; by migrating they challenge sovereignty, break the very questionable bond between nation as soil and the monopoly of state power. To reaffirm its own sovereignty, the state stops them at the border and, in order to do so, it is ready to violate human rights. As the prime location for confrontation and clashes, the border does not just become the rock against which many lives end up sinking, but also the obstacle against any right to migrate.

This contradiction is all the more jarring in the case of the democracies that historically arose proclaiming the rights of man and citizens. Migrations throw up a constitutional dilemma that deeply damages liberal democracies: the one between state sovereignty and adherence to human rights. Today, democracy is struggling in the midst of this double bind. It is not difficult to realise why, in this context, hospitality has been denatured so as to become, rather, hostility. The human rights of foreigners are suspended by the administrative accounting role played by “governance” while only the rights of citizens, worthy as they are, receive

strong support. It is not by chance that in the public debate the questions surrounding the so-called “migration crisis” revolve around the ways to govern and regulate “flows”.

Further confirmation of the exclusive goal of blocking migrants is provided by the lack of provision or prearrangement of legal and safe channels of entry, in spite of awareness, as noted by all the international agencies, that migrations constitute structural phenomena that cannot be governed using material or juridical walls.

If the creeping disruption of our model of democracy is dangerous in general terms, it is all the more so if it is applied to the problem of migrations which are an irreversible phenomenon in a world where capitals, merchandise and information circulate in an increasingly quick and free manner which makes it inconceivable that only human beings cannot do so. This process is destined to deeply transform our increasingly multi-ethnic societies that will therefore be obliged to review the traditional concept of citizenship itself.

VII. Penal crimes and system crimes

From the facts which emerged in the investigation by the Court, different levels of responsibility may be outlined: firstly, that of the European union and/or the Italian state, and then that of specific representatives of the institutions who have signed agreements with Libyan factions which have committed and continue to commit heinous crimes against migrants (in detention camps and in the phases of transportation by sea). These responsibilities should be distinguished depending on whether they concern complicity for the torture enacted in Libya and *refoulement* towards Libya, or the thousands of deaths and disappearances of migrants and refugees over the last few years in the Mediterranean.

In the first case responsibilities are easier to assign to acts undertaken by the state and individuals of conscious cooperation in the crimes committed in Libya (represented at the very least by the provision of economic and material resources). On the grounds for responsibility by the Italian state of complicity the Amnesty international report of December 2017 recently intervened, providing the reasons for which it can be stated that, considering the principles of international customary law, a responsibility of the state exists regarding involvement in the crimes committed by the Libyan military forces to which Italy lends financial and instrumental assistance.

Nor are there any technically insurmountable obstacles (in terms of causality and awareness and, obviously, apart from the identification of precise facts constitutive of penal offences, or at the internal level amounting to ministerial offences, as envisaged in art. 96 of the Constitution) to outlining a penal responsibility in the involvement of the top institutional echelons which have enacted policies from which serious violations of the right to life and the wellbeing of migrants have arisen: the post-war period was marked precisely by the recognition that the murders and acts of torture committed in the context of armed conflicts must be answered for not only by states, but also by the people who are responsible, even at the highest institutional levels.

It is much more complex and technically harder to frame the crime of “leaving [people] to die at sea” within existing penal law, in which the unlawful conduct of people at the top institutional levels does not consist of positive behaviour, but of behaviour of omission in the

presence of a precise juridical duty, by having failed to take action in an adequate manner when faced by tragic consequences which were entirely predictable and avoidable.

These are complex issues and problems which, in due time, will be faced by those competent for initiating penal actions at a national and international level.

Insofar as our present competence is concerned, in the absence of a univocal definition of peoples, we note that the right of peoples (as identified in the Algiers Charter which is the normative basis for this tribunal) and, through such rights, people themselves, are essentially identified by violations and attacks deriving not just from actions and omissions for which well specified subjects may be accused, but also, more generally, from a loss of the sense of politics for the benefit of the market, the abnormal growth of inequalities, an exclusive concern for profits alongside the abandonment and compression of people's human, civil and social rights; from wars and massacres suffered while international bodies prove inactive and incapable; from environmental destruction, whose effects are primarily suffered by the poorest peoples, caused by boundless and unchecked industrial development; from atrocities and tragedies, to return to the matters at hand, which are daily occurrences in the Mediterranean at the expense of migrants forced to leave their countries due to war, hunger and environments that are impossible to live in.

These are evident violations of fundamental rights which cannot always be qualified within a typology from the penal law and are not always possible to attribute, as penal typologies require, to specified subjects. They are aggressions for which it is difficult to frame all the safeguards of the penal law: from the principle of personal responsibility to that of the specifically determined nature of facts which may entail punishment. These aggressions undoubtedly constitute crimes due to their devastating effects on an unspecified number of people and entire collectives which may be described as "system" crimes because they are the violent outcomes of mechanisms produced by the domination of the economic and political system.

The Permanent People's Tribunal, which is a court of opinion, focuses its attention on these system crimes, and its main function is to mobilise public opinion against large-scale violations of the rights of peoples by raising awareness about their criminal nature.

In fact, the PPT is not obliged, as national and international courts are, to bound the scope of its investigation and judgement just in relation to penal law as it is established at a national and international level, but rather, it may include among its competencies systemic violations of the rights of peoples which do not directly or exclusively correspond to penal typologies forming part of positive law.

Even for the laws and secondary norms that in Italy, as in several other European Union states, have been adopted against immigration, although their adoption cannot be configured as a penal offence, these can and must be identified as responsible for the massacre caused by the closures and refusals of entry at the borders for migrants.

The definition as a "system crime" mainly concerns the European Union's responsibility for activating a global policy to fight illegal migration and impose omissive behaviour in border controls for the purpose of keeping migrants as far away as possible from European borders.

This policy has directly and indirectly caused countless deaths of migrants who tried to enter the EU through irregular routes in order to flee from repression, war or poverty, that is, to try to exercise their right to a dignified life. It is the same policy which condemned to torture those who were intercepted at sea or on land, and were then imprisoned and subjected to violence and all sorts of violations, which have sadly become “normal” in terms of their being degrading or inhuman.

Bringing charges against the European Union for the concept of “system crime” obviously does not dispense us from considering the responsibility of each of the European states, for not respecting the duty to rescue people, for direct complicity with conducts of torture, ill-treatment, serious risk of death, also through an increase in these crimes resulting from policies to close borders. Hence, there is a need to acknowledge and assert a two-fold responsibility: of the European Union and of each state.

RULING

More specifically, the PPT, meeting in its session in Palermo from 18 to 20 December 2017 – considering the multiple elements of testimonial evidence which emerged and the documents acquired, evaluating the Italian and European Union acts, acknowledging the statements by top level government officials to reply to or answer observations voiced in different for a, including by representatives of the United Nations – deems that:

- the European Union’s policies on immigration and asylum, starting from understandings and agreements reached between states of the European Union and third countries, constitute a denial of the fundamental rights of persons and of the migrant people, demeaning their dignity by defining them “clandestines” and “illegals” and by deeming “illegal” the activities to rescue and assist them at sea;
- the decision to make the Frontex and EUNAVFOR Med naval units retreat has contributed to expanding the scope for intervention by the Libyan coastguard in international waters, which blocks migrants heading for Europe, prejudicing their life and safety, taking them back to Libyan centres where they are subjected to practices of economic extortion, torture and inhuman and degrading treatment;
- the activities undertaken in Libyan territory and in Libyan and international waters by the Libyan police and military forces, as well as by numerous tribal militias and by the so-called “Libyan coastguard” following the Italian-Libyan memorandum of 2 February 2017, amount – in view of their objective consequences of death, deportation, disappearance of people, arbitrary imprisonment, torture, rape, reduction into slavery and, in general, persecution against the migrant people – to a crime against humanity;
- the conduct of Italy and its representatives, as envisaged and implemented by the aforementioned memorandum, amounts to complicity in the actions by Libyan forces against migrants, both at sea and in Libyan territory;
- following the agreements with the Libyan coastguard and in its activities to coordinate various [agents’] conducts, episodes of aggression NGOs undertaking search and rescue activities in the Mediterranean have complained about, may also be attributed to the Italian

government's responsibility, at times in possible complicity with European agencies acting in the same context;

- the forced dismissal of NGO boats from the Mediterranean, also induced by the "Code of Conduct" imposed by the Italian government, has significantly weakened search and rescue activities for migrants at sea and has thus contributed to increasing the number of victims.

RECOMMENDATIONS

THE TRIBUNAL:

° Demands an urgent moratorium on the implementation of all those agreements which, in a similar way to the EU-Turkey agreement and the Khartoum Process, are characterised by a lack of public scrutiny and by co-responsibility in the violation of migrants' fundamental human rights.

° Invites the Italian Parliament and the European Parliament to urgently convene Commissions of inquiry or investigation on migration policies, agreements and their impact on human rights, as well as on the use and assignment of funds meant for international cooperation, for the purpose of identify and where possible prosecuting responsible parties.

° Deems the specific responsibility of communicators and the mass media in ensuring a correct information on migration issues, recognising migrant people not as a threat, but as a holder of fundamental human rights.

The Tribunal shares and reiterates the proposals issued by the UN Special Rapporteur on forced disappearances along migration routes (2017) as well as the demands and recommendations made by various non-governmental organisations, including those contained in the latest Amnesty International report (December 2017) on the situation in Libya.

The Tribunal ends by stressing that this hearing and the entire session would not have been possible without the commitment and active contribution of the organisations, associations and collectives which, in Sicily, Italy and Europe, are actively practising solidarity, hospitality and lending assistance to migrants and refugees, and of those acting to safeguard their fundamental rights. For this reason, they are attacked, criminalised and delegitimised. Alongside migrants, they are the life-blood of our work. To them goes our gratefulness and support.

This text abridged and translated by *Statewatch*. See original: "La sentenza della Giuria del TPP" (Sentence by the PPT Jury), available at:

<http://permanentpeopletribunal.org/la-sentenza-del-tpp-che-conclude-ludienza-sulla-violazione-dei-diritti-delle-persone-migranti-e-rifugiate-realizzata-a-palermo/>

Full coverage of the testimonies and the sessions are available (in Italian) on the website of the radio station *Radio Radicale*.

18 December 2017 session:

<https://www.radioradicale.it/scheda/528594/tribunalepermanente-dei-popoli-sessione-sulle-violazioni-dei-diritti-delle-persone>

Presentazione delle realtà sociali richiedenti, Pasqua De Candia; Introduzione sul TPP e la sessione delle persone migranti e rifugiate, Gianni Tognoni; L'Atto di accusa generale presentato nella Sessione di apertura di Barcellona, Brid Brennan; L'atto di Accusa dell'udienza di Palermo, Daniele Papa; Alessandra Sciorba, membro della CLEDU (Clinica Legale per i Diritti Umani) dell'Università degli Studi di Palermo; Daniele Papa, membro dell'ASGI (Associazione per gli Studi Giuristici sull'Immigrazione); Franco Ippolito, presidente del Tribunale Permanente dei Popoli; Leoluca Orlando, sindaco del Comune di Palermo; Il Mediterraneo ieri e oggi: da crocevia di incontro di culture e civiltà a frontiera [The Mediterranean, yesterday and today: from a crossroads for the meeting of cultures to a frontier], Maurizio Albahari; I morti e i desaparecidos del Mediterraneo [The dead and disappeared of the Mediterranean], Flore Murad-Yovanovitch; La violazione dei diritti fondamentali dei rifugiati: il ruolo degli stati nazionali tra politiche europee di contrasto all'immigrazione e le garanzie della CEDU [The violation of refugees' fundamental rights: the role of national states between European policies to fight immigration and the ECtHR's guarantees], Antonello Ciervo; La governance delle frontiere e delle migrazioni in Europa e in Italia: analisi della "forma" che contiene il disumano [Governance of borders and migrations in Europe and Italy: analysis of the "form" which contains inhumanity], Iside Gjergji; Francesco Martone; Donatella De Cesare; Antonello Ciervo; Iside Gjergji; Luciana Castellina; I finanziamenti per la gestione dei flussi migratori: il Trust Fund di emergenza per l'Africa [Funding for the management of migration flows: the emergency Trust Fund for Africa], Ludovica Jona; I finanziamenti per la gestione dei flussi migratori: il fondo ItaliaAfrica [Funding for the management of migration flows: the Italy-Africa Fund], Sara Prestianni; Migranti africani e politiche di contenimento, il caso della Libia [African migrants and containment policies: the Libyan case], Antonio Maria Morone.

Part 2: Cases and Testimonies: Charles Heller; Testimonianze a cura di Oxfam/Bordeline Sicilia, Adriana Zega; Nancy D'Arrigo; Paola Ottaviano; Testimonianza di Michel, giovane migrante domande di Carlos Beristain, Franco Ippolito, Fulvio Vassallo Paleologo; Testimonianze a cura di MEDU: Rapporto sulle condizioni di grave violazione dei diritti umani dei migranti in Libia (2014-2017), Alberto Barbieri; Flavia Calò; Ahmamaduo lallo.

19 December 2017 session:

<https://www.radioradicale.it/scheda/528595/tribunalepermanente-dei-popoli-sessione-sulle-violazioni-dei-diritti-delle-persone>

Cases and testimonies (including questions by the court) by Sea Watch, Ingolf Werth and Johannes Bayer; testimonies by journalists (including questions) Cornelia Toelgyes, Giacomo Zandonini; testimonies by young migrants and associations (including questions) Fausto Melluso, Mohammed Kamad, Jay, Lamin, Giampiero Obiso, Nancy Porsia,

Alessandra Ballerini, Luca Masera, Lorenzo Trucco, Gaetano Azzariti; Ingolf, Werth. Il ruolo dei mass media [The role of the mass media], Serena Termini; Final arguments: Fulvio Vassallo Paleologo, lawyer, ADIF president (Associazione Diritti e Frontiere); Serena Romano, lawyer of CLEDU (Clinica Legale per i Diritti Umani, Legal Clinic for Human Rights).

20 December 2017 session:

<https://www.radioradicale.it/scheda/528596/tribunalepermanente-dei-popoli-sessione-sulle-violazioni-dei-diritti-delle-persone>

Round table, reading of the sentence and questions to the jury.