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Managing Migration in the United States and the European Union – Maintaining the Security

Zarządzanie migracją w Stanach Zjednoczonych i w Unii Europejskiej – utrzymanie bezpieczeństwa

Introduction

Fear is a strong instrument that could be used to "design immigration statutes". One can think of President McKinley's assassination, Germans during World War II, communists during the Cold War, present terrorists and other modern extremists. In recent years, right-wing extremists has taken advantage of fear during election campaigns conducted in European countries in order to show that the roots of instability and insecurity lie in the irregular migration flows. At the same time, those right-wing extremists can also become an internal threat to the country when they become violent or provoke other groups of extremists to act violently towards the policy of a given country. Where to find the balance of the state interest, migrants' interest, ideologies and policies? What does the law say about it?

In order to analyse the current developments of migration management one should have a look at the historical transformation of safe migration management

to security-oriented migration management. The example of the United States' migration management over the years is a good way to understand where the European Union is going with its complicated legal system and migration control. The notion of "national security" will be discussed as well as the way in which recent U.S. leaders and their administrations have defined it in their national strategies. In addition, a response of European leaders and EU Commission to the 2015 refugee crisis and strategies and lessons learned from both regions will be analysed.

Migration control and management is no longer just a problem to be resolved at the state level. It has developed from the state level to the regional one and then it became an issue of global concern. Instability in one part of the world results in massive movements of people to the more stable regions. America and Europe are the biggest regions where forced migrants tend to arrive, even at the cost of their own lives.[1]

The discussion about migration has shifted from the human security issue to the national security issue, jeopardizing the founding principles of the EU. Therefore, the research questions are: 1) What is the visibility of the human security concept in the EU's policies?, and 2) How was it implemented to tackle the migration crisis? As already mentioned, the human security constitutes an adequate concept to address new security issues and although the EU has been familiar with it, it is important to analyse it with regard to its implementation. This article discusses the historical and legal development of migration management and its current effects in the world. Challenges like the COVID-19 pandemic or other health-related issues also change the policies of migration because at that point the well-being of the public has to be taken into account.

The main criticism concerns the concept of human security itself. It continues to be a point of discussion between those who favour the broad approach (freedom from want) and those who prefer the narrow one (freedom from fear). The issue still remains unsolved, even after introducing it in the 1994 UNDP report. The role of the state is unclear due to the fact that it can either improve or threaten the security of its citizens. While the end of the Cold War changed the security thinking from national security to more universal, the September 11 attacks brought it back and helped it gain its position. Critics say that the human security concept is unwieldy as a policy instrument, and due to its vagueness, politicians do not give it any priority. Academic criticism refers to the fact that the human security concept has no analytical purpose and it cannot be measured. Furthermore, when it comes to debates concerning the definition of human se-

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[1] L. Roots, *Irregular Migration in European Union after Lisbon*, "L'Europe Unie" 2012, vol. 6, pp. 99–112.

curity, the broad definition is seen as too extensive and, thus, it does not provide a clear research agenda. Some argue that there is no real difference to the universal declaration of human rights and it promotes a false sense of priorities in nation's security agendas.[2] To support this argument the states and people should just respect the universal human rights and the notion of security is maintained.

Supporters of the concept of human security argue that it represents a new paradigm in security which focuses on threats in daily life and takes into account aspects beside military threats. Human security has already changed the thinking about security. It has, for example, introduced new security policy issues such as ban on anti-personnel mines.[3] Non-military factors such as poverty, diseases and political violence should also be taken into account.

Concept of security

As already stated, the concept of human security cannot be used as an academic or analytical tool, due to the fact that it is too broad and fails to establish a hierarchy of goals and, thus, is not able to set priorities. The main ongoing debate concerns the scope of the definition of human security. Should the focus be on the narrow definition or should the wider aspects of development be also taken into account? The UN and Japan have adopted the use of the broad definition focusing on non-military threats, whereas the narrow definition is promoted mainly by the Western governments, including many EU countries, and it focuses on protecting individuals from war and violence.[4] Supporters of the narrow definition see that it can be better applied as a foreign policy tool when compared with the broad definition which can recognize many threats to well-being as security risks and, thus, human security loses its analytical aspect.

As the human security concept focuses on individuals, it can be argued that it diminishes states' role and, thus, its sovereignty. However, human security and state sovereignty should not be perceived as one concept prevailing over the other, their relationship should be more complementary since human security complements the security of the state rather than replaces it. It is noteworthy that states have an important role in promoting and ensuring human security but they can also diminish it. The September 11 attacks, and in consequence the counterterrorism strategy, limited the rights of individuals and more atten-

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[2] K. Booth, *Theory of World Security*, Cambridge 2007, p. 323.

[3] *Ibidem.*

[4] *Human Security: Genesis, Debates, Trends,* Center for Security Studies (CSS), ETH Zurich 2011, https://css.ethz.ch/en/services/digital-library/publications/publication.html/128525 [access: 8.11.2020].

tion was focused on state security. However, the concept of human security has managed to gain its position in the security policy agendas. Fostering human security in fragile states is a crucial instrument for preventing potential threats in those areas.[5] First, the definition of security has been extended from country's military and defence issues to social ones. Also of importance is the close geographical proximity of Europe with Russia, which is considered an unstable and totalitarian country.[6]

Traditional security concepts are not enough to address both the old and the new threats to human lives, namely chronic poverty, ethnic violence, human trafficking, climate change, pandemics, international terrorism, economic and financial declines. These kinds of threats extend beyond national borders and challenge the old notion of security which focused on external military aggressions.

As mentioned above, the concept of human security was developed in order to address these issues while shifting the focus from state security to the security of individuals. Human security means protecting fundamental freedoms and include concepts of development, human rights and national security while moving away from state-centred conceptions of security of individuals.[7] Even though human security empowers the rights of individuals it does not diminish state security, but rather complements it: "human security and state security are mutually reinforcing and dependent on each other. Without human security, state security cannot be attained and *vice versa*".[8]

The concept of human security expanded the notion of security in 1994 when it was introduced in the Human Development Report by the UNDP.[9] It questioned the realist notion of security by shifting focus to individuals rather than states, as a fundamental object of security, and it focused on non-military sources of insecurity that exposed individuals to threats and contributed to the collapse of state structure in the long term.[10] There are two definitions of human security – a broad definition and a narrow one. A broad definition, outlined in the 1994 Human Development Report, encompasses freedom from want and freedom

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[5]   *Ibidem.*

[6]   A. Cottey, *Security in 21st Century Europe*, New York 2012.

[7]   *Human Security in Theory and Practice: An Overview of the Human Security Concept and the United Nations Trust Fund for Human Security*, United Nations Human Security Unit, 2009.

[8]   *The European Security Strategy*, Council of the European Union, 2003, https://data.consilium.europa.eu/doc/document/ST-15895-2003-INIT/en/pdf [access: 8.11.2020].

[9]   *Human Development Report 1994*, published for the United Nations Development Programme, New York–Oxford 1994, http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf [access: 8.11.2020].

[10]   M. Nuruzzaman, *Paradigms in Conflict: The Contested Claims of Human Security, Critical Theory and Feminism*, "Cooperation and Conflict" 2006, vol. 41(3), http://cac.sagepub.com/content/41/3/285.full.pdf+html [access: 8.11.2020].

from fear and takes into consideration human security issues such as hunger, disease, pollution, affronts to human dignity, threats to livelihoods and other harms in addition to straight security threat. A narrow definition focuses on violent threats to individuals and communities.

Human security means freedom from violence and fear, and concerns the security of individuals. While human security does not diminish the state's role in enforcing national security, it can be stated that state secure is not always equal to people security. When the UNDP proposed a new security agenda it provided a shift from the threat of the superpower rivalry. Four essential characteristics were identified in the 1994 Report: "human security is a matter of universal concern; its issues are interdependent; it is better dealt with early than late; and it is people-centred". Also the seven categories of security challenges were listed: economic; food; health; environment; personal; community, and political. These were presented together with six major threats: population growth; economic disparities; migration pressure; environmental degradation; drug trafficking and international terrorism. Human security was described as "safety from chronic threats such as hunger, disease and repression" and "protection from sudden and harmful disruptions in the patters of daily life".[11]

To achieve human security and address a set of complex issues, collaborative, responsive and sustainable actions are necessary. They have to be: 1) people-centred, 2) multi-sectoral, 3) comprehensive, 4) context-specific, and 5) prevention-oriented. All these needs should be addressed by a hybrid approach which leans on two main pillars; protection and empowerment. When assessing human security, it can be divided into three phases: 1) analysis, mapping and planning, 2) implementation, and 3) impact assessment.[12]

When assessing the EU's responses to the migration crisis, in phase 1, it is necessary to address the needs, vulnerabilities and capacities of the affected communities in origin, transit and destination countries. These strategies should be done within protection and empowerment framework in co-operation with all communities. Phase 1 should also identify the root causes of insecurity and establish comprehensive responses, which include short-, medium- and long-term strategies. Phase 1 should ensure coherence on goals and the allocation of responsibilities among the actors. Phase 2 should in fact implement the established policies and agendas in cooperation with local partners in the affected communities and monitor the stressfulness of those. Phase 3 should assess the implementation of policies – how they worked and whether they really addressed the human insecurities and improved the livelihood of the people. The Common

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[11] K. Booth, *op. cit.*

[12] *Human Security in…*, *op. cit.*, p. 15, 16.

Foreign and Security Policy (CFSP) is in very close association with the Common Security and Defence Policy (CSDP), which is a segment of the CFSP. The CSDP is a coherent and comprehensive political, diplomatic, economic, humanitarian, civil and military instrument.[13] With the former name, the European Security and Defence Policy, the CFSP was given a new dimension in the Lisbon Treaty which entered into force in 2009. It aims to provide for the EU an operational capacity for missions of peacekeeping, conflict preventing and strengthening international security in accordance with the principles of the UN Charter.

The CSDP is an operational framework to address security issues and it creates an important aspect in the EU's security policies and, thus, it cannot be left ignored when assessing the human security approach. The CSDP provides the EU with an operational capacity to deploy both civilian and military operations across the globe. The civilian missions include: strengthening missions; monitoring missions and executive missions. These include capacity-building, third-party observation and implementation of an agreement. During 2015 there were no civilian missions established.[14]

In the Communication on Security,[15] the Commission is highlighting the main difficulties that the EU is facing. They are: pandemic situation, cyber security, global environment, hybrid and terrorist attacks, organised crime. There are some instruments at the EU level tackling the issues like Directive 2013/40/EU on attacks against information systems[16] or General Data Protection Regulation (EU) 2016/679[17] as well as the Data Protection Law Enforcement Directive (EU) 2016/680[18] regulating the processing of personal data for the purposes of the detection, prevention, investigation and prosecution of criminal offences or the execution of criminal penalties. Another, quite a new directive is related to the security of networks. Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.[19]

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[13] G. Glume, J. Rehrl, *Handbook on CSDP Missions and Operations – the Common Security and Defense Policy of the European Union*, Vienna 2015, https://eeas.europa.eu/archives/docs/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/final_-_handbook_on_csdp_missions_and_operations.pdf [access: 8.11.2020].

[14] *The EUISS Yearbook of European Security*, European Union Institute for Security Studies, 2016.

[15] *EU Commission, Communication from the Commission to the European Parliament, The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy*, COM(2020) 605 final, Brussels, 24.7.2020.

[16] Directive 2013/40/EU, OJ L 218, 14.8.2013, pp. 8–14.

[17] OJ L 119, 4.5.2016, pp. 1–88.

[18] *Ibidem*, pp. 89–131.

[19] OJ L 194, 19.7.2016, pp. 1–30.

Historical developments in the US migration management

The United States, as a country with a vast number of irregular migrants, has taken a different approach to migration control than the European Union. Globalization has influenced also that part of the world and it has not only changed the concept of states sovereignty, but also the concept of conflict itself. The traditional interstate wars have been replaced by an increasing number of intrastate conflicts with ethnic-cultural tensions and increasingly religious differences.[20] Many of the post-1990 wars such as those in Rwanda and the Balkans have been intrastate conflicts whose common feature was the fragmentized state with divided armies which might not be under any centralized power.[21] These kinds of "new wars" are characterized by numerous belligerents, including both state and non-state actors. Due to their nature, these conflicts are harder to resolve and most of the time do not include clear winners and loser like in traditional warfare. Another feature in today's conflicts is an increasing number of civilian victims as well as the fact that the conflicts are mainly funded by illegal activities.[22]

However, intrastate conflicts have created a new kind of problem in both international and regional terms, namely the number of forcibly displaced people is increasing, the result being humanitarian crises around the globe. This situation cannot be ignored by the international and regional actors as well as other countries that are not even active parties to the conflict. And, thus, these changes in international relations need to be taken into consideration in their own security policies. Leaving behind the East-West rivalry, Europeans and Americans are now faced with a new kind of security problems.

According to Will Maslow, national security has been an inherent aspect of immigration law since the founding of the country.[23] This has been the United States approach for a long time. Indeed, to fully understand the impact of immigration law on national security it is necessary to look how the issue has evolved. When President Barack Obama announced his plans to shield millions of immigrants from deportation, Congress and the commentators pilloried him for acting unilaterally.[24] When President Donald Trump attempted to ban im-

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[20] H. Münkler, *The New Wars*, Cambridge 2005.

[21] A. Krieg, *Motivations for Humanitarian Intervention: Theoretical and Empirical Considerations*, Netherlands 2013, p. 6.

[22] *Ibidem*.

[23] W. Maslow, *Recasting Our Deportation Law: Proposals for Reform*, "Columbia Law Review" 1956, vol. 56(3), p. 309, 311–312.

[24] D. Nakamura, R. Costa, D.A. Fahrenthold, *Obama Announces Immigration Overhaul Shielding 4 Million from Deportation*, "The Washington Post", November 20, 2014, https://www.

migration from six predominantly Muslim countries, another group of critics regarded this action as "tyrannical". Beneath this polarized political resistance lies a widely shared belief: that Congress, not the President, makes our immigration policies, dictating who can come to the United States, and who can stay, in a detailed and comprehensive legislative code.

In their book *The President and Immigration Law*, Adam B. Cox and Cristina M. Rodríguez challenge the myth that Congress controls immigration policy.[25] Drawing on a wide range of sources-rich historical materials, unique data on immigration enforcement, and insider accounts of our nation's massive immigration bureaucracy – they tell the story of how the President became our immigration policymaker-in-chief over the course of two centuries.[26] It actually appears that even the Supreme Court did not want to resolve this important question. Robert Barnes writes in his article that "[t]he inability to issue a ruling in *U.S. v. Texas* is the most serious consequence to date of the Supreme Court's shorthanded status. The delay in announcing the tie – the case was argued in mid-April – indicates that the court tried to find a compromise that could draw five votes".[27] Starting from debates over the Alien and Sedition Acts to Jimmy Carter's intervention during the Mariel boatlift from Cuba, presidential crisis management has played an important role in this story. Far more foundational, however, has been the ordinary executive obligation to enforce the law. Over time, the power born of that duty has become the central vehicle for making immigration policy in the United States. To analyse the reason of the President's relationship to Congress, Cox and Rodríguez's analysis helps us better understand how the United States ended up running a massive shadow immigration system in which nearly half of all non-citizens living in America are here in violation of the law. It also provides a blueprint for reform that accepts the role the President plays in shaping the national community, and outlines strategies to shorten the abuse of law enforcement authority in immigration and beyond.[28]

washingtonpost.com/politics/obama-immigration-plan-will-shield-37-million-from-deportation/2014/11/20/3345d672-70dd-11e4-893f-86bd390a3340_story.html [access: 8.11.2020].

   [25] A.B. Cox, C.M. Rodríguez, *The President and Immigration Law*, Oxford 2020.
   [26] R. Barnes, *Supreme Court Won't Revive Obama Plan to Shield Illegal Immigrants from Deportation*, "The Washington Post", June 23, 2016, https://www.washingtonpost.com/politics/supreme-court-wont-revive-obama-plan-to-shield-illegal-immigrants-from-deportation/2016/06/23/6cea5f1e-3950-11e6-9ccd-d6005beac8b3_story.html [access: 8.11.2020].
   [27] *Ibidem*.
   [28] A.B. Cox, C.M. Rodríguez, *op. cit.*

Developments in the EU migration management

The end of the Cold War brought about changes to the international arena. The Kantian notion of perpetual peace was celebrated by politicians and the victory of the West was believed to usher the era of world peace. However, the 21st century showed that the wars have not ended but in fact changed their form bringing new challenges and a new set of complex issues to international relations. A shift from the bipolar to unipolar world created a new world order. After the Cold War, the EU shifted its focus from mainly economic issues towards creating a global political entity, which is a part of not only securing the safety of Europe but also of a global security agenda. The Common Foreign and Security Policy (CFSP), established in the Treaty of Maastricht in 1992, enabled EU Member States to speak and act as one entity in global affairs. EU foreign and security policy seeks to "preserve peace and strengthen international security; promote international cooperation; develop and consolidate democracy, the rule of law and respect for human rights and fundamental freedoms".[29] The establishment of CFSP added a new framework to the EU's external policies, thus, giving the EU more room for a common involvement. The objectives of the CFSP (Art. 21.2 TEU) include safeguarding the EU's values, fundamental interests, security, independence and integrity, preserving peace and preventing conflict in order to strengthen international security in accordance with the purposes and principles of the UN Charter. The EU promotes supporting the human rights and principles of international law.[30]

The 2014 Annual Report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament on the main aspects and basic choices of the CFSP, addressed issues concerning migration, multilateral order and support to democracy, human rights, international humanitarian law and the rule of law. The Report was adopted by the Council on June 20, 2015. It acknowledges that there is a need to further improve the links between the EU's internal and external policies and migration policy needs to be a much stronger part of the Union's external policy. The EU tries to place migration on its political, economic and social agendas in cooperation with its neighbouring countries. Migration is seen as a global, complex and multilateral phenomenon that requires comprehensive, coherent and long-term responses from the EU.[31]

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[29] European Union Foreign & Security Policy, https://ec.europa.eu/fpi/what-we-do/common-foreign-and-security-policy_en [access: 17.07.2021].

[30] *The EUISS..., op. cit.*

[31] *The 2014 Annual Report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament.*

Within time, questions of nation states' territories and sovereignty became more about global politics rather than state politics and spread transnational attention, actions and cooperation beyond nation states. Certain issues in the globalized era are universal and include notions such as "human rights" and "individual freedoms", and, thus, individual states are required to focus their attention on them. New security challenges cannot be solved by sovereign states alone and, therefore, they had to give up some of their powers which led to the creation of many transnational organizations such as the EU.

In 2003, the concept of human security was taken as a part of the European Security Strategy and, therefore, this research examines how visible it is in the European Union's security policies, and how it is used in the current migration crisis. The migration crisis which started in 2014 has been the most severe since the Second World War and resulted in irregular influx of people into Europe, causing a humanitarian crisis which reached the European Union. The discussion on migration has shifted from the human security issue towards national security and this is manifested in some of the actions carried out by the European Union.

It can be witnessed that the concept of human security is visible in the policies, agendas and action plans that the European Commission proposes to the Member States, however, implementation of these at the individual state level is insufficient and, thus, causes an insufficient response at the EU level too. The European Union needs a more coherent response to the migration crisis with full respect of its commitments to promote rights and freedoms of individuals. The human security concept could work as an organizing framework for the European Union when tackling the migrant crisis without compromising national security of the Member States.

The Common Security and Defence Policy (CSDP) is a weak link in the European integration project. Longstanding interferences in particular countries' affairs impact further arrangements. As has been observed, there are differences between the endangered states, disparities in their goals and inclinations, and in some cases a lack of shared trust and solidarity. However, the Lisbon Agreement requests and allows significantly more as far as our regular security is concerned. Jean Monnet has taught us that "Europe will be fashioned in emergencies, and will be the whole of the arrangements embraced for those emergencies".[32] Numerous crises and quickly advancing worldwide patterns (e.g. negative reactions to EU interference) have undermined the European Union's role as a security defender.

Firstly, as opposed to being encompassed by a ring of companions, the EU is presently confronted with precariousness extending from the Sahel to the Horn

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[32] *Europe: Lessons from the Crisis*, September 14, 2020, https://ec.europa.eu/commission/commissioners/2019-2024/breton/announcements/europe-lessons-crisis_en [access: 8.11.2020].

of Africa, through the Centre East and the Caucasus up to the new forefronts in eastern Europe. In addition, the development in the multipolar security environment has prompted a broadening of security dangers that spread over political, social and monetary measurements and are progressively interconnected. These dangers are not absolutely military in nature but rather extend from the proliferation of weapons of mass destruction (WMD) to cyberattacks, robberies, the activities of ethno-patriot groups with subversive aims, and dangers to natural security. Due to the impact of globalization, they effectively rise above state outskirts and are no more unusual in certain geographical areas. The phenomena of radicalisation and fanaticism in the EU and the US are perceived as "conveying vessels" and obscure the distinction between what is inside or outside the EU. It is no longer the internal issue of the state or a region, it has a global dimension and, thus, needs a global approach, more cooperation in order to fight the root causes of these phenomena.

Managing migration and crisis

Migration management at the EU level is a relevantly new phenomenon.[33] The migration crisis, which started in 2014, has created the massive movement of people since the Second World War. The term "migration crisis" refers to both migrants and refugees. In this thesis, the term "migrant" is used as an umbrella term for all three groups: migrants, refugees and asylum seekers. While all refugees are considered as migrants, not all migrants are considered as refugees. Migrants and refugees are now fleeing into Europe from Africa, the Middle East and South Asia and, thus, they have caused the greatest challenge for European leaders and policymakers since the 2008 financial crisis.[34]

The neighbouring countries, Lebanon, Jordan, Iraq, Egypt and Turkey were the first ones to face the migrant crisis pressure. It is clear that the already unstable region could not handle the situation by itself and, therefore, migrants had to continue their journey to Europe. According to the International Organization for Migration (IOM), Europe's Mediterranean border has become "the world's deadliest". Due to the rise of the right-wing and nationalist parties in some Member States and the threat of Islamic terrorism, the EU has been more focused on securing its borders rather than protecting the rights of migrants

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[33] L. Roots, *The Impact of the Lisbon Treaty on the Development of EU Immigration Legislation*, "Croatian Yearbook of European Law and Policy" 2009, vol. 5(5), pp. 261–281.

[34] J. Park, *Europe's Migration Crisis*, Council on Foreign Relations, September 23, 2015, https://www.cfr.org/backgrounder/europes-migration-crisis [access: 8.11.2020].

and refugees which are stated in the international law. So far, it remains unclear how EU Member States are to tackle the crisis and whether they are able to grant asylum status for an indefinite period and introduce immigration reforms. The problem arose when both migrants and refugees flee to Europe via the same routes, which makes border controls as well as assessment of these people more difficult. Greece and Italy, two countries which suffered most from the economic crisis, are key migratory routes into Europe. Individual countries, for example, Hungary have also been exposed to difficulties connected with migration flows on the EU's eastern border. All EU Member States have to follow Regulation (EU) No. 604/2013 – called "the Dublin Regulation" – which establishes the Member State responsible for the examination of the asylum application. The Regulation "establishes the principle that only one Member State is responsible for examining an asylum application. The objective is to avoid asylum seekers from being sent from one country to another, and also to prevent abuse of the system by the submission of several applications for asylum by one person. The objective and hierarchical criteria are therefore defined in order to identify the Member State responsible for each asylum application".[35]

Asylum seekers, thus, need to remain in the country they had entered which evaluates the application. However, there are certain criteria when assessing individual applications. They may vary from family considerations to health issues. Refugees who enter further into Europe are faced with a deportation back to the country through which they entered the EU. While the EU is tackling with the migrant crisis, policymakers want to amend the Dublin Regulation in order to establish a common European asylum policy. Because in reality none of the countries of migrants' first arrivals have followed the Dublin Regulation, due to the high number of migrants and their influx into other European countries, the Dublin Regulation will most likely be reassessed by the European Commission.

When we talk about the immigrant there is also a problem of its legal definition. Especially if we look at the EU official documents or any working document commonly used in this regard at the EU level. However, there is a variety of expressions interchangeably applied to describe this phenomenon. These include, among others: irregular, illegal, unauthorized, undocumented or clandestine (im) migration and (im)migrants. The only legal definition in this field is provided in Directive 2008/115/EC (Return Directive) on common standards and procedures in EU member states for returning illegally staying third-country nationals, where "illegal stay" means "the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions

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[35] Preamble to the Dublin Regulation (EU) No. 604/2013.

of entry as set out in Art. 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State".[36]

For many observers, the European Union is mired in a deep crisis. Sluggish growth, political confusion following a decade of strict politics, Brexit, and, finally, Asia's growing influence, contributed to the fact that the EU is seen as a declining power on the world stage. Columbia Law Professor Anu Bradford argues the opposite in her book *The Brussels Effect*: "the EU remains an influential super-power that shapes the world in its image. By issuing regulations that shape the international business environment, elevating standards worldwide, and leading to a notable Europeanization of many important aspects of global commerce, the EU has managed to shape policy in areas such as data privacy, consumer health and safety, environmental protection, antitrust, and online hate speech".[37] Contrary to how superpowers wield their global influence, the Brussels Effect[38] liberates the EU from playing a direct role in imposing standards, as market forces alone are often sufficient as multinational companies voluntarily extend the EU rule to govern their global operations in other countries. A great deal has changed not only in the global security environment but also in the EU's security field, which requires both actions and responses from the Union. The end of the Cold War changed the international field. A shift from the bipolar to unipolar world challenged the notions of "nation state's territory" and "sovereignty" and, thus, domestic politics became more and more integrated with global politics. This new era of globalization brought about a new set of universal issues which included notions of "human rights", "development" and "security". To address them, states needed a new focus in both their internal and external policies and while sovereign states saw that they were no longer able to respond to the eco-nomic, political and security dimensions by themselves, they gave up some of their power which led to the creation of many transnational organizations such as the EU. The Brussels Effect that Bradford writes about shows why the EU has acquired such power, why multinational companies use EU standards as global standards, and why the EU's role as the world's regulator is likely to outlive its gradual economic decline, extending the EU's influence long into the future.

As the security environment and the concept of state sovereignty changed, the concept of the conflict itself changed as well. The traditional interstate wars have been replaced by intrastate conflicts which has created the problem of forcibly displaced people due to humanitarian crises, for example, in the Middle East and

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[36] European Union, Schengen Borders Code, 2008, Art. 3(2).

[37] A. Bradford, *The Brussels Effect. How the European Union Rules the World*, New York 2020.

[38] The term "Brussels Effect" is sometimes used to describe the EU's rule-making process. Since this procedure involves the European Commission, European Parliament and European Council, it is often said that both decisions and EU law are made in Brussels.

Africa. This situation cannot be ignored by the international actors. To tackle these new issues, the concept of human security was adopted in 1994 when it was introduced in the Human Development Report by the United Nations Development Programme (UNDP). Traditional security concepts are no longer enough to address both the old and the new threats to human lives. Human security means protecting fundamental freedoms of people, including aspects of development and national security, while moving away from state-centric conceptions of security to one that concentrates on the security of individuals. The EU adopted the human security concept to be part of the ESS in 2003.

Conclusions

The European security mechanism defines the activities to be implemented in the event of a breach of security in the EU. Its successful implementation is based on the political responsibility of all parties seeking to improve the situation. This involves EU organizations, Member States and EU institutions. It requires a worldwide point of view with security as one of our basic principles. But in order to overcome migration crises and terror threats, the EU must develop joint procedures for maintaining the security of the EU, closely involving its Member States and cooperate closely with the United States and third countries. Security control and its maintenance has been for decades the sovereign issue of the state. In the evolving world, European governments should cooperate and develop strategies, not just to defend their internal interest but the interest of the world in general. For the above-mentioned mechanism to be effective, it must be based on cooperation and compromise between individual nations.

When analyzing the rapidly weakening security in Europe, it is difficult to resist the impression that appropriate actions should be taken as soon as possible to protect the inhabitants of Europe and the borders of the continent. Faced with a serious threat to the security of the European Union, some Member States have taken decisive steps towards strengthening military cooperation. Already back in 2013, the European Parliamentary Research Service estimated the cost of non-Europe in the area of EU security and defence at between EUR 26 billion and EUR 130 billion a year. Regardless of the undeniable financial costs, political, moral and vital goals encourage the EU to cooperate more closely in terms of providing European security. The cooperation between the United States and the EU within NATO is the cornerstone of the world security, and after the 2020 U.S. presidential elections, this cooperation needs to be continued and made more effective.

In order to increase security at the regional level, the solidarity between neighbouring countries and migrants' countries of origin needs to be enhanced. In case

these countries are serious threat to the world peace, quick and effective measures should be launched that can be politically agreed upon before the problems arise. Expanding solidarity is the way in which Europe can improve the security within its territory, but divisions and disagreements within the European Union make the region weaker and more vulnerable to external attacks.

While the EU has established certain ethical values as its core principles, it is important to assess how they are reflected in the security policy, how they can be achieved, and to what extent international law and EU domestic law work alongside each other. It is evident that the EU acknowledges the integration of the security, economic, political and social dimensions and that all of these are present in threats facing the EU. However, the EU and the US lack the coherence to achieve their aims and promote ethical values. One of the problems is that the EU places the promotion and respect of human rights at the core of its external actions and, thus, it is problematic how to effectively deal with the migration crisis.

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Abstract: The article reflexes the nexus between security and migration management. Immigration is often seen as threat to national security but in case of refugees they are the victims of the instability and lack of protection of their human rights. The article aims to analyse how the human security concept is discussed in EU policies and how it has been implemented to tackle the migration crisis. The approach of the USA to migration and security will be used for the comparative analysis. The article discusses the historical and legal developments of migration management and the effects and problematics in the open world. Since the EU and the USA are the world big players, they should stay the leaders in promoting human rights and security. The way to do it is to introduce homogeneous policies in terms of migration management.

Keywords: migration management; United States; European Union; migration; security; human rights; migration crisis

Abstrakt: W artykule opisany został związek między bezpieczeństwem a zarządzaniem migracją. Celem jest analiza sposobów omawiania koncepcji bezpieczeństwa człowieka w politykach unijnych oraz tego, jak jest ona wdrażana w obliczu kryzysu migracyjnego. Do analizy porównawczej wykorzystano podejście Stanów Zjednoczonych do migracji i bezpieczeństwa. Ponadto omówiono historyczne i prawne uwarunkowania zarządzania migracją oraz ich skutki. Ponieważ Unia Europejska i Stany Zjednoczone są największymi graczami na świecie, powinny pozostać liderami w promowaniu praw człowieka i bezpieczeństwa. Sposobem na to jest wprowadzenie jednolitych polityk w zakresie zarządzania migracją.

Słowa kluczowe: zarządzanie migracją; Stany Zjednoczone; Unia Europejska; migracja; bezpieczeństwo; prawa człowieka; kryzys migracyjny