

Land Grabbing: a "New" Driver and a Challenge for International Migration Law

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Author: Alfredo Rizzo (INAPP National Institute for Public Policy Analysis)

Abstract The 2018 UN Global Compact on migration has stressed how intensive and world-wide uncontrolled migratory fluxes cause economic, political and humanitarian crises that must be tackled at the international level. These phenomena have recently brought at the core of political debate the need to cope with local "land grabbing" as one of the emerging causes of migrations. Land grabbing is in fact a recognized negative outcome of the interrelation between weak public policies and rampant international investments practice, notwithstanding existing standards that, even in that context, are aimed at protecting both specific individual rights as well as some broader groups' rights (see UN 2007 Declaration on indigenous peoples). Through a mainly legal analysis, the research suggests a theoretical path in the perspective that, when it comes to emerging international challenges, the political decision-making levels effectively grant human rights protection and aim at broader sustainable development goals, including environmental protection. Indeed, migrations are in most cases due to weak public policies of the departure countries, in particular when such policies respond to aggressive economic practices implemented globally both by private companies and by foreign public actors, as exemplified by lands' massive acquisitions that too often hit negatively individuals' welfare and rights alongside the local populations' ones.

Summary: 1. Introductory remarks on the international context – 2. Land grabbing and the “new” EU Common agricultural policy – 3. Land grabs practice and “external” EU policies – 3.1. *The biofuels case* – 3.2. *In search of an EU's liability for abuses in renewable energy sources policies* – 3.3. *The extraterritorial character and effects of EU Energy policy and law* – 3.4. *The emerging EU's liability for international practice in environmental/energy sector* – 4. Concluding remarks

1. Introductory remarks on the international context

The phenomenon named “land grabbing”, meant as a causal factor (*driver*) of many regional crises and of the subsequent increase of contemporary migratory flows worldwide, has been the subject of institutional and scientific analysis for several years.

It is more than a decade now the aim for an effective and efficient democratic governance of global development has been proved still far from being achieved and, at some extent, even counter-productive. Despite the progress in "formal" democratization also at an international level, many important deficits in transparency and responsibility of the governments, on the one hand, and in the empowerment of local populations, on the other hand, persist also in several areas and countries where formal progresses seem to have taken place in same mentioned "democratic" direction.

This first aspect invests issues dating back to the processes of decolonization, often poorly governed at the international level, as well as at the strictly internal one. From this, a progressive imbalance of national public systems emerged in favor of national elites hoarding natural and agricultural resources. There is therefore, alongside the aforementioned more general political problems, a more specific problem and a true deficit of territorial governance and therefore a

more specific lack of governance of changes, inter alia, in agricultural property regimes, the absence or shortage of which affects inevitably involved populations, mainly those residing in rural areas worldwide (De Schutter, 2011, p. 261). Aforementioned problematic issues involve, on the one hand, processes tending to bestow an ever greater autonomy (through self-determination in an "internal" and "external" meaning ¹) to the State, being the latter finally left "free" of determining national public policies without any external interference; on the other hand, these developments, at least in some regions of the world, have led to accumulating on few hands control over land, inevitably impairing, in some cases, individual rights corresponding (directly or not, formally or in substance) even to "classic" rights of property. As a result, large-scale land allocations that have been implemented by means of massive sales of land in favor of big international investors, though recognized as formally legitimate, at the same time have caused particularly unfair and harmful effects to the peoples, agriculture, economies and socio-environmental development of the countries receiving those investments (De Schutter, 2015).

It seems useful to specify that, in this case, rights worthy of protection at the international level do not as such relate to a concept of property right in "classic" private-law terms. In fact, these rights concern the concrete use of (and / or the actual need to use) portions of real estate for the purposes of own sustenance, nutrition and survival, thus emerging the need for a sufficiently tight connection between material property and its exploitation, as the individual rights in question cannot be concretely satisfied "at a distance": while this is what exactly occurs in the exercise of property rights in "classical" terms instead, as these, as such, tend to abstract their

¹ "Self-determination" under international law has been considered as "one of the most important driving forces in the new international community" (Cassese, 1995). Customary principle of self-determination referred to in particular in Article 1 of the Charter of the United Nations is, as the International Court of Justice stated in its Advisory Opinion on Western Sahara (ICJ Reports 1975, paragraphs 54 to 56), a principle of international law applicable also to all non-self-governing territories and to all peoples who have not yet achieved independence. It is, moreover, a right legally enforceable *erga omnes* and one of the essential principles of international law (ICJ "East Timor" decision, *Portugal v Australia*, ICJ Reports 1995, p. 90, paragraph 29). On the other hand, the Center for Human Rights of the University of Padua presented to the General Conference of the Helsinki Citizens' Assembly, HCA Bratislava, on 25 and 29 March 1992 a declaration ("Self-determination, human rights and peoples' rights, minority rights, transnational territories"), where it is emphasized that individuals and peoples are originary subjects also in the international legal system and that states are to be considered complex entities however "derived", also in accordance to current international legal and political framework. The founding principles of this "new" international law are: the principle of the protection of life; the principle of equality of individuals and peoples; the principle of peace; the principle of solidarity; the principle of social justice; the principle of democracy. This trend has been proved also by the 1989 Convention (No. 169) of the International Labor Organization (ILO) that confers on indigenous and tribal peoples a right to self-determination as well as specific human and social standards that should be enjoyed not only by individuals but by certain groups as well, such as tribal peoples (who protect their own customs and traditions) and "indigenous" peoples as such. This source protects the right to cultural identity and the participation of peoples in public decisions that affect them, the right to define their own future, equality in the face of administration and justice, the right to land and related resources, the right to employment and adequate working conditions. On the basis of mentioned ILO Convention, the 2007 UN Declaration on the Rights of Indigenous Peoples, which is applicable to both indigenous peoples *en tant que tels* and individuals who belong to indigenous groups, under art. 8 para. 2 b) requires that States prevent (or adequately compensate the damaged for) any act that has the purpose or effect of depriving tribal or indigenous peoples of their lands, territories and resources, also pursuant to the aforementioned ILO Convention (Maguire, 2014; Marcelli, 2015; Özsü, 2019).

own configuration from the need, for the individual (be it physical or legal person) who boasts formal qualifications on the good, to materially exploit the latter (Claeys, 2016). It is also wise considering that, following an international standards perspective, the fact that the determinations regarding the regimes of ownership (or individual possession for any other reasons) of the land be taken without the direct participation of the individuals concerned infringes the right to participate to the decision-making processes of the public administration, a right that is explicitly enshrined in the UN Pact 1966 on economic, social and cultural rights (Wisborg, 2013; Viviani, 2016).

Since the 80s last century, agricultural real estate acquisitions have been greatly enabled by the liberalization of public policies. Indeed, this liberalization in developing countries, implemented as part of the stabilization and structural adjustment programs, deprived farmers of the technical, economic and financial support that had allowed them to invest and progress. Furthermore, the partial liberalization of international trade in agricultural products, combined with the use of ever more efficient transport and trade methods, has led an ever increasing number of farmers from almost all regions of the world to deal with much more competitive agricultural producers and investors. The latter, on their part, have been mostly supported by same local governments where their investments were realized and have ended up at excluding from the relevant markets many (on the scale of millions world-wide) local less supported farmers who have been consequently forced to leave their place of origin (McLeman, 2017)².

² This is also due to the increase, as proved since end last century, of foreign direct investments mainly in agricultural sector in most of less developed or developing countries. This has been certified in the light of the fact that investors from foreign countries have acquired “*arable land in less developed regions – mainly in Africa, South and Central America and Southeast Asia. Since 2000, approximately 15-201 million ha of land worldwide have been acquired or are under negotiation in the context of the recent surge of Foreign Direct Investments in land (FDI in land) (...). Land acquisitions by foreign private investors have taken place on a small scale for decades. However, a changed economic and political environment seems to have accelerated this process in the recent past*” (GTZ, 2009). In more general terms, foreign direct investments are mostly implemented through bilateral investment agreements (Bilateral Investment Treaties, BITs) which since the Second World War have found considerable impetus through a practice of international law that most often sees large private companies confronted to the governments hosting the investment (AA.VV., 2013; Fecak, 2017). This branch of international law finds its counterpart precisely in the need to protect certain individual rights or public policy concerns equally pursued by the contemporary legal system based on the Universal Declaration of Human Rights and the two 1966 UN Covenants on human, civil, social and economic rights. In this context, a new category of standards has also emerged, such as the individual right to a healthy environment and other related human and social rights (Francioni, 2010, 2012). EU itself has taken in due consideration the need to balance international investments’ protection (being such protection pursued through agreements concluded under new art. 207 of the Treaty on the functioning of the European Union, TFEU, e.g. the CETA or TTIP agreements, though the latter is not in force yet) and the protection of other non-economic interests and values, equally covered under same general EU rules (human and social rights, sustainable development, the environment, human health and the protection of the fragile such as the elders, minors, women, third country nationals with specific focus on refugees and asylum seekers). In fact, it has been proved how, lately, “*a number of international investment treaties (e.g. 2004 Canada Model BIT, 2012 US Model BIT and 2012 Southern Africa Development Community SADC Model BIT) have acknowledged the importance of sustainable development by referring to certain non-investment concerns, such as the environment, health and labor conditions, in their preambles and/or in specific treaty clauses, whereas a few international investment treaties have included clauses on non-precluded measures related to the conservation of natural resources*” (Acconci, 2016, p. 104 ff.).

It doesn't seem brave to assume, then, that these phenomena cannot be effectively monitored through legal systems not suited to ensure certainty to ownership rights (beside other relevant basic human rights, e.g., the right to have access to effective legal remedies), though considering those rights in the framework of other relevant public policy objectives, such as sustainability of the e.g. agricultural policies and the connected need to improve environmental protection in the broadest sense. The last three decades on the contrary show how these phenomena have affected large areas of the planet, as happened for example in Russia following the establishment of the first democratic governments, given the peculiar historical event that affected that specific geographical area between the eighties and nineties last century (Roudart and Mazoye, 2015). Maybe, it can be inferred that, where no stable legal and institutional culture in an advanced democratic sense exists, phenomena allowing that the prevailing economic forces unilaterally impose their own needs can more easily occur, affecting governments' decisions and therefore impairing same citizens' related rights and interests.

In this context, the need arises to strengthen international legal cooperation to promote rule of law and human rights standards in countries where the division of constitutional powers, formally or substantially, is not fully implemented.

2. Land grabbing and the “new” EU Common agricultural policy

'Multiple crises' in the today's globalized context impact not just on the financial sector (investment), but entail issues of climate change, migrations and the new hurdles in the international energy, medicines and food supply chain, especially when one comes considering the broad disjunction between, on the one hand, the more developed countries and, on the other hand, the developing areas or those less developed (see *infra*) (Brand 2009).

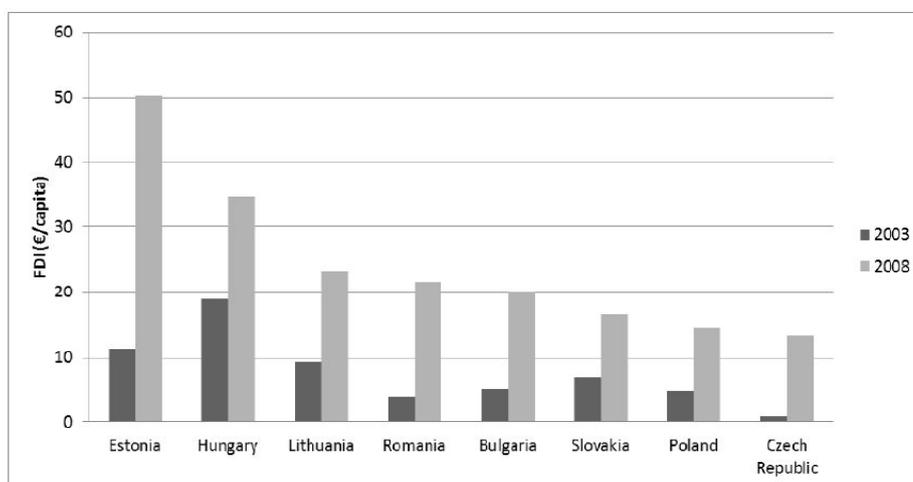
In the mentioned context, advanced democracies, such as those of western Europe or those specifically belonging to European Union, deserve a separate discussion, at least up to a certain date. Indeed, privately-owned models constitutionally established in those countries have not only protected the formal rights' holders, but have also provided a development of national agricultural policies sufficiently compliant to related public policies aims, also by means of agricultural conversion processes and financial supports such as those "historically" envisaged by the common agricultural policy (CAP) implemented under the European Community's treaties (Bruno, 2018, p. 85 on art. 44 of Italian Constitution). Under this provision, a rational agricultural activity, e.g. technically suitable and economically valuable, has become a factor that must be taken into account in any legislative balance with other possibly conflicting constitutional interests, such as the protection of the landscape, culture or environment (Simoncini, 2012).

Very similarly with Italian Constitution, under article 39 of the Treaty on the functioning of the EU (TFEU), Common Agricultural Policy general aims are the following:

- increasing the productivity of agriculture, developing technical progress and ensuring the *rational development* of agricultural production, as well as a better use of production factors and related labor and
- ensuring a fair standard of living for the agricultural population.

However, in recent times also on this specific subject area and region (e.g. national and EU agricultural policies), relevant studies have proved how, in several European regions, land grabs by big companies has had a true impact on the vitality of rural sector. On the other hand, land grab has been particularly concentrated in most of new members of EU from eastern Europe: in fact, foreign direct investments in the agricultural sector (as a main driver of phenomena such as same grabs of lands) have increased rapidly in the last few years especially in countries such as Romania, Bulgaria, Hungary and Poland, that is, exactly after the rapid change of private ownership regimes derived from the constitutional changes in those same countries (Ciaian, Kancs, Swinnen, Van Herck, Vranken, 2012).

Figure 1. Foreign Direct Investments in the agricultural sector (stock, €/capita) in selected EU Member States, 2003 and 2008³.



It's additionally interesting noting that, considering developments in the EU market in the last 15/20 years, a watch over food markets is particularly instructive. Indeed, an increasing concentration of food markets in few hands has prevented (mostly eastern) European farmers from receiving fair revenues, causing the progressive abandonment of lands and subsequent grab of same lands in the hands of few big agro-food retailers' chains (Vander Stichele and Young, 2009).

³ EU Parliament Study, Directorate General for Internal Policies - Policy Department B: Structural and Cohesion Policies, Agriculture and Rural Development, *Extent of Farmland Grabbing in the EU*, 2015, p. 21.

Thus, the weakening of the socioeconomic vitality of the rural sector in many EU countries has been due to a massive rural exodus and the progressive disappearance of peasant farming. Latter factors have been proved being the unavoidable results of persisting large-scale land acquisitions on food agricultural companies' side, through massive programs (unavoidably supported by several European governments as from the late 50s last century) of privatization and dispossession of relevant natural resources. Moreover, capital accumulation in the rural economy and commodity chain has had a polarizing effect and has consequently made smaller holdings increasingly unable to compete with larger farms.

Above phenomena are also in good part due to EU subsidy schemes foreseen in relevant Common Agricultural Policy programs, usually (at least in the past CAP rounds) supporting larger holdings at the price of the smaller ones⁴. This has in most cases strengthened larger farms at the cost of the small ones in market competition, not because the first ones are necessarily more efficient in farming, but because they are much more efficient in gaining public subsidies (Borras et al., 2013).

However, negative results of this more traditional approach to agricultural policies in the EU by means of CAP programs are, expressly or not, tackled through a more fine-tuned approach recently adopted at EU level. As is known, under the CAP the European Union provides financial support to the agricultural and forestry sectors and to rural areas, by means of both same EU supports and establishing relevant EU law rules on State aid policies in the relevant sector. As the economic effects of State aid do not change depending on whether the aid is national or financed by the Union itself, the European Commission demands that adequate consistency be ensured between EU State aid policy (governing constraints to public aid at the national levels) and the direct support schemes that EU itself, by means of the European Commission, traditionally provides to national farmers under same EU CAP. This is the aim of Article 81 in Regulation (EU) 1305/2018 on rural development⁵ and of Article 131 of the proposed CAP Strategic Plan Regulation⁶, laying down that, save as otherwise provided, the EU

⁴ As an example dealing with an EU founding country, according to the Italian National Institute for Statistics (ISTAT, 2011), at the beginning of the last decade large farms in Italy with more than 100 ha experienced a continuous growth in number together with a 10% increase in the amount land in 40 years. Starting 2000s those farms have had access to almost 30% of the Total Agricultural Area (TAA). Such trends contradict the benefits that the agrarian reform should – and could – have brought by reinforcing the process of agricultural land concentration taking place in the country. Just over half (51%) of farms were of less than 2 ha in 1961 and controlled the 7.2% of the TAA. By 2000 they represented 57%, controlling only 6% of the TAA (Onorati and Pierfederici, 2013).

⁵ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 OJ L 347 20.12.2013, p. 487.

⁶ COM(2018) 392 Final 2018/0216 (COD), *Proposal for a Regulation of the European Parliament and of the Council Establishing Rules on Support for Strategic Plans to be Drawn Up by Member States under the Common Agricultural Policy (CAP Strategic Plans) and Financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) And Repealing Regulation (EU) No.*

Treaty's competition rules, including those governing State aid, apply to any kind of support delivered to a private company under the CAP. More precisely, Regulation (EU) No 1308/2013⁷ clearly establishes that "*There continues to be a need to maintain market support measures whilst streamlining and simplifying them*". In addition, dealing with the intertwinings between national and EU rules on State aid, under "considering" n. 176, same regulation establishes what follows: "*The proper functioning of the internal market would be jeopardized by the granting of national aid. Therefore, the provisions of the TFEU concerning State aid should, as a general rule, apply to agricultural products. This notwithstanding, in certain situations exceptions should be allowed. Where such exceptions exist, the Commission should be in a position to draw up a list of existing, new or proposed national aid, to make appropriate observations to Member States and to propose suitable measures*". As a consequence, under current articles 211 ff. mentioned regulation 1308/2013 broadens the applicability of articles from 107 to 109 Treaty on the Functioning of the European Union (State aid rules) to the production and trade in agricultural products, save where national State aid rules and exceptions listed under same 1308/2013 regulation apply. On the interrelation between EU general rules on State aid and same EU State aid rules applicable in the agricultural sector, it is wise recalling that in the EU Court of Justice' view and following a *lex generalis* versus *lex specialis* approach, once EU has established a Common Market Organization (CMO) in accordance to art. 40 TFEU, the relevant rules of such CMO, including those on competition and State aid, prevail on those of the TFEU, including any potential derogation to same EU State aid restraints. Under same logic, exceptions to State aid restraints allowed under TFEU general provisions (107 n. 2 and n. 3) do not apply to a CMO if similar exceptions aren't equally foreseen under relevant CMO regulation⁸. It is worth noting that, in the above competition rules' ambit applicable to agricultural policies, EU Member States are allowed to provide support for investments in the creation and development of non-agricultural activities under 2014-2020 Rural Development Programs⁹, provided such activities

1305/2013 of the European Parliament And of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council, SEC(2018) 305 final.

⁷ Regulation of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347, 20.12.2013, p. 671 ff.

⁸ CJEU 26 June 1979, *Pigs and Bacon Commission*, case 177/78, ECR 2161. The judgment in question is interesting also because it follows a typical "federalist" approach on the requirement that national remedies be suit to effectively protect individual rights granted under EU law and infringed under national legislation (being in question, on that occasion, a conflict between national levies in the agricultural sector and relevant EU law, e.g. national levy on carcasses aimed at the production of bacon and duty to export relevant products by means of national intermediaries, Swaine E., 2000).

⁹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion

are micro- or small enterprises in rural areas or managed by farmers or members of a farm household. Moreover, under same proposed CAP Strategic Plan Regulation, member States would be allowed to grant support to help *business start-ups of non-agricultural activities in rural areas being part of local development strategies*.

From the above, one can conclude how new CAP strategy is also aimed at strengthening other public policy aims of CAP itself, by supporting, more than in the past CAP rounds, investments suited to tackle environmental issues and, at the same time, with the view of resettling areas that have recently suffered from the effects of above mentioned phenomena, referable to land grabbing practices occurred in some EU's rural areas.

3. Land grabs practice and “external” EU policies.

3.1. The biofuels case

Land grabbing, meant as a specific and rather significant causal factor of recent migratory flows at all levels (national, regional and international), has been understood as an unpredicted outcome of related public policies that the EU itself, in addition to its own Member States, has adopted to pursue its own general interest objectives.

It has been shown that in recent times land acquisitions by EU member States' public/private companies abroad have been deeply connected to recent energy policy's aims that, conformingly to specific EU law requirements, are addressed to the use of eco-friendly primary sources: in particular, this has been the case of biofuels resulting from transformation of palm-oil.

For the purposes of this contribution, it is worth mentioning that since beginning this century several EU countries have implemented large-scale palm oil plantations in Liberia, Tanzania and Mozambique (British and Dutch companies), Cameroon (French companies), Sierra Leone (Portugal), Congo-Brazzaville, Senegal and Ghana (Italy; Cotula 2016). More generally, international surveys have shown that in Africa, between 2005 and 2016, 40% of transactions in land for investments in renewable energy sources has been made by public/private European companies, while Northern American companies transacted for 15% out of the total transfers of land with same finalities in same African continent (Cotula, 2016; Schoneveld G.C., 2014).

At EU level, recent 2018 Renewable Energy Directive (RED)¹⁰ under its 81st “considering” explicitly recalls how Directive 2009/28/EC¹¹ had already established a set of sustainability criteria, including those protecting land with high biodiversity value and land with high-carbon

Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320.

¹⁰ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, (OJ L 328, 21.12.2018, p. 82).

¹¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

stock. However, at same “considering” it is acknowledged that the issue of indirect change in the use of land – occurring when the cultivation of crops for biofuels, bio-liquids and biomass fuels dislocates traditional production of crops for food and feed purposes – has never been formally tackled at same EU level. As a result, the RED 2018 directive acknowledges that the mentioned use of land for non-food purposes has increased the pressure on deals in land, triggering the expansion of agricultural land into high-carbon stock areas, such as forests, wetlands and peat lands, causing, as a further consequence, other greenhouse gas emissions.

On this latter issue, Directive (EU) 2015/1513¹² acknowledged that the magnitude of greenhouse’s gas emissions indirectly linked to change in land-use, is capable of cutting on some or all greenhouse gas emissions savings of individual biofuels, bio-liquids or biomass fuels. In the light of this, the new RED states that, even considering estimated risks arising from indirect land-use change, it has been shown that the scale of such result depends on a variety of factors, including the type of feedstock used for fuel production, the level of additional demand for feedstock triggered by the use of biofuels, bio-liquids and biomass fuels, and the extent to which land with high-carbon stock is protected worldwide. Thus, new RED Directive sets a cap of 7% (see art. 26) of ‘renewable energy in transport’ coming from the conventional crop-based biofuels (‘first generation biofuels’), that is, biofuels as the ultimate product of the land used for that purpose. This provision extends, as the whole Directive does, to transactions and investments made in or addressed to non-EU countries with same aim of getting renewable resources and in particular palm-oil, which per se requires, as is known, corresponding conspicuous acquisitions of land. That is to say: most of deals in land with a significant economic content have an impact directly on change of privately-owned regimes in the country of investment and in most cases give raise to the subsequent need for local farmers and traders in food sector to leave origin lands. This gives raise to mostly internal or interregional migratory flows, having been proved that, as far as Europe is concerned, those kinds of migratory fluxes as follow ups of changes in agricultural proprietary regimes have been originated and still happen e.g. in and from Eastern Europe countries such as Romania, where most population left countryside to move towards the main Romanian cities or other Western European countries, and this not too differently from what happens in some regions of Africa (Sassen, 2014; Choplin, 2017)¹³.

¹² Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources (Text with EEA relevance) (OJ L 239, 15.9.2015, p. 1).

¹³ “Out-migrations” (that is to say, migration basically from one continent to another) have qualified still recently migratory flows from Southern Europe to (in most cases) North-America, while American or African migratory flows can be mostly classified as “internal” migrations (e.g. “internal displacements”, check Internal Displacement Monitoring Centre, *IDMC at a Glance*, 2020). According to mentioned EU Parliament Study *Extent of Farmland*

To sum up, it has been considered how biofuels policies under Renewable Energy Directive (RED), as well as various related global policies tackled by various international tools such as REDD+ (Reducing Emission from Deforestation and Forest Degradation) (Lawlor and Haberman, 2009, p. 269 ff.)¹⁴, although not as direct causal factors, provide the formal context for massive land grabbing in several regions world-wide. On that same basis, Europe and EU have become themselves formal and factual frameworks where land grabbing conducts occur by means of growing public and private investments in renewable energy sources requiring per se large-scale land deals and exploitations, with subsequent significant modifications of land use.

For the purpose of this paragraph and in strictly legal terms, it might be interesting assessing the territorial scope and effects of mentioned limitations imposed under RED directive. Indeed, as mentioned above, many international agreements for the purchase of lands aiming at getting alternative crops for energy use have been implemented by several EU countries, by means of both private and public actors. This raises the question of the mentioned EU law sources' external effects. RED directive itself tackles this issue by stating, at its 103rd "considering", that a progressive increase in harvesting for energy purposes is expected in the light of the growing numbers of imports of raw materials from third countries alongside production of those materials within the Union. In a subsequent quite short sentence, same 103rd "considering" quickly concedes "[it] *should be ensured that harvesting is sustainable*" (emphasis added). In addition, at its 40th "considering" same RED tackles issues of international trade (import/export) in renewable energy sources, stating that the sources produced outside the Union should continue to be imported in the EU with the view of becoming part of renewable sources shares held by same EU member States. For the sake of RED's aims, it is stated that imports of raw materials for

Grabbing (... , see footnote n. 2) at p. 22: "The Bulgarian agricultural sector for example has received foreign direct investment from China, Kuwait, Qatar, Saudi Arabia, the United Arab Emirates and Israel in recent years (...). Among the top 100 agricultural companies operating in Romania in 2011 are companies with ties to Lebanon, Italy, Lithuania, Denmark, the Netherlands, France, the USA, Great Britain, Portugal, Spain, and Austria. The size of some of these agro holdings is unprecedented and out of standard European proportions. The biggest farm in Romania for example, belonging to the Lebanese owned Maria Group, amounts to 65,000 ha. With its own port and slaughter house, it exports meat and cereals, largely to the Middle East and East Africa. Similarly, Bardeau Holding, which controls 21,000 ha in Arad, Timis, Caras Severin, and Arges counties in Romania, has its own transport infrastructure and undertakes its own storage (including two cereal warehouses, with capacities of 20,000 tonnes and 12,000 tonnes respectively), processing, and marketing activities. It is linked to the Austrian Count von Bandedau, who is the fifth largest landowner and among the ten biggest farmers in Romania".

¹⁴ Reduced Emissions from Deforestation and Forest Degradation (REDD) aims at increasing forests attractiveness than agricultural and timber products by valuing the carbon in forests for its climate regulating benefits. The United Nations has considered including a REDD mechanism in the Framework Convention on Climate Change (UNFCCC). REDD offers incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. Developing countries would receive results-based payments for results-based actions. REDD+ goes beyond deforestation and forest degradation and includes the role of conservation, sustainable management of forests and enhancement of forest carbon stocks. REDD policy has been assessed following a human rights based approach, by considering, for instance, rights of local populations (indigenous peoples, see *supra* n.1) who are primarily affected by aggressive public policies aimed at gaining value from deforestation processes.

exploitation of renewable sources aimed at energy consumption should be tracked and accounted for in a reliable way and that same EU will take account of connected agreements with third countries concerning the organization of such trade in renewable energy sources. In connection to this, it is assumed that a connection mechanism between the Energy Charter Treaty (per se concerning international trade in energy) and same directive's provisions dealing with cooperation on same issues inside the EU be envisaged.

From the above it is apparent how RED regulatory framework aims at covering also aspects of international deals on raw materials. Those deals are supported by current practices of both public and private investments on land abroad. It has already been mentioned (see *supra* Ch. 1) how such investments in terms of deals on lands have an impact on subsequent migratory fluxes due to the imbalance between international law rules protecting such investments and the still debated legal status conferred to less qualified migrants (e.g., those who leave own territories for mainly socio-economic issues such as, inter alia, climate changes and other environmental issues, McLeman, Geddes & Jordan). It seems wise instead to assess previously whether mentioned commerce of raw materials for the production of biofuels, as explicitly supported by EU legislation, might give rise to same EU's liability for the several negative outcomes of that legislation, such as forced migratory flows from the regions where phenomena of grabs in land happen.

3.2. In search of an EU's liability for abuses in renewable energy sources policies

It is amply acknowledged that after the end of Second World War the boundaries of standards, mainly those concerning fundamental human rights, binding on the State's authority developed from a strictly internal/constitutional dimension to the level of the international relations: this has favored the progressive depiction of the State's liability not just for State's activities performed inside own national borders, but also whenever the same State performs its legal personality in the international arena (Crawford 2001)¹⁵. A clear example of this is provided by some "regional" judicial systems such as those established under the so called "Rome convention", that is to say, the European Convention for the protection of human rights and fundamental freedoms (ECHR), whose legal effects among its founding members are assessed by the European Court of Human rights (ECtHR). The ECHR is clearly addressed to its signatory States and requires that relevant national authorities act conformingly with same ECHR basic standards – protection of human dignity and of human life and of basic individual freedoms – "internally", that is to say, when States enact their own authority inside their own territory on their own citizens as well as on particularly qualified "foreigners", e.g., citizens of other ECHR member

¹⁵ Report of the International Law Commission on the Work of its Fifty-third session, UN Doc. A/56/10, paras. 76 and 77 (2001). See <http://www.un.org/law/ilc>.

States or third country nationals such as those seeking asylum or refuge in the light of relevant 1951 Geneva Convention on the protection of international protection seekers (Rizzo, 2019).

However, under some conditions, ECtHR case-law has progressively widened ECHR's scopes fixed under its article 1 to cases where human rights infringements occur even outside the boundaries of ECHR Members States. This has been particularly the case of human rights' infringements in the performance of international military missions whenever individual behaviors contrary to ECHR can be attached to the national authorities acting inside the territory of the third country (non-ECHR) where the military mission takes place (Rizzo, 2016).

Under same ECHR regime, ECHR member States' liability in cases of human rights infringements has been assessed in areas such as environmental law, although ECHR doesn't cover explicitly that subject-area. In fact, environmental standards' infringements have been classified under article 2 (protection of human life) and/or 8 (protection of private life) ECHR, following a case-by-case basis each time those kinds of protection emerged (simultaneously or separately) under specific factual circumstances (Rizzo 2018).

Though several international law tools and provisions prove an emerging right for anyone to benefit from a "safe" environment, it seems still debated if an international binding rule exists confirming State's international liability in cases of damages for wrongful practices implemented by both private or public actors, with a negative environmental impact also, and in particular, whenever such impact entails "extra-boundaries" effects. So far, international law principles and rules have been able at affirming a general duty of compensation for cases where such national behaviors have cross-borders or beyond-borders effects, on the general assumption that a liability in this case extends also to behaviors that may be considered as "lawful" under relevant international law rules on State's responsibility (Marchegiani, 2018). A growing trend is however acknowledged towards the establishment of a true duty under international customary law forcing the State to keep a safe environment both abroad and inside own national borders. In recent times, this trend has been also confirmed by a relevant case-law of the International Court of Justice by means of an extensive understanding of treaty law rules related to both the State's international liability and more specific environmental protection standards (Conforti, 2010; Francioni, 2012; Marchegiani 2018)¹⁶.

On the other hand, private and public law entities' liability for environmental damages caused in a foreign State can be assessed "internally" by same national judiciaries, those of both the State

¹⁶ Advisory Opinion of 8 July 1996, *Legality of The Use by A State of Nuclear Weapons in Armed Conflict*, ICJ Reports p. 66, Judgment of 25 September 1997, ICJ Reports 1997, p. 7, s.c. *Gabčíkovo-Nagymaros* case. See also Judgment of 20 April 2010, *Pulp Mills on the River Uruguay*, ICJ Rep. 2010 p. 14. The latter has been criticized due to its lack of consideration of pre-emptive aims pursued under the precautionary principle, particularly relevant in cases of environmental damages with trans-boundary character.

to which such public and private entities formally belong and those of the State who suffered from those illicit behavior's effects, particularly in the light of the "polluter pays" principle established under UN Rio Declaration and now well-established under EU legal system as well, whose public policies are particularly attentive to environmental issues representing, since the Treaty of Amsterdam's reforms at the end of 1990s, one of the major subjects under same EU's competences, though "shared" with those of EU Member States (Rizzo, 2018).

Issues of individual damages occurring from activities with significant environmental impact are also specifically addressed under relevant EU rules of private international law, that is to say, whenever individuals might claim compensation for damages (including those with a broader character connected to a significant negative change of own life conditions) suffered from private and public entities' bad behaviors that had a meaningful ecological impact with a transboundary character (Bogdan, 2009)¹⁷. EU law also extends the right to act in compensation for particularly qualified environmental damages to both public law entities (States and related territorial or administrative articulations) and to private law entities however representing and promoting collective interests such as those of the consumers or of local populations whose main interests and same living conditions might be endangered by environmental wrongdoings (Giuffrida, Rizzo, 2018; Grušić, 2016)¹⁸. Additionally, any private companies' behavior with an extraterritorial/international character and entailing actual or potential environmental damages might be subject to relevant Corporate Social Responsibility rules, such as those launched by the Organization for Economic Co-operation and Development (OECD) in the context of its policy promoting responsible business conduct¹⁹, although such rules still keep an evolutionary character that does not entirely meet the need that international liability of private law entities for wrongdoings be effectively sanctioned. It is, however, true that in the same CSR perspective, several "public interest" factors are now considered in advance when both public and private

¹⁷ e.g. arts. 4 and 7 Reg. 864/2007 (on the law applicable to non-contractual obligations, OJ 2007 L 199 p. 40) concerning the individual right to claim damages, including the cases where environmental damages might even just indirectly ensue from bad environmental behaviors committed in a place different from that where same damages have occurred. Jurisdictional issues of controversial cases arisen from non-contractual obligations, with particular reference to environmental damages, are also dealt in Brussels I Regulation Recast (Regulation No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) OJ 2012 L 351 p. 19).

¹⁸ Directive 2004/35 of 21 April 2004 on Environmental Liability, OJ 2004 L 143 p. 56, whose 10th "considering" explicitly reminds that the Directive itself doesn't add any rules of conflict of laws relevant under private international law rules and that it applies without prejudice to the rules on international jurisdiction under abovementioned Brussels I Regulation (see above).

¹⁹ OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct*, explicitly referring also to other similar best-practice guidance for businesses similarly afforded by the 2011 UN "*Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*", see UN Special Representative final report to the Human Rights Council (A/HRC/17/31), as well as the ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* adopted by the International Labor Office in 1977 and amended lastly in 2017 .

undertakings are planning to perform their activities abroad with the view of improving their own participation in the global market and competition.

The establishment of procedural remedies when such standards are not complied with remains however outside CSR scope, beyond their formalistic recognition in each industrial practice (Utting, 2008; Van Calster, 2014)²⁰. It can be wise mentioning that several international agreements between EU and third countries under EU association policy (art. 217 TFEU) incorporate relevant provisions on land management, corporate social responsibility and the promotion of sustainable development, although such policies are mostly referred not expressly to CSR framework but to same agreements' specific goals dealing with the management of "environment and natural resources" issues (Acconci, 2016).

As it will be further clarified, environmental policy issues, together with issues of other connected policies, e.g. those concerning energy policy (whose related impact assessment procedures have become even more significant), have ever growing implications for nowadays international relations. In fact, in addition to abovementioned issues that specifically concern States' liability for environmental damages, abundant literature and case studies deal also with environmental migrations, as a significant character of current migratory crises existing worldwide. It is in fact proved that many migratory flows from several areas of the world and even inside some single regions are caused in most cases by local (regional) environmental crises often putting at stake individuals' living conditions in their origin territories (Leon-Arcas 2012). In a way or another, land grabbing is an additional driver of migration strongly connected to mentioned "environmental" crises (in a broad meaning), although same phenomenon appears still poorly considered under strict legal terms. All in all, as shown above, EU biofuel policy has a negative impact that has so far been amply proved by relevant data and scholarly papers. This begs the question of whether previous considerations on the States' international liability can be extended to abuses imputable to the EU alone each time EU law obligations stemming from relevant EU policy objectives (e.g., EU environmental or energy policies) might entail such negative impacts outside same EU borders, including, inter alia, land grabbing phenomena and the resulting increase of forced migratory flows. Indeed, as it has been shown above, same EU legislation on renewable energy sources explicitly supports national policies implementing international trades on lands for the subsequent import of energy sources extracted e.g. from palm oil crops. However, these policies perform negative impacts both internally (e.g. on States where the land is traded, impairing national or local economic vitality) and externally (e.g. on

²⁰ CSR practice has emerged at the beginning of this century as a first reaction to different consolidated global market phenomena such as foreign direct investment (FDI), the structuring of global value chains, and the consolidation of a legal apparatus aiming at securing the rights of corporations and of investors in areas related to trade, investment, and intellectual property, while several forms of inequality have correspondingly been increased globally (Utting, 2008).

subsequent need for local farmers to leave their territories in search of better living conditions not just inside one same State or region, but even abroad).

Could then be inferred that these negative feedbacks are imputable to EU as such, in particular for those EU policies that support (directly or not) mentioned land trades for crop of specific goods aimed at the production of alternative energy sources?

3.3. The extraterritorial character and effects of EU Energy policy and law

To answer above question a short overview of recent targets of EU environmental/energy policies might be useful. Indeed, it is wise to firstly assess the legal character of the relevant policy that EU is enabled to perform in this case.

One essential debated question deals with whether some EU policies might have extraterritorial effects (that is to say, outside same EU member states' boundaries), exception made for those areas of EU law where those effects have been explicitly acknowledged, e.g. and above all as far as EU competition law is concerned (Munari, 2016) and considering those areas of EU law whose boundaries, in terms of legal effects, still seem not completely defined instead, also due to a lack of relevant case-law on those issues.

As an example, RED directive 2018 doesn't rule explicitly on the extraterritorial effects of obligations derived from at least some of its provisions. Indeed, in its recitals the directive itself clearly promotes the possibility that some of its obligations be extended to EU's external relations, supporting same EU's member states effort for that aim. Then, it seems that EU explicitly supports EU member States for the opening and conclusion of international agreements in particular on, e.g., crops aimed at harvesting products for biofuels. However, it is still questionable if such formal framework is enough to state that not just EU member States, but EU as such is liable for abovementioned negative outcomes – that is to say, environmental migration and migrations as follow up of sudden and massive changes in land property's regimes – derived from same EU policy on renewable energy sources with mentioned trans-boundary effects.

Before giving a final answer to the above question, it is required considering that RED directive 2018 is expressly based on current art. 194 TFEU, specifically devoted to EU energy policy. This policy, being formally part of competences that EU “shares” with its own Member States, has been included in the “climate and energy package” launched on 2009 with the view of improving the “integration” principle, that is to say, the need that environmental protection considerations and aims be “integrated” in several different areas of law and EU policies, in particular when it comes considering climate change issues that entail, as such, differentiated challenges to be tackled in an as much “integrated” way as possible (Kulovesi, Morgera & Munez, 2011). In addition to an Emission Trading Scheme (operating as of 2013 to 2020) and

other more specific connected aspects (such as, inter alia, an Effort-Sharing Decision for transports, buildings, agriculture and waste), the package includes same abovementioned Renewable Energy Directive.

Broadly speaking, notwithstanding a clear reference to the principle of solidarity even in the relevant subject-area (e.g. Article 194.1 of the Treaty on the functioning of the European Union), EU energy policy still raises several issues in the light of its transversal and multi-faceted character, e.g. it may entail aspects even just indirectly dealing with competition law matters that traditionally fall under EU exclusive competence, while *per se* energy policy aims are still put under those EU competences that are only “complementary” to those of EU Member States (Leon-Arcas and Filis, 2013). This latter “institutional” issue raises some questions when it comes considering that, following the aims of this paper, the Court of Justice of the European Union has given a wide reading of EU's competence on "external" energy policy issues. In the Court's view, an international agreement on the marketing of energy resources may not fall under EU Member State's competences in accordance to abovementioned “complementary” character of same EU competence on energy policy: in such a case, the CJEU, on the contrary, confirmed that common commercial policy aims (traditionally falling under exclusive EU competences) are apt to entail other kinds of aims of the same international agreement at stake. Consequently, in such a case the quality of EU's competences follows that of mentioned agreement's aims²¹. If EU energy policy aims are pursued via the performance of common commercial policy competence on EU side, the “exclusive” character of that latter competence explains the emergence of an EU's international responsibility even when it only pursues mentioned energy policy aims.

In the light of abovementioned formal criteria, it is nowadays amply acknowledged that international trade – where EU performs its exclusive competence – has given rise to a shift of environmental inconveniences from most developed to less developed countries²². This is also due, as is amply proved, to the substantial imbalance between the level of so-called “material footprint” (e.g. the global allocation of used raw material extraction to the final demand of an economy) in the western more developed countries (most of them to be meant as EU members and/or EU as such) and that in the developing or less-developed countries: in fact, recent studies prove that as wealth grows, countries tend to decrease their domestic portion of materials' extraction through an increase of international trade, whereas the overall mass of material consumption generally increases (Wiedeman et al., 2015) .

²¹ Court of Justice of the EU, 26 November 2014, *Green Network SpA v Autorità per l'energia elettrica e il gas*, case C-66/13 ECLI identifier: ECLI:EU:C:2014:2399.

²² United Nations Environmental Program (2016), *Global Material Flows and Resource Productivity: An Assessment Study of the UNEP International Resource Panel*.

Still, even considering the many abovementioned factors, it seems still questionable if those latter might help in assessing the existence of an EU's international liability for its policies in the energy sector, considering the negative feedbacks these policies have in terms of, inter alia, negative practices such as land grabbing and consequent forced migratory flows.

3.4. The emerging EU's liability for international practice in environmental/energy sector

We have seen that EU's responsibility for negative feedbacks of its international behavior might arise under some aspects.

The first aspect deals more generally with issues related to environmental practice under an international law perspective. In this area EU performs specific and ample competence by means of legislative and international tools: this should consequently entail the emergence of same EU's liability for the negative feedbacks of such practice, at least under relevant international law rules applicable in this field.

The above considerations should also extend to other ambit of law related to environmental policy, such as energy policy, although the CJEU has brought the performance of this policy on the EU institutions' side under the effects of the competence EU itself has on commercial policy (which is, anyway, under EU's exclusive competence, as such giving raise to same EU's liability for the potential or actual negative impact the relevant legal tools may have on related individual rights).

In theory, then, one should conclude that negative results of abovementioned EU action in the mentioned fields should entail same EU's liability.

However, the above conclusion fails to consider other significant factors that come into play.

First of all, one should consider a general "exemption" of EU from the usual international liability rules applicable to States or international organizations. This is based on general explicit rules of the EU treaty (e.g. art. 344 Treaty on the functioning of the European Union, establishing that EU member States should defer to the sole CJEU competence for assessing controversial matters related with EU law in general²³). Those rules have granted a peculiarly

²³ In his Opinion n. 2/13 of 18 Dec, 2014 dealing with the *Accession of the EU to the European Convention on the Protection of Human rights*, at p. 201 ff., the Court of justice of the European Union recalls that, according to its steady case-law, "international agreement cannot affect the allocation of powers fixed by the Treaties or, consequently, the autonomy of the EU legal system, observance of which is ensured by the Court. That principle is notably enshrined in Article 344 TFEU, according to which Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein" (see Opinions 1/91, EU:C:1991:490 and 1/00, EU:C:2002:231; judgments in *Commission v Ireland*, C-459/03, EU:C:2006:345, and *Kadi and Al Barakat International Foundation v Council and Commission*, EU:C:2008:461). Such a rule extends to cases where EU Member States mean to implement a Bilateral Investment Treaty including its procedural rules that give jurisdiction to an arbitral tribunal. In such a case, in the CJEU view, article "[267 and] 344 TFEU must be interpreted as precluding a provision in an international agreement concluded between Member States (...) under which an investor from one of those Member States may, in

autonomous character to the EU legal system and exempted relevant institutions from being put under the lens of other institutions external to same EU legal order (Iannuccelli 2018).

The above general considerations complement other more empirical issues. Above all, one problem rests in the question of whether those resident in a non-EU country where the negative results of EU acts (be them legislative or international agreements) have been felt are enabled to act against EU itself in order to claim any damage suffered from such negative impacts. Generally speaking, EU legal system affords some avenues to individuals, in particular when it comes considering the potential or actual damages that an EU legal source with extra-boundaries aims may perform even on the economic interests of non-EU legal persons²⁴. In fact, EU legal system as such has developed a broad understanding of the right of access to justice against EU legal sources, under the lens of current art. 263 par. 4 TFEU, devoted to the individual right of action against EU legislative/regulatory acts, although under some conditions. A broad reading of this well-established procedural tool in the EU legal system is given in the *UPA* judgment²⁵, where the CJEU emphasized that the complete system of legal remedies of the EU consists of a combination of direct action before EU courts as well as judicial review in national courts, who can also submit to the CJEU a reference for preliminary ruling (Pech, 2020).

However, while same jurisprudence has favored an extensive reading of EU legislative acts in terms of their actual or potential territorial extension, it must still be confessed the more difficult position of third country nationals affected by EU law rules or provisions with extra-boundaries effects, by comparison with EU countries' nationals similarly suffering negative effects from same legal sources. Those individuals would not, inter alia, access easily a national judiciary of one EU country (unless they are businesses established abroad but with a legally recognized establishment in one or more EU countries) in order to allow such judiciary to submit a request for preliminary ruling under current art. 267 TFEU. A different conclusion could be drawn for EU law sources with true or potential impacts on non-EU nationals, that is to say, regulations aimed at impairing third-country nationals' rights²⁶. However, this area of EU law has its own

the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept" (Judgment of 6 March 2018, C-284/16, *Achmea*, ECLI:EU:C:2018:158).

²⁴ Court of First instance of the European Union, Judgment of 6 Sept. 2011, case T-18/10, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, ECLI:EU:T:2011:419 confirmed by the Court of Justice on 3 October 2013, case C-583/11, ECLI:EU:C:2013:625, a case where it has been clarified the meaning of "regulatory act" under art. 263 para. 4 TFEU, with the view of allowing third parties to challenge such an act in case of proven damage suffered as a consequence of same act: in the case at hand, the Court accepted that several third country nationals (from Canada and Norway) had been involved by same abovementioned EU "regulatory act", that is, Regulation of 16 September 2009 No 1007/2009 on trade in seal products (OJ 2009 L 286, p. 36).

²⁵ Court of Justice, judgment of 25 July 2002, case C-50/00, *Union de Pequenos Agricultores* (UPA).

²⁶ This could be the case of EU sanctions regimes. Current article 215 TFEU has in fact confirmed and reassessed a long-standing practice of EU aimed at sanctioning third countries for infringement of international law obligations.

specificities not per se applicable to different and more general issues such as those concerning unexpected negative feedbacks of EU legislation on third countries and third country nationals, including EU legislation's negative outcomes leading to massive abandon of lands with consequent loss of populations in mentioned third countries.

4. Concluding remarks

Many scholars and documents today prove that specific EU policies dealing with abovementioned environmental/energy policy aims have counterintuitive and negative feedbacks on third countries' territories and populations, becoming a critical factor for the increasing of land losses by local populations and consequent latter's' movement from their territories.

EU legal system is still poorly apt to grant full protection to third country nationals suffering the effects of EU legislation in the environmental/energy areas, given that those tools have been particularly relevant in recent times with the view of improving specific policies such as those on renewable energy sources (being those sources now acknowledged as one of the main tools for a safe and environmental-friendly economic development in the EU itself). Unfortunately, mentioned environmental-friendly aims of EU energy policy give raise to the need of investing in wide lands, with the subsequent need that same renewable energy sources' producers invest in broad areas existing both in Europe and in third countries. The negative impacts of such investments, in terms of loss of land-use efficiency and consequent forced migratory flows from the lands where such investments are made, have been proved both in Europe and abroad. The breadth of those issues require a radical shift of approach in many areas of international, European and national legislation, involving several objectives ranging from issues of agricultural to environmental, energy and migration policies and law. In fact, abundant literature and case-law have proved that "land grabbing" is a wide-spread economic practice involving as actors both international investors (States or private companies) and recipient countries, whose negative impact forces local populations to leave their source territories.

Although above issues become more and more urgent in recent times, considering the vast ecological and migratory issues registered world-wide, big international actors such as the EU haven't achieved sufficient and effective tools with the view of responding such challenges yet. This is due to the several and somehow still contradictory characters of the EU legal order. On

Those countries could be charged with such restrictive measures directly or via their representatives. In this perspective, individuals or legal persons might suffer direct or indirect effects of those sanctions, depending if they act or not in the name and for the advantage of the State who had primarily infringed international law obligations. The CJEU has confirmed how EU treaties, also in the light of an explicit provision (art. 275 TFEU), afforded legal avenues to anyone whose basic rights had been potentially or actually breached by a restrictive measure adopted at EU level under mentioned article 215 TFEU (for an overview, see *ex multis*, Eeckes 2014).

the one hand, statutory autonomy of some EU hinders other international or even national institutions (e.g. national judiciaries) to act against it with the view of charging EU's liability for mentioned negative "external" feedbacks of its legislation. On the other hand, the procedural means of EU law aimed at awarding an effective legal remedy against EU legal acts are poorly available to non-EU nationals, at least in terms of the same effectiveness that those tools are supposedly meant to grant. In the light of such effectiveness, even other tools recently achieved at EU level, such as the Aarhus Convention, seem to be limited in scope and mainly inapt to cope with the many deficiencies that international politics in the environmental and energy sectors are still suffering today²⁷, with the many implications this may have and in fact has in terms of negative impacts on vast territories and their inhabitants (Montini).

When all is said and done, the world needs that significant international actors such as the EU, besides the states and other relevant organizations, find effective procedural tools fit to provide individuals with protection against the many negative feedbacks caused by more and more strict economic and political connections. The inconsistencies and deficiencies globalization is creating require that all relevant actors cope coherently with current political and economic instability and all its several critical implications, including mass migratory flows and the consequent spread of insecurity due to lack of governance of these phenomena both in the countries of departure and in those of welcome.

Alfredo Rizzo June 2021

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²⁷ As an example and with specific reference to aims of judicial review and related right to an effective remedy, the EU has established the chance of internal review of an administrative act or alleged omission in relation to environmental law under the Aarhus Regulation, but such a procedure can only be raised on the basis of a breach of EU environmental law. Moreover, the same mentioned procedural tool is only opened to NGOs established under national law of an EU Member State whose primary objective is the promotion of environmental protection.

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