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European policies and the refugee crisis

A challenge to Unity?

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Abstract

Alla luce degli avvenimenti che hanno interessato e stanno interessando tuttora la politica internazionale nonché l'attenzione mediatica Europea e di tutto il mondo, alcune domande sorgono spontanee quando ci troviamo investiti nella nostra quotidianità da immagini drammatiche di gruppi enormi di persone in viaggio verso l'Europa, costrette ad attraversare condizioni climatiche impervie e molto spesso ostilità. Da dove vengono queste persone? Cosa le spinge a emigrare e cosa sta facendo l'Unione Europea per rispondere in qualche modo alla più grande emergenza umanitaria dei nostri tempi?

Questa tesi non si pone l'ambizioso quanto irrealistico obiettivo di dare una risposta alla crisi, ma piuttosto di analizzare le varie problematiche coinvolte nella sua gestione e come questa abbia sollevato questioni sopite e fondamentali che scuotono l'intera anima Democratica europea e mettono in discussione la sua unità.

L'emergenza dei rifugiati che ha colpito l'Europa si inserisce in un più grande argomento da sempre studiato e analizzato da storici e teorici delle relazioni internazionali, quello delle migrazioni.

Secondo i dati raccolti da Eurostat, al mondo vivono 232 milioni di migranti internazionali. Il diritto di viaggiare, muoversi e risiedere in un altro stato, così come il diritto di lasciare la propria madrepatria e ritornarvi, appartengono ad uno dei capisaldi della nostra civiltà moderna: la Dichiarazione Universale dei Diritti dell'Uomo. Ciò nonostante gli Stati, detentori del diritto di sovranità sul proprio territorio, possono apportare restrizioni a questi diritti. E' importante ricordare, infatti, che gli Stati hanno un legame particolare con gli individui che abitano e nascono all'interno del proprio territorio, che godono in altre parole della nazionalità. Al contrario, nei confronti dei cittadini provenienti da altri Stati, vengono adottate leggi specifiche per la loro regolamentazione.

Il macro fenomeno delle migrazioni è caratterizzato da vari soggetti e per facilitare la sua analisi viene solitamente suddiviso in due categorie: migrazioni volontarie e migrazioni forzate. Questi due gruppi sono composti a loro volta da altre sottocategorie a seconda dei fattori che spingono i migranti a lasciare il proprio territorio e dei fattori, propri dello Stato d'arrivo, che attraggono i migranti nel loro paese. Al contrario della dottrina prevalente, la legislazione internazionale si focalizza invece sull'importanza di separare migrazioni regolari da irregolari. Tuttavia, allo scopo di fornire uno spettro

basato sui vari fattori che influenzano le migrazioni, questa tesi proporrà il caso dell'immigrazione irregolare come un terzo macro gruppo dalla natura ibrida: in altre parole, considerando la difficoltà di distinguere, a volte, tra fattori di natura volontaria e forzata nell'analizzare i movimenti migratori, l'immigrazione irregolare sarà posta come categoria potenzialmente raggruppante immigrati volontari e/o involontari.

Facenti parte della categoria dell'immigrazione volontaria sono principalmente migranti economici e migranti spinti dallo scopo di riunificazione familiare. La seconda macro categoria invece raggruppa rifugiati, richiedenti asilo, sfollati interni e profughi che fuggono da disastri ambientali.

L'immigrato economico viene generalmente definito come una persona che lascia la propria residenza abituale per insediarsi in un altro paese e migliorare in questo modo la propria qualità di vita. Il termine è spesso utilizzato per distinguere questo tipo d'immigrazione da quella invece forzata che in italiano viene comunemente identificata nella figura del "profugo". Tuttavia nel corso della tesi saranno proposte alcune osservazioni riguardanti la difficoltà nel distinguere a volte le ragioni che definiscono un immigrato economico da un rifugiato.

Mentre il secondo tipo viene riconosciuto a tardi a livello internazionale nella storia dell'immigrazione, il migrante economico ha sempre fatto parte della storia, tanto che gli Stati hanno alternato politiche a volte permissive a volte più restrittive per gestire al meglio i vari flussi a seconda delle loro necessità interne.

A livello Europeo, l'immigrazione economica rappresenta un'opportunità importante di condivisione di conoscenze e accrescimento nel campo dell'innovazione e della ricerca, nonché un elemento fondamentale per il ringiovanimento della popolazione. Di fronte alla grande sfida posta dall'invecchiamento progressivo della popolazione, la Comunità Europea cerca di favorire i profili più specializzati. Inoltre uno spazio importante è rappresentato anche dai profili più bassi e dal lavoro stagionale che occupa posizioni lavorative che spesso soffrono la carenza di manodopera.

Il secondo importante gruppo di migranti volontari è composto dalla migrazione familiare che, in altre parole, comprende i migranti che decidono di lasciare la propria terra natale al seguito di un altro membro del proprio gruppo familiare, spinti quindi da un fattore emotivo o economico. L'immigrazione a scopo di ricongiungimento familiare è spesso favorita dagli Stati perché rappresenta un tipo di categoria dalle migliori

prospettive d'integrazione. Tuttavia non esiste una definizione universale di famiglia e dunque gli Stati spesso adottano politiche differenti. Ad esempio in Europa solo i parenti di primo grado sono riconosciuti come appartenenti al gruppo familiare avente diritto a ricongiungimento, mentre per quanto riguarda figli maggiorenni, nonni e genitori autosufficienti ogni Stato definisce le proprie regole.

A differenza di quanto era stato previsto dagli studiosi della materia, i flussi sono variati e hanno interessato diversi paesi. La costante che è rimasta invariata nel tempo è quella che vede migranti provenienti da paesi a più basso reddito migrare verso paesi a reddito medio-alto.

Ciò che distingue certamente il macro gruppo delle migrazioni volontarie da quello delle migrazioni forzate è essenzialmente contenuto nel nome: mentre il migrante economico o quello spinto da ricongiungimento familiare intraprende un viaggio frutto di una decisione pensata o comunque di natura volontaria, il profugo è invece costretto a emigrare e spesso per ragioni di natura imprevedibile e immediata. Alcuni dei fattori scatenanti sono: violazioni dei diritti umani fondamentali, guerre, cambiamenti climatici e disastri ambientali, persecuzioni sul piano religioso o politico.

Come è stato detto in precedenza, è spesso difficile capire e distinguere in modo netto le cause che spingono un immigrato a fuggire, ma a livello legislativo viene operato uno sforzo in modo da ottimizzare al meglio la gestione di questa categoria sensibile.

Il rifugiato è forse la tipologia di più alto profilo, in quanto beneficiari di protezione internazionale specificata nelle sue caratteristiche dalla Convenzione Internazionale sullo Status di Rifugiato redatta a Ginevra nel 1951. Il ruolo e la responsabilità internazionale e dei singoli Stati è di fondamentale importanza nella gestione dei flussi in quanto essi, oltrepassando i confini internazionali, coinvolgono direttamente l'intervento degli attori Statali che vengono oltretutto giudicati "buoni" o "cattivi" in base alla loro gestione e "produzione" di rifugiati.

Nonostante ciò, l'importante rilievo assunto da questa categoria non è che il frutto di una legislazione recente. Infatti, solo nel ventesimo secolo viene considerata l'importanza di regolarizzare con passaporti specifici l'ingresso di questa categoria. Con l'aggravarsi della situazione a causa della seconda guerra mondiale, il numero dei rifugiati crebbe in modo esponenziale: all'epoca 30 milioni di persone risultavano

disperse, tra queste c'erano Serbi che scappavano dai Balcani, Ebrei che scappavano dalla Russia e Italiani in fuga dal fascismo.

La Convenzione di Ginevra nasce in risposta a questi primi grandi flussi e inizialmente il suo scopo era ridotto agli avvenimenti accaduti prima della sua data di attuazione. Con un successivo protocollo la sua azione venne ampliata temporalmente.

Oltre a stabilire l'obbligo di protezione internazionale per i rifugiati, la Convenzione definisce precisamente quali siano i criteri per riconoscere e distinguere questa categoria: un rifugiato viene definito tale quando è riconosciuta una paura fondata di persecuzione per la quale il soggetto decide di scappare e cercare protezione in un altro Stato. Ci sono tuttavia delle differenze a livello nazionale nell'interpretazione della Convenzione che spesso si traducono in una mancanza di coesione a scapito di un'efficiente protezione di questi soggetti.

La categoria del richiedente asilo viene spesso confusa con quella del rifugiato: benché anch'essi fuggano da situazioni in cui la loro vita e/o libertà è a rischio, esiste una sostanziale differenza sul piano giuridico. Il richiedente asilo non dispone di una Convenzione a livello internazionale che lo protegga o che gli garantisca protezione da parte dello Stato nel quale entra. Al contrario, la sua gestione e accoglienza viene gestita in base alle leggi interne dello Stato interessato che devono però non contrastare con l'Art. 14 della Dichiarazione dei diritti fondamentali dell'uomo che garantisce il diritto a richiedere e beneficiare dell'asilo, ma non pone un obbligo di garantire quest'ultimo da parte dello Stato.

Come suggerisce la parola stessa, il diritto d'asilo implica una responsabilità e un impegno molto più profondo di quello della protezione internazionale spettante di diritto ai rifugiati. La differenza è sul piano temporale: mentre lo status di rifugiato è caratterizzato dalla temporaneità, quello del richiedente asilo implica uno stato permanente, lo Stato si deve impegnare in altre parole ad ospitare al suo interno il soggetto che gode del diritto di asilo per un tempo indefinito.

Di natura ancora più diversa è lo sfollato interno. Questa speciale categoria d'immigrati involontari ha riscosso un alto livello di attenzione in tempi recenti nel quale si è provveduto a stilare una serie di progetti e di principi, applicabili a livello internazionale, per la loro protezione. Gli sfollati interni (in inglese: internally displaced people) soffrono di un alto grado di fragilità perché, a differenza dei rifugiati o richiedenti asilo, non

oltrepassano i confini del proprio territorio e rimangono quindi in prossimità di zone a rischio.

Tra le cause identificate per lo sfollato interno troviamo quelle ambientali, che però vengono a livello antropologico e legislativo poste come fattori responsabili di una categoria a sé stante quella dei profughi spinti da disastri di tipo ambientale, ecologico o per cambiamenti a livello climatico.

La questione rimane tuttavia controversa poiché molti studiosi identificano quella delle catastrofi naturali come una causa antecedente a quelle più moderne dei conflitti o persecuzioni che caratterizzano i rifugiati. Per questo motivo molte definizioni di profugo ambientale lo associano alla figura del rifugiato. E' però importante operare una distinzione tra le due categorie in quanto a livello legislativo, il profugo ambientale non rientra nella protezione garantita dalla Convenzione di Ginevra, ma necessita ancora di un adeguato quadro di leggi per la sua particolare situazione.

Dati allarmanti prevedono che per il 2050 il numero di profughi ambientali si aggirerà intorno ai 150 milioni.

Per chiudere il quadro, la terza macro categoria, composta dall'immigrazione irregolare è, come è stato detto in precedenza, parte sia delle migrazioni volontarie che involontarie. La sua caratteristica ibrida è dovuta principalmente al fatto che molto spesso un immigrato che arriva in un paese spinto da motivi economici, può ricadere nel mercato nero, o molto più facilmente proseguire la sua permanenza anche dopo la scadenza del visto. Purtroppo l'immigrato irregolare viene spesso associato dai media all'immagine del profugo che arriva sulle nostre coste tramite l'enorme canale del contrabbando e traffico di migranti, ma questo porta inevitabilmente questa categoria a essere soggetto di discriminazione e molto spesso di ostilità.

E' senza dubbio vero che un gran numero di profughi arriva in Europa senza i documenti validi per fare domanda di asilo o per trovare lavoro, ma l'estenuante lotta all'immigrazione clandestina non è altro che uno degli aspetti più controversi della politica comunitaria.

E' sicuramente importante per gli Stati nazionali difendere i propri confini e assicurarsi il maggior controllo possibile di chi entra nel proprio territorio, ma è altrettanto importante capire e affrontare le cause dell'irregolarità all'origine. Spesso politiche restrittive e di massimo controllo dei confini hanno portato i migranti a sfruttare rotte irregolari per paura di essere respinti verso i paesi di provenienza o per incompatibilità della loro

documentazione con quella richiesta una volta entrati tramite i canali regolari. Di conseguenza s'instaura un sistema che produce un circolo vizioso nel quale gli Stati cercano di adottare politiche sempre più restrittive per combattere l'immigrazione clandestina, con il risultato di una generale sottostima della forza motivazionale che spinge i migranti a intraprendere i viaggi e a ricorrere a vie irregolari pur di arrivare nel paese prescelto. Ne consegue pertanto un innalzamento delle quote di migranti irregolari registrate.

Considerate le difficoltà ad operare una netta distinzione delle cause che definiscono le varie categorie che interessano il fenomeno migratorio, nel corso della Tesi verrà analizzata la cornice internazionale e più nello specifico quella Europea in modo tale da capire come la Comunità si destreggia per rispondere e amministrare l'immigrazione volontaria e involontaria e i vincoli che la Comunità Internazionale pone rispetto a determinate categorie.

Innanzitutto è importante ricordare che gli Stati sono più o meno propensi ad adottare una Convenzione Internazionale quando questa non mette a repentaglio la loro sovranità nazionale e quando gli garantisce un margine di discrezione nella gestione in questo caso, dei migranti. Mentre la Convenzione sullo Status di rifugiato ha riscosso moltissima partecipazione da parte degli Stati (ben 142 firmatari), quella sui diritti dei Migranti Lavoratori e delle loro Famiglie non ha raccolto la stessa coesione. Infatti, l'Unione Europea provvede autonomamente alla gestione dei migranti economici e dei ricongiungimenti familiari, attraverso la competenza del Trattato Unico sull'Unione Europea (Trattato di Lisbona) e con le rispettive Direttive.

Dal 2009, con l'entrata in vigore del Trattato di Lisbona, viene abbandonata la suddivisione in pilastri e la competenza in materia di immigrazione ricade all'interno dei Titoli IV e V del Trattato. Inoltre si è cercato di ridurre la tendenza ai particolarismi nell'adozione delle normative dovuta al ruolo dominante del Consiglio spostando molte delle responsabilità al Parlamento Europeo in modo da creare una maggiore armonizzazione.

Un passo avanti nella storia della gestione delle immigrazioni a livello europeo è stato fatto nel considerare a tutti gli effetti lavoratori o comunque migranti provenienti da paesi terzi, quindi esterni all'Unione, come aventi diritti simili o pari a quelli dei cittadini europei. E' importante ricordare che all'interno del territorio Europeo i cittadini dispongono della libertà di circolare e di risiedere in un paese Europeo per un periodo

di tre mesi nell'arco di sei per motivi di studio o lavoro. Per quanto riguarda i cittadini provenienti da paesi terzi, l'Unione Europea ha previsto nel 2011 un permesso unico per permettere agli immigrati regolari di presentare tramite una formula unica la richiesta di lavoro e soggiorno all'interno di uno Stato Membro. Altre Direttive garantiscono agevolazioni per i lavoratori stagionali, studenti e per i lavoratori rientranti nell'ambito dei trasferimenti intra-societari.

Per garantire un rinnovamento della popolazione e un accrescimento del livello culturale ed economico, l'Europa considera la gestione dell'immigrazione come cruciale per il raggiungimento di questi scopi. In particolare per promuovere la crescita economica, l'Unione fornisce la Carta blu dell'UE" ai lavoratori più qualificati per garantirgli una facilitazione nel rilascio del permesso speciale di soggiorno e di lavoro e di condizioni più allettanti per i cittadini di paesi terzi in modo che questi possano ricoprire una posizione lavorativa più qualificata e contribuire così all'innalzamento del livello produttivo e d'innovazione.

Per quanto riguarda invece l'immigrazione involontaria, gli stati membri dell'UE oltre che ad essere vincolati dalla Convenzione sui Rifugiati e ovviamente dal rispetto dei diritti umani dichiarati nella Dichiarazione Universale, sono tenuti a rispettare, secondo l'Articolo 78 del TFUE, l'adozione di politiche comuni in materia d'asilo. Inoltre, la carta dei diritti fondamentali dell'Unione, approvata nel 2009 con il Trattato di Lisbona, pone gli Stati di fronte ad alcuni diritti fondamentali come quelli di asilo e di non-refoulement, la cui origine viene dalla Convenzione di Ginevra e proibisce a uno Stato di rinviare un rifugiato verso un paese dove la sua vita o libertà possa essere messa a repentaglio.

Nello specifico della gestione dei richiedenti asilo invece, nel 1990 si è attivata la Convenzione di Dublino, poi divenuta Regolamento UE nel 2003 e modificato successivamente nel 2013 in Regolamento Dublino III.

Lo scopo del Regolamento è quello di evitare il più possibile l'evenienza del così detto "asylum shopping". In altre parole, quello che succedeva era che in mancanza di un'armonizzazione nelle procedure di accettazione delle domande di asilo, i richiedenti spesso facevano domande in più di un paese con il risultato di un sovraccarico del sistema. In risposta alla necessità di valutare nel miglior modo possibile se accettare le domande proposte dai richiedenti asilo, l'UE si è proposta con il Regolamento di Dublino di affidare agli Stati di primo arrivo il compito di analizzare le domande,

raccogliere le impronte e indirizzarle poi allo stato destinatario che ha il compito di accettare o meno la domanda. Questo tuttavia si è tradotto in un maggior onere dei paesi interessati dai più grandi flussi migratori a discapito della corretta attuazione della condivisione del carico amministrativo dei richiedenti asilo.

Un ulteriore tentativo di unificazione delle pratiche di asilo e identificazione dei richiedenti è stato fatto con le Direttive CEAS, ovvero il sistema europeo comune per i richiedenti asilo. Tuttavia, nonostante che il Regolamento di Dublino, assieme al sistema Eurodac per la raccolta delle impronte abbiano subito rinnovamenti, le Direttive CEAS sono risultate fallimentari nella risposta alle priorità Europee. In particolare gli attentati terroristici del 2001 alle torri gemelle e quelli di pochi anni successivi a Madrid, hanno indotto un innalzamento del livello di sicurezza richiesto dagli Stati membri in materia di immigrazione, tema che risulta tutt'ora vivo e forte nella crisi dei rifugiati attuale.

I problemi del Regolamento di Dublino così come il tardo concepimento di un maggiore coinvolgimento Europeo, ha portato l'Unione a subire le cause dell'enorme ondata migratoria e a gridare all'emergenza.

La cosiddetta crisi dei rifugiati trova le sue origini nelle zone del Medio Oriente come Siria e Iraq, Nord Africa come Eritrea, Nigeria, Somalia e Sudan e Sud Asia come Afghanistan e Pakistan e infine in gran parte dei Balcani. Le rotte interessate non sono tuttavia nuove agli europei, da sempre la rotta centrale del Mediterraneo che collega la Libia con le coste della Sicilia, in particolare l'isola di Lampedusa, hanno interessato flussi di immigrazione costanti, spesso accompagnati da tragici naufragi.

Con il passare del tempo però, con l'aggravarsi della condizione libica e il progressivo irrigidimento delle condizioni climatiche, i flussi hanno subito un cambiamento di rotta e si sono indirizzati soprattutto verso il mare Egeo tra la Turchia e la Grecia.

Già nel 2013, l'Italia, in risposta ad una delle ennesime tragedie che avevano insanguinato le acque del Mar Mediterraneo aveva rinnovato il proprio appello ad un intervento di stampo europeo per fare fronte a livello comunitario all'emergenza. Tuttavia il governo del Primo Ministro Letta aveva dovuto "arrangiarsi", accusato di ricevere già abbastanza fondi europei per la gestione e il controllo dei flussi via mare; iniziava così l'operazione Mare Nostrum.

La missione di Mare Nostrum durò poco, quando la Presidenza della Commissione Europea passò nelle mani di Juncker, quest'ultimo chiese la sospensione di Mare Nostrum e mise in atto la nuova operazione Triton.

Al di là delle vite perse in mare, ciò che preoccupava la Commissione erano gli enormi flussi di immigrazione irregolare che arrivavano dalle coste libiche attraverso viaggi sponsorizzati da contrabbandieri. Allo scopo di sventare e combattere il traffico di immigranti, l'operazione Triton aveva il compito di contrastare gli arrivi favoriti dal traffico illecito e pattugliare i confini.

Tuttavia il ricorso a maniere più drastiche si rivelò insufficiente quando nemmeno i mesi freddi del 2014 scoraggiarono le ondate immigratorie e sempre più rifugiati siriani si aggiungevano alla lunga coda di immigrati nord africani e provenienti dall'Africa subsahariana che cercavano di raggiungere il suolo europeo. La questione immigrazione apparve un'altra volta sul tavolo della Commissione che doveva questa volta rispondere alla chiamata non solo dell'intera Comunità Europea, ma anche mondiale con un piano di provvedimenti concreti e immediati.

A Maggio del 2015 venne quindi proposta l'Agenda Europea per l'immigrazione che si suddivideva in due filoni: il primo prevedeva un'azione immediata in risposta alla crisi dei rifugiati. Il secondo invece riguardava l'aggiornamento del sistema Europeo sia in materia d'immigrazione regolare che irregolare per un miglior approccio duraturo nel tempo.

L'azione immediata prevedeva tre ambiti diversi d'azione, tutti finalizzati al contrasto dell'immigrazione irregolare, al salvataggio delle vite perse in mare e alla distribuzione del peso esercitato dalle numerosissime richieste d'asilo all'interno del territorio dell'Unione.

Per permettere la realizzazione di questi obiettivi l'unione incrementava i fondi destinati all'Agenzia Frontex, che da anni collabora con gli Stati membri per una corretta amministrazione e controllo delle frontiere, e istituiva l'operazione EUNAVFOR Med. La missione di EUNAVFOR Med è innanzitutto quella di operare in modo più efficace alla distruzione dei canali di traffico e contrabbando di migranti. Tuttavia, l'uso della forza nelle operazioni da intraprendere rimane una questione da valutare attentamente in quanto la missione va ad operare in acque sia internazionali che libiche. Oltretutto la natura del suo intervento è stata contestata sul piano funzionale, ovvero ci si chiede come l'operazione possa dimostrarsi efficace nel salvare vite

umane, dal momento che già l'operazione Triton si era dimostrata insufficiente nella riduzione degli incidenti.

Il secondo piano dell'azione prevede il ricollocamento e redistribuzione dei migranti arrivati nel territorio europeo. Dal momento che i paesi più colpiti sono Italia e Grecia, questi non verranno compresi nel calcolo delle quote, ma al contrario verranno aiutati a ricollocare un totale di 40.000 rifugiati arrivati sulle loro coste tra gli stati Membri. Il piano di redistribuzione invece interessa l'installazione di centri di accoglienza e strutture per il trasferimento diretto di quelle persone risultate idonee a ricevere protezione internazionale direttamente dagli Stati di origine o dagli Stati di transito a quelli dei Paesi Europei partecipanti al piano. L'UNHCR collaborerà in quest'operazione e ha già dichiarato che affinché il programma risulti efficace, l'Europa dovrà impegnarsi nella redistribuzione di un totale di 20.000 profughi all'anno entro il 2020.

A Settembre la Commissione, in risposta alle numerose critiche e proteste da parte di alcuni Stati Membri sulla questione delle quote volontarie aveva istituito un numero obbligatorio di 120.000 redistribuzioni per i prossimi due anni. Ungheria, Slovacchia e altri paesi dell'ex blocco comunista si sono dimostrati da subito riluttanti all'idea facendo mancare l'unanimità all'attuazione del programma.

Il terzo punto dell'Agenda per un'azione immediata riguarda la collaborazione con i paesi terzi allo scopo di attuare programmi di cooperazione nei paesi responsabili dei più grandi flussi migratori in modo tale da avere una più concreta incidenza a monte del problema e, grazie allo scambio di informazioni, avere un quadro più chiaro sui fattori scatenanti e sui numeri previsti. Oltretutto l'Unione s'impegna nella distribuzione di fondi per supportare l'azione di stati terzi che ospitano la maggior quantità di rifugiati come Giordania e Turchia.

Per quanto riguarda i programmi di lunga durata invece, l'Agenda propone una più efficace protezione delle categorie più sensibilmente colpite dall'immigrazione irregolare in modo tale da prevenire la loro espansione e contrastare le esistenti. Un Handbook sulle modalità di rimpatrio verrà proposto agli Stati in modo da armonizzare le procedure supportate anche dall'operato di EASO che si occuperà dell'analisi delle domande. Il Regolamento di Dublino dovrà invece attendere la sua modifica.

L'Unione si preoccupa inoltre di non compromettere i flussi d'immigrazione volontaria composta da studenti, ricercatori e professionisti. Per permettere questo, è in programma un miglioramento della Carta Blu dell'UE, l'istituzione di un Portale per l'immigrazione per favorire lo scambio d'informazioni tra i migranti e un miglioramento delle opportunità di studio e integrazione.

A quasi un anno dalla presentazione dell'Agenda i risultati riguardanti l'azione immediata risultano scarsi e scoraggianti. A Gennaio del 2016 solo 272 migranti erano stati ricollocati seguendo le procedure proposte dal programma di ricollocamento. Molti paesi non hanno partecipato al sistema delle quote, ma hanno al contrario adottato sempre più politiche nazionali restrittive a favore di un maggior controllo dei confini. Paesi come Austria, Germania e Francia pattugliano gli ingressi, mentre altri si sono attrezzati nella costruzione di barriere fisiche come immediato riparo all'aumentare dei flussi.

A Settembre 2015 la Germania della Cancelliera Angela Merkel apriva le porte a tutti i rifugiati siriani sospendendo il Regolamento di Dublino, ora si trova lei stessa a far fronte delle conseguenze della sua "generosa" politica. La Germania, così come i paesi che si devono far carico dei flussi che arrivano dalla ormai esausta Turchia, quali Grecia e Ungheria, hanno dovuto in poco tempo organizzarsi per l'accoglienza, ma dichiarano ormai di essere saturi. La Grecia in primo luogo, stremata dalla crisi economica iniziata nel 2008 che non gli ha più dato tregua da quel momento, ha subito dichiarato di non essere minimamente attrezzata ad accogliere così tante persone e tanto meno a fare il gioco della Germania che ora si innalza a paladina dei siriani. Dopo essere stata demonizzata e quasi esclusa dall'Eurozona, ora si trova nuovamente sotto i riflettori della minaccia europea di uscire dall'Area Schengen. Atene è accusata di non rispettare al massimo le sue responsabilità nell'analisi dei flussi. In altre parole si cerca di far fronte all'emergenza operando una netta classificazione di chi ha davvero bisogno di protezione e di chi può invece essere rimpatriato. In questo contesto la distinzione appare, un'altra volta, difficile da operare. Così com'è stato analizzato a livello antropologico e sociale, è spesso molto difficile dividere i vari fattori che muovono una persona a migrare. Nel caso della crisi dei nostri giorni quest'operazione risulta impossibile perché i flussi oltre che essere composti da nazionalità che sono state palesemente riconosciute come aventi diritto allo status di rifugiato, come i siriani e gli

eritrei, includono altre nazionalità appartenenti ad un esodo provocato da cause forse meno recenti, ma altrettanto degne di essere considerate alla base di un diritto di protezione. Tuttavia chi fugge da paesi la cui povertà è stata causata da guerre passate, anche provocate da interventi occidentali, è un migrante economico e quindi Afghani e Somali, ad esempio, troveranno rifiutata la loro richiesta di entrare dentro i territori europei. Chi invece viene dalla Siria avrà diritto ad avanzare.

Alla luce degli scarsi risultati ottenuti finora e della complessità della situazione, si apre una nuova prospettiva per la Turchia, paese terzo in prima linea nella crisi siriana, di giocare il suo ruolo. La Turchia ha, infatti, dichiarato di aver speso già un totale di 8 miliardi di dollari per la gestione dei campi profughi che hanno finora offerto protezione a un totale di 2 milioni di rifugiati in confronto dei quali i numeri europei sembrano insignificanti. Negli ultimi mesi alcuni Stati Membri dell'Unione hanno richiesto un'azione più incisiva da parte della Turchia sul piano del controllo dei suoi confini e della gestione dei migranti all'interno del proprio territorio. La collaborazione prevede un doppio vantaggio: da un lato l'Europa cerca di sfruttare i suoi già avviati rapporti con il Paese per arginare i nuovi arrivi e impedire così il collasso del proprio sistema, dall'altra parte la Turchia può sfruttare l'aiuto promesso all'UE per avanzare le sue richieste di accesso alla Comunità, obiettivo in sospenso da ormai moltissimi anni.

E' però importante non dimenticare quanto questo costi caro agli ideali Europei, infatti uno dei motivi dello stallo delle procedure di accesso della Turchia all'Unione è il suo fallimento nel rientrare nei criteri fondamentali richiesti per far parte dell'UE come il rispetto di diritti fondamentali di espressione e stampa, il riconoscimento delle minoranze, in questo caso quella Curda con la quale il Presidente Erdogan ha in corso un'estenuante lotta da anni, la parità di genere e altre questioni spinose. D'altra parte, la prospettiva che si presenta all'Europa nel caso che fallisca nella gestione della crisi dei rifugiati è la sua inevitabile perdita di credibilità sul piano internazionale e il rischio di una possibile spaccatura.

Appare ormai evidente come la crisi migratoria stia tuttora mettendo in discussione non solo la capacità europea di trovare un accordo per una politica comune in materia di gestione dell'immigrazione, ma anche i suoi valori fondamentali di umanità e democrazia. Il problema della sicurezza, anche alla luce degli attacchi terroristici di Parigi, sta mettendo in discussione oltre all'intero sistema Schengen anche il mantenimento dell'Euro.

Introduction

Migration is a very complex phenomenon that has interested human life since its existence. It represents the movement of people from one place to another and every person has experienced it at a point in his or her life. In addition it is linked with global issues including economic growth, poverty, human rights, discrimination and the problems of integration, and as a consequence it involves a great quantity of actors.

Historically, Europe has been a country of emigration, but today the pattern is experiencing a great shift and the EU is transforming into the principal destination for the protagonists of the greatest immigration crisis of our history, after World War II, the refugees.

As a matter of fact, we cannot and we should not turn our back on this emergency because it is not only something towards which we must take immediate action, but it will also affect our lives in the future. The entity of the whole influx has no antecedent, for this reason a great number of actors are focusing their attention on the issue: on one side scholars, researchers, policy makers, humanitarian organizations are trying to analyse the causes of the crisis and the consequences that will be reflected on our society, on the other terrorism is profiting from the instability generated.

In the general context dominated by uncertainties it is difficult to see even a glimpse of a resolution. What is obvious is that the issue will be at the centre of the attention for the next months on.

The purpose of this thesis is creating an anthropological and juridical framework over the different categories in which migration divides. Secondly, it tries to underline the difficulties of operating distinctions on the causes that literally push and pull migrants to migrate, especially in the actual crisis where migrants escape from their motherland as a response of a variety of factors contributing in this way to the difficulty of the European Union to adopt an effective and comprehensive action.

In addition it will critically analyse the controversial manoeuvres undertaken by the Member States to respond to the situation. Is the resolution of the refugee crisis the challenge that will put to its knees European Unity?

In the first chapter of the thesis, the different categories of migrants will be presented following the division of voluntary and forced migration. A separate section will be

dedicated to irregular migration, explaining its nature of being at the same time the most combatted category, but also the most difficult to identify for its permeable nature. Historical elements will implement the analysis of this part.

In the second chapter the International and European legal framework will be explained to help understanding how States deal in different ways depending on the category of migrant involved. In this part it will emerge how the respective Laws do not always reflect the anthropological nature of some categories. In addition, Europe will result to be lacking harmonisation in processing the influxes of refugees.

The crucial part of the thesis will be included in the third part. At first there will be a critical exposition of the European Agenda on Migration presented in May 2015 showing how the manoeuvres proposed resulted to be insufficient to tackle the emergency and how they became the umbrage for nationalism to prevail. As a matter of facts, Member States seem more concerned about preserving their national interest and grant security to their citizens, rather than collaborate and take a more humanitarian perspective of the whole crisis. In this context the main subject of the question seems to be no more the refugee, but rather who is supposed to take responsibilities and how.

Migrants are more and more becoming the object of trade between European governments who want to extend their borders to stop the influxes and third countries, such as Turkey who try to pursue its interests in exchange of taking the refugees within its borders.

To conclude, a short overview of the past will show how Western superpowers have intervened and contributed in many ways to the instability of the region involved in the crisis. Further considerations will interest the possibility of the fall of the Schengen Agreement: in a situation in which States are establishing the controls at the borders to ascertain that the sole chosen categories of migrants enter their territories, the menace of the end of one of the pillars of the European Union is not only a burden, but also an extreme portent for the existence of the single currency.

Chapter 1

Defining Migration

1.1. What is migration?

The Oxford Dictionary defines migration as: “the movement of people to a new area or country in order to find work or better living conditions”, or, more generically, the “Movement from one part of something to another¹”.

Migration implies a movement, in this case of human beings. Ancient history teaches that people have a “natural” tendency to migrate. But attributing this definition to migration can be misleading. In fact, if on one hand the adjective suggests a “voluntary” or simply a “rational” way of living, on the other it excludes all other types of forced migration, in other words refugees or simply displaced people. Moreover, considering migration as a natural way of conducting human life, it could be misinterpreted and may lead to a wrong assumption that deciding not to move, but preferring to remain in the country of origin is an unnatural way of living².

Approximately 232 million international migrants are living in the world today. Since 1990, the number of international migrants in the global North has increased by around 53 million (65%), while the migrant population in the global South has grown by around 24 million (34%). Compared to the global population though, the number of international migrants remains relatively small. In 2013, international migrants comprised about 3.2% of the world population, compared to 2.9% in 1990³.

Taking a look at the European situation, Eurostat (the statistical office of the European Union) published, on the 1st of January 2014, a collection of data concerning the European numbers of migration. Up to that date, the Member States of the European Union counted 506.8 million residents, out of which 472.8 million were legal citizens of a

¹ “migration.” Oxford Dictionary online. 2015. www.oxforddictionaries.com, accessed November 14, 2015.

² Erica Unsher, ed., *Essentials of Migration Management: a guide for policy Makers and Practitioners*, (Geneve: Migration Management Foundation, 2004) Vol. 1, 8.

³ UN-DESA and OECD collaboration, “World Migration in Figures” (paper presented at the United Nations High-Level Dialogue on Migration and Development “Making migration work”, New York, October 3-4, 2013), accessed November 14, 2015, <http://www.oecd.org/els/mig/World-Migration-in-Figures.pdf>.

EU country, while 34.1 million were foreign citizens. This group also divides in 14.3 million citizens of another Member State and 19.8 million non-EU citizens⁴.

Considering these data, we perceive how migration not only refers to a movement, but it also implies an international feature. The world has become more and more interconnected and the possibilities granted to people who want to leave are far easier and safer than they were in the past. Migrating is an action granted to every person who can afford the transport costs or who is prepared to long walks: for example many tribes had, mostly in the past, migrated walking long distance through deserts or arid steppes. The liberty to do so has become more restricted as the world has been divided into States. In fact, controlled borders now delimit States' territories. Moreover, States have normally a special and exclusive relation with a group of persons who are called citizens and share the nationality of the country. Persons possessing the nationality of a State are in principle entitled to enter the territory of that State and to reside as long as they wish, while all other people do not have those rights. In relation to that State, they are foreigners, aliens: for them, that State is a foreign State⁵.

Often, migration is associated with the purpose of establishing a new residence elsewhere.

International migration has diversified and grown during the late twentieth and twenty-first centuries⁶. Many people are on the move and are coming from a great variety of countries. The movement has also changed in the types of people involved, in the destination countries and in the numbers. While in the mid-twentieth century the movements involved mostly people coming from former colonies (such as for example Indian and Algerian to the UK and France), now the paths and the demography of migrants do not reflect colonial histories. Mistakes commonly happen while talking about the migration issue. In fact, people sometimes put together refugees, asylum seekers, economic migrants and internal displaced people under the same definition of "migrant". Many different reasons forerun the decision to leave motherland and there are several others factors that attract migrants in arrival countries. These two aspects of

⁴ Eurostat, "Foreign citizens living in the EU Member States" (paper presented as the 250/2015 newsrelease on December 18, 2015), <http://ec.europa.eu/eurostat/documents/2995521/7113991/3-18122015-BP-EN.pdf/d682df12-8a77-46a5-aaa9-58a00a8ee73e> accessed November 15, 2015.

⁵ Pieter Boeles et al., *European Migration Law* (Antwerp: Intersentia 2nd edition, 2014), 5.

⁶ Boeles et al., *European Migration Law*, 9.

migration are called “Push” and “Pull” factors and are very important in the analysis of the phenomenon.

The “Push” factors are the elements that literally push people to leave their country, in other words elements such as civil war, persecution and natural disasters. The “Pull” factors category examines all the elements that migrants may find attractive in the country of destination. However this latter approach can be in some occasion too reductive for the purpose of defining the causes of mass migration. In fact, other aspects should be considered. Sometimes governments’ decisions in developed countries may function as an incentive to enlarge the inflows of migrants. For example, in the particular case of the Syrian refugee crisis, Germany’s decision to accept all Syrian refugees in its territory has represented a considerable stimulus for Syrian people to leave their country, and historians could not predict this manoeuvre.

In the following part, I am going to explain how differently these persons are hosted or rejected from arrival countries, following the rules dictated by International Law, taking into consideration in particular European policies.

International Law presents two opposing principles about migration. On the one hand The Universal Declaration of Human Right, adopted by the UN General Assembly in 1958, declared at Article 13 that:

1. Everyone has the right to freedom of movement and residence within the borders of each State⁷;
2. Everyone has the right to leave any country, including his own, and to return to his country⁸.

Even though international human right treaties guarantee the freedom to leave any country, States present some restrictions.

For example, considering people who are accused of serious crimes or are in prisons, States usually provide general limitation to their right to leave and to move for the sake of their citizens. All these restrictions must be given in accordance with the law, they must pursue a legitimate aim and they must be acknowledged by the international human right law which has not only the task to analyse them and eventually recognize

⁷ UN General Assembly, Universal Declaration of Human Rights, December 10, 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed November 14, 2015] Art. 13.

⁸ Ibid.

it, but the restrictions must be considered essential to the achievement of that aim⁹. The limitations must be proportionate and any situation has to be considered and studied deeply.

In spite of this, International law does not provide the right to enter another a country, it only provides the right of a person to enter the State of which he or she has the nationality. In addition, States are granted the right to deny entry to foreigners thanks to the principle that they are the only one exclusively competent with respect to their internal affairs.

However this does not mean that States are always free to deny entry to foreigners: in fact this possibility could only be taken into consideration only when it does not violate a bilateral or multilateral treaty that the State has contracted on the matter¹⁰.

Migration is a phenomenon that can interest different types of people, have many different motives and can be performed in different ways, moreover it is important to make a distinction between voluntary and forced migration. To define the different types of migration it is better to follow an order. Starting from the two biggest category of voluntary and forced migration, I am going then divide them then into other categories determined on the reasons that push people to move. In addition, a special section is going be dedicated to irregular migration that interests both forced and voluntary migration.

The separation between forced and voluntary migration derives mostly from how policies on migration management are designed to distinguish and decide which rights should be attributed to one group or to the other. Forced migration finds its origins on politics or on war and it interests people who flee from persecution or from a tragic situation generated by conflicts or natural disasters. On the opposite side, voluntary migration is principally based on economic motives. As it is not simple in reality to distinguish between volition and coercion, it is still problematic to adopt this clear distinction. In fact, migration is normally shaped by elements that are both voluntarily and at the same time linked to force and a migrant decides to move on the bases of both political and economic reasons. The decision to leave one's own motherland is

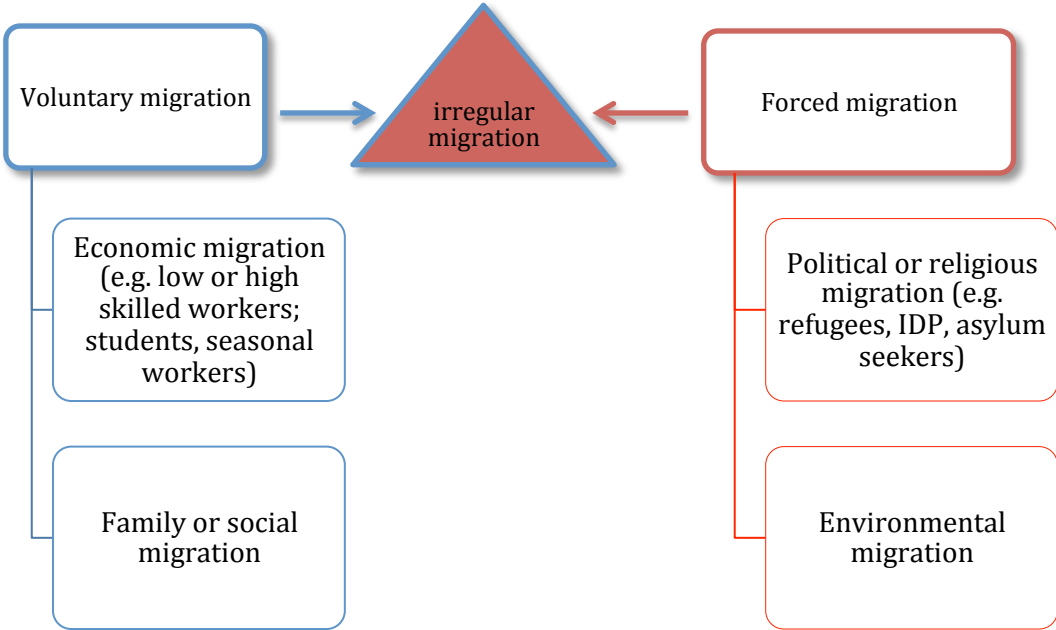
⁹ Elspeth Guild, Jean Monnet, "The right to leave a country" (issue paper by the Council of Europe and the Commissioner for Human Rights, France, October, 2013).

¹⁰ Boeles et al., *European Migration Law*, 15-16.

never a simple and straight: both forced and voluntary migrants experienced constraints while both have the possibility to choose about their actions¹¹.

In conclusion, it is important to consider that this type of distinction represents a spectrum rather than a dichotomy, but it is still important to consider the existence of these two groups because States distinguish between the rights to be granted to each of these two categories. In addition International law deals differently with human mobility in comparison with forced migration.

The following chart explains better the division made:



Economic migration, Political migration and Family migration were basically what Europe experienced at the end of the XIX century and XX century. During the year 1960, the hugest type of migration was the economic one and it involved bachelor young men who were not aiming at marrying in the country of arrival nor at family reunification.

Nowadays Europe is a territorial entity whose borders are far easier to cross and the efficiency of means of transports permits migrants to travel in a cheaper way than in the past. Globalisation has concurred in creating a world that is now complex and diversified.

¹¹ Alexander Betts, *Forced Migrations and Global Politics*, (Chichester, West Sussex: Wiley-Blackwell Publications, 2009), 4-5.

Voluntary migration is principally composed by economic migration that can be divided into: business migration, high-skilled migration, low-skilled migration, student migration, temporary migration and permanent migration.

Also family migration has a voluntary connotation: it involves women or children who join afterwards a family member, in the majority of the cases a man, who has previously left home to find a better remunerated job in another country. The reasons for family reunification may be very different and can interest also purposes of marriage or of finding better medical, social and fiscal policies.

In regards of forced migration I am going to make a distinction between political or religious migration and environmental migration. The protagonists of the first group are people who leave homeland for persecution, internal disorder and war. Under this category we find the refugee, who is subjected to special laws and regulations. Environmental migration is, instead, a phenomenon that involves people who are forced to leave their country for natural disasters or for the degradation of the ecosystem.

1.2.Voluntary Migration

1.2.1.Economic migration

An economic migrant is a person who leaves his or her habitual place of residence to settle outside his or her country of origin in order to improve his or her quality of life¹².

The term is often used to underline the differences with the refugee: the economic migrant is not supposed to escape from a situation in which his or her life is at risk because of persecution. For this reason, people trying to enter a country for economic purposes are required to present legal permission. Nevertheless the two categories sometimes merged one into the other and for this reason they represent at the moment the argument of an intensive debate. In fact, while Syrian people are escaping from Civil war and persecution, and thus they are internationally recognized as refugees, they are also searching for better condition in European countries. Most of them are high-skilled workers who will then look for a high-remunerated job in the host country. Considering this aspect, it may appear that Syrian migrants are part of one of the fluxes composing economic migration. In fact, while the biggest flux of migrants composing the economic

¹² "Key migration terms," International organization for migration, accessed November 14, 2015. <http://www.iom.int/key-migration-terms>.

migration are foreign people who enter a country to look for a job, there can be also migrants who enter a foreign country with a different reason than finding a job and then look for it afterwards, for example asylum seekers or students.

An important aspect to consider is that, while the country of destination can consider economic migrants as a real economic resource, countries of departure often suffer from losing its citizens. The reason is quite simple: migrants are commonly adults, many times skilled workers, for this reason leaving their country means that they will no longer contribute to the economy of their homeland. Looking at the positive aspect of the situation, the economic pressure gets lower when young and working people flee a poor country to be employed in another economy.

While the concept of refugee was recognized only during the period between the two wars, economic migrants have always been present in the literature of immigration. They have, during time, evolved in a much more complex, dynamic and larger phenomenon, but they have been present at any times in history.

Between 1846 and 1890, around 17 million people left Europe for the New World and they were all economic migrants, looking for a better condition in the so-called land of promises. Of these, the largest number came from British Isles. This was partly due to the fact that Britain was one of the first country to feel the impact of the Industrial Revolution, and also because a large number of people left Ireland in response to the potato famine of 1845-47 which have left the country in poverty. The German territories also provided large numbers of migrants in that period, around 3.5 million impelled by rural poverty and periodic crop failure left the country.

The peak of migration was around the turn of the century. Over the whole period – 1845 to 1939 – well over 50 million people had left Europe. Major destinations were United States (38 million); Canada (7 million), Argentina (7 million); Brazil (4.6 million); Australia, New Zealand and South Africa (2.5 million)¹³.

During the same period of time there was a considerable migration within Europe as well. While a majority of Irish migrants went to USA or Australia, some 700,000 went next door to England, Wales, or Scotland to find employment in the factories or in construction.

Some migrants' inflows, coming mostly from Poland and Ukraine, arrived in Germany and worked as substitute of German agricultural workers who had left the land to more

¹³ Unsher, *Essentials of Migration Management*, 8.

remunerative employment in the heavy industries of the Ruhr valley. This type of migrants had time-limited contracts which are a significant ancestor of a later generation of contracts given to guest workers.

Permissive policies alternated with stricter regulations on the entry of foreign workers. For example, during the early twentieth century, countries were applying rigid controls and limitations, but this tendency was soon abandoned for a more permissive policy that led Western Europe and the United States to accept inflows of low-skilled migrants representing a real resource for the industrial recovery. As the population of developed countries was gradually more educated, the need for workers to employ in the agricultural or in the manufacture sectors pushed to accept more and more low-skilled migrant who filled temporary labour shortages (for example during wartime in the United States and in Western Europe between 1950 and 1960)¹⁴.

Western developed States started to allow a high level of mobility. The problem with low-skilled migrants was that, despite the fact that they were needed during periods of transition, western countries were also aiming at limiting their permanence to a short period of time, providing them with seasonal contract. As a consequence, this provoked an unintentional stream of permanent migrants. Moreover, state intervention was even more involved in controlling of inflows and in inducing the return of low-skilled migrants¹⁵.

Low-skilled migrants are accepted as long as they fill the vacant occupations left by national workers. For example, Italy has experienced in the early 2000s a massive inflows of women coming from Ukraine, Moldova and Romania, who came to Italy to work in the assistance field. As the western population gets older, more people are needed in the sanitary and assistive field (for example nurses and caregivers).

Another problem with low-skilled workers is that, considering their non-permanent nature as migrants, remittances¹⁶ are always sent to the families that, most of the times, are still living in the country of origin. In this sense, host countries are not benefitting from their salaries.

¹⁴ Ian Goldin, Geoffrey Cameron and Meera Balarajan, *Exceptional People: how migration shaped our world and will define our future* (Princeton: Princeton University Press, 2011), 295-296.

¹⁵ Goldin, Cameron and Balarajan, *Exceptional People*, 301.

¹⁶ A remittance most commonly refers to the funds an expatriate sends to his or her country of origin via wire, mail, or online transfer. These peer-to-peer transfers of funds across borders are economically significant for many countries that receive them, (Investopedia, accessed November 13, 2015, <http://www.investopedia.com>).

As for high-skilled workers instead, globalization has helped to shape a consensus among leading receiving countries about the desirability of highly skilled economic migration¹⁷.

In fact, during early 90s, developed countries improved their regulations to accept more high-skilled people, mostly in the information technology field. As it was for low-skilled migrants, skilled workers occupied at first temporary shortages, mostly in the U.S. With the Immigration Act, the U.S. government enlarged the number of visas available to highly skilled workers and soon new countries followed the same path. By the mid-1990s, 30 percent of the documented people migrated to the United States were highly skilled. In 1998, France created a special status for scientists and scholars and simplified entry procedures for computer professionals. Germany launched a “green card” program in 2000 to attract foreigners working in health care and IT. In the EU, the percentage of skilled migrants as a proportion of the overall migrants grew from 15 percent in the early 1990s to 25 percent in 2002¹⁸.

Skilled migrants are considered as a real economic resource, not only because the cross-culture experience has always led to the improvement of knowledge and to the innovation of civilizations, but also because high-skilled people contributed to the achievement of national economic growth thanks to their experience as high-expertise permanent workers. In fact, while low-skilled migrants are mostly seasonal and temporary contract workers, high-skilled employees are usually benefitting from long-lasting contract, which allows family reunification. Moreover, higher salaries are provided to high-skilled labourers who can, in this way, spend them on local economy for example to grant a better education to their children, to buy houses and any other comfort they could need to improve their life conditions.

The biggest problem with this type of migration involves the country of departure. Skilled migrants’ migration is commonly called “brain drain” and it literally means “brains flee”. In effect, when skilled migrants flee homeland, not only they deprive their country of the possibility to benefit from high expertise workers in highly specific field such as medicine, science and technology, but also, opposite to low-skilled migrants situation, remittances are often not present because most of the skilled migrants are willing to achieve permanent stay in the host countries and for this reason they spent salaries in the host country.

¹⁷ Goldin, Cameron and Balarajan, *Exceptional People*, 296.

¹⁸ Goldin, Cameron and Balarajan, *Exceptional People*, 298-299;

As I have previously mentioned, States provide limitations and controls for migrants both skilled and non-skilled. The most commonly required documents are passports and the visa document. The term passport originally derives from the French word *passer port* that means “passing through a port”. In ancient times, migrants and foreigners in general had to pass the control of the port they arrived in when entering a new country¹⁹.

Within a time of 100 years, most of the countries adopted the passport regulation, and most of them introduced also the requirement of a visa. “Visa” literally concerns something that “must be seen”. In many countries it existed a tourist visa which allowed a permission to stay in the country of arrival for 90 days for either reason of tourism, of studying and of general temporary job. But other countries have stricter regulations and avoid covering the possibility of working without a specific Visa document.

There are also regions of visa-free migration, which are very important experiments to open up the economic market to non-national people²⁰.

The free movement of workers was established as a cornerstone of the common market in the foundational 1957 Treaty of Rome for European Union. During the 1990s, the zone of free movement expanded to include Iceland, Norway, and Switzerland (although these countries are not part of the EU). On the 1st of May 2004, eight former communist countries in Central and Eastern Europe (called the “A8”)—Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia—and the islands of Malta and Cyprus acceded to the Union. On the 1st of January 2007, Romania and Bulgaria became new members of the EU together with Croatia who joined in 2013, bringing the total number of member states to 28.

European citizens can move within European border without a visa and can live for a period of six months or more in a European country if they fall into one of the following categories, which are: employed, self-employed, of sufficient means not to require access to health or social benefits, student, or family member of an EU citizen who meets one of these criteria²¹.

People coming from other countries are required to present a valid documentation, which commonly explains the nature of the journey. To simplify the bureaucracy, visa

¹⁹ “History of Passports”, Government of Canada, accessed November 14, 2015, <http://www.cic.gc.ca/english/games/teachers-corner/history-passports.asp>.

²⁰ Goldin, Cameron and Balarajan, *Exceptional People*, 308-312.

²¹ *Ibid.*

are usually prepared before coming to the foreign country and thanks to this procedure, States can overcome all the basic welcome procedures with less costs.

To conclude, the other two categories of economic migrants are the seasonal workers and the students. Seasonal migrants, who remain for a definite period of time in the country of arrival, are mostly employed in the agricultural fields for the period of the harvest or in the service field for example for jobs involving tourism, sport, activities and so on. In the past this category has represented a real economic resource for poor countries that relied on people who could afford the expenses of migration and who could then find a temporary occupation to gain money that were sent back to the motherland.

With the peak of globalisation, not only the possibilities to work in a foreign country developed, but also the possibility to study in a foreign country. Students have gradually considered the chance to study abroad as a stepping-stone for a permanent residence in a foreign country. As a consequence, States are providing more and more opportunities and facilitated procedures to welcome students from different countries, not only because they represent an intellectual resource that may in the future implement their research field, but also because it helps the creation of a net of high-profile people who will hopefully contribute with the sharing of information and collaboration at an international level.

Unfortunately not all migrants coming in a foreign territory are regular and documented people. Most of the times, people coming from poor countries find difficulties in entering a developed country's territory and passing border control procedures. For this reason they use the alternative way of the illegal immigration. Many of them fall within the category of undocumented migrants and have to experience a series of procedures of identification which most of the times are long and expensive.

1.2.2. Family Migration

States put a lot of efforts in providing good policies to take advantage of economic migration because, as I have mentioned above, high-skilled workers, low-skilled workers and students contribute to the growth of a country. Moreover, remittances are a

very important aspect of this type of migration and for this reason States are willing to provide the best condition as possible to benefit from this economic resource. However, favourable policies are often provided by some States to permit family reunification.

Family migration has built channels that allow the movement of family members who want to reunite in the same country, which is of course different from the country of origin. The family plays a determinant role in the decision to migrate: not only the presence of a family member suggests in the rest of the family, which is for example still living in the motherland, a natural and emotional need to migrate, even if this implicates a change of residence, but it represents a real sponsor for the host country as well. In other words, the family member who already resides in the new country represents an incentive for new people to come to visit and reside in the country because not only he or she is already integrated in the new society, but most of the time the person already knows the language, the habits and has preference channels to interact with native people. For these reasons family migration can also be called social migration as it expressed through social channels. A social channel is variable and unpredictable, but it usually produces permanent migration. It is important to notice that similarly to the relationship between the economic migrant and the refugee, these categories often mix one another and people who belong, for example, to the category of family migration are usually the product of previous migration that could have been either economic or political: for instance, a person who enters a country fleeing political persecution, could settle down permanently in the destination country and brings then others there through social channels²².

Women are the main protagonist of family migration and they are involved not only in the reunification with the husband, who may have left the country of origin years before in search for a job, but they are often the protagonist of family formation that includes marriage with a permanent resident.

Despite family migration benefits from a widespread support from State policies, the acknowledgment of a common meaning of “family” and the way to manage the reunification depends on the entity of the flows. Concerning permanent residence, States are often reluctant to attribute it, especially for spouses and unmarried dependent minors²³.

²² Goldin, Cameron and Balarajan, *Exceptional People*, 324-325.

²³ *Ibid.*

Nevertheless, policy-makers have to measure with human rights and other constitutional obligations when trying to propose and apply restrictive definition.

France, Germany, and later Belgium, Italy, the Netherlands and Spain, have made progresses in recognizing family reunification as a human right²⁴.

However, European countries still have restrictive policies. Entering as a family member is permitted only to the relatives who are dependent on the primary migrant, in addition European countries do not recognize adult children, siblings, and nondependent parents and grandparents as part of the family migration category.

In the United Kingdom, for example, only dependent parents and grandparents are recognized and are subjected to the provisions, while for all the other siblings this is not conceived. Moreover, in 2003, all EU members States, except for Denmark, Ireland and the UK, which have different regulations, established a “minimum standard” for the family reunification issue, intending that the reunification of families would have been possible and recognized only if one of the members was a EU resident.

Denmark’s policies are even more detailed, in fact family reunification involving a couple is possible only when both partners are at least 24 years old or when the migrant who first arrived in Denmark, and for this reason plays the role of the sponsor for the other migrant, has obtained the residence since a long time. Moreover, spouses are supposed to demonstrate their attachment to the country more than to any other country, this means that they must put Denmark before their home country.

Other countries are less restrictive on the issue, for example the United States permit the right to enter the territory of the country to every “immediate relative” such as spouses, parents, and unmarried children under the age of 21²⁵. The permission given to immediate relatives and extended relatives has restriction on the base of a quota, for this reason extended relatives who want to migrate have to face long application processing periods. In addition there are subquotas that function as ulterior restricting policies for migrant flows from specific countries that highly contribute to the migrants population of the U.S. (for example Chinese, Indians, Mexicans and Philippines, whose siblings have to wait for a period of 23 years for their application to be considered).

²⁴ Goldin, Cameron and Balarajan, *Exceptional People*, 326.

²⁵ Goldin, Cameron and Balarajan, *Exceptional People*, 326.

Policy-makers planned that family migration would have follow the same patterns that have characterized the past of the phenomenon, but this was proven to be unrealistic. In fact, some groups of migrants were more likely to follow their relatives in foreign countries and chain migration did not develop as they have expected.

Talking about Western European family migration, for example France was interested in the migration of people coming from Turkey and Nord Africa, while Germany welcomed people from the former Yugoslavia, Poland and Turkey.

The characteristic that remained constant through history was that family chain mostly developed in one direction: from low or middle-income countries to high-income countries.

Social migration involves also ancestral migration flows. These flows usually develop in the opposite direction as family channels. It is not rare that people, who leave a country for economic reason or as a refugee, after years, decades or sometimes even after skipping a generation, decide to return to their country of origins and undertake thus the path back to their motherland.

The flows involved in ancestral channel are relatively smaller than the others but they nonetheless deserve some attention, in particular in regards to some specific countries. The so-called “ethnic reunification” is the most powerful policy used by countries that may decide to promote the permanent settlement of migrants who have an ancestral connection with the native group of the country. This type of policy focuses on the importance of the juridical norm of the *jus sanguinis*, which determines citizenship on the bases of ancestry, not residence. Germany, Israel and Russia provide legal advantages for people who have an ancestral connection with them and promote policies of “return home”. Many other States grant partial or full citizenship rights²⁶.

However, this preferential way in which migrants with ancestral connection are treated in some countries is the source of a heated debate. First of all, some people sustain that this constitutes an unfair discrimination against those who instead do not possess such connection. Moreover, the inclusion does not involve indiscriminately anybody who has ancestral routes, but States usually extend preference policies to people having specific characteristics. In addition, decisions are made on the basis of political influence of certain ethnic groups. On the opposite, those who approve these policies consider the preferential treatment as the best way to improve integration and eliminate

²⁶ Goldin, Cameron and Balarajan, *Exceptional People*, 329-330

many of the difficulties that a migrant may have to overcome when trying to go back to his or her motherland. Nationalists consider the fact that people are, most of the time, victims of accidental geographical separation and in this way are supposed to be sustained by the most favourable policies as possible.

In Europe, the country with the oldest program for repatriates is Germany. The *Aussiedler* (“late repatriates”) program was instituted in the 1950s and it targeted those people who had an ancestral connection with Germany, but were living in the former Soviet Union: ancestral Germans and non-German family members from the former Soviet Union are entitled to German citizenship²⁷. The possibility to have citizenship, granted due to ancestral connection, for Germans coming from other countries was taken into consideration when an evidence of individual discrimination was shown. Between 1988 and 1997, 2.2 million ancestral Germans were admitted²⁸.

Other European countries established a similar program for the recognition of the developments happened after the end of the Second World war and consider also the difficulties that migrants had to overcome due to restrictive policies adopted during the communist regimes in Eastern Europe. For example, in 1990, Greece promoted a program to attract back to the country Pontian Greeks coming from Georgia, Armenia and southern Russia. Hungary and Russia adopted similar programs.

In the years between 1992-1998, three million persons left former Soviet Union States to settle back in Russia. Italy bestows citizenship on all descendants of Italian citizens born after 1861 if no person in the “chain of citizenship” has renounced it²⁹. Other European countries with “repatriation laws” include Armenia, Bulgaria, Croatia, Czech Republic, Finland, Ireland, Poland, Slovakia, Slovenia, Turkey, and the Ukraine.

Taking a look at another part of the world, in the Middle East Israel for example has the largest and oldest Law of Return. Individuals of Jewish ancestry, their families, and their grandchildren may enter Israel and take up citizenship, regardless of financial position, education, age, or health³⁰. Distinctions are not made and the government, together with the financial support of private foundations, provide economic sustainment to people who cannot afford the journey back to Israel.

²⁷ Goldin, Cameron and Balarajan, *Exceptional People*, 332-333.

²⁸ Ibid.

²⁹ Goldin, Cameron and Balarajan, *Exceptional People*, 334.

³⁰ Goldin, Cameron and Balarajan, *Exceptional People*, 331.

Despite the policies favouring ancestral migration channels are still present and available in many countries, especially in Europe, the number involved in such flows has decreased. Since the end of the Cold War the people accepted by Germany have been less than 8,000 in 2006. Concerning Israel, which is supposed to be the country with the highest number of ancestral migrants, registered less than 15,000 people a year. In conclusion we can perceive not only that ancestral migration is becoming less relevant than it was in the past, but also that States are concentrating their efforts in other migration policies rather than focusing on ancestral channels.

1.3. Forced migration

Forced migration has dominated the political scene of the migration issue in the twentieth and twenty-first century. People are forced to migrate for different reasons: for political or religious persecution, conflicts, natural or men-made disasters³¹.

Starting from conflicts: during that period of time they have progressively evolved in large-scale wars in which armies of opposing factions faced each other on more or less vast territory. Their growth has generated a concatenation of low-intensity conflicts that are unfortunately hitting and damaging areas inhabited by civilians: for example internal conflicts in the Balkans, Africa, and the Caucasus in the aftermath of the Cold War. Furthermore, conflicts begun to involve not only soldiers, but also the population through attacks driven by organized groups (for example the 9/11 attack on the World Trade Centre, the 2004 Madrid train bombings and the 2007 subway bombing in London). This has generated the so-called “war on terror” that has manifested with the occupation of Afghanistan and Iraq following the purpose of searching for the weapons of massive destruction and terroristic bases.

The repartitions of the territory in the South Asia and in the Middle East; along with the role of authoritarian regimes, human rights violations and environmental disasters resulting from hurricanes, tsunamis, and climate change have all contributed to people leaving their own communities in search for protection elsewhere³².

³¹ Betts, *Forced Migrations and Global Politics*, 1.

³² Ibid.

Political persecution has interested mostly refugees who have searched for international protection in neighbouring countries, but who has also travelled long distances and dangerous routes to reach the western countries. Others became stateless people escaping from natural disasters. In addition to these two categories there are also internally displaced people who have been displaced while staying on the territory.

Each year, the United Nations High Commission for Refugees release an annual figure of the numbers of refugees registered during the year. In 2009 the number of displaced people was 43,3 million³³, the highest number since mid-1990. Data collected by June 2015 showed that the total number of refugees reached 60 million people. To put it in another way, it is roughly the equivalent of the entire Italian population³⁴.

Of course push and pull factors do no interest only voluntary migration, but are responsible for the movement of forced migrants too. The difference is that, while the first one is usually the product of calculated decisions in which a period of reflection is possible, the reason that precedes for example a refugee's decision to leave is unpredictable and also the destination country is not always planned in advance. For example people may flee from an aerial onslaught near their village, in this situation the population of that village would escape in order to have their lives spared and might probably do not care for their destination. In some cases a forced migrant may deliberate choose for their journey: for example people in Somalia have left their country not for a sudden risky situation, but as they felt that the condition of their country was not permitting them to have any opportunity for their lives. Another example is the combination of both the push and pull factors: many people coming from Afghanistan and Iraq, escaping terrible war conditions and are still enduring extremely hard living conditions in transitional States such as France and Belgium, in order to reach their final destination, the UK. In this situation, migrants are of course forced to leave their country due to dangerous living conditions, but they are deciding not to remain in the first country of arrival: on the contrary, they are on the contrary struggling to reach a country that they consider better for their life expectancy and opportunities.

³³ Boeles et al., *European Migration Law*, 9.

³⁴ David A. Graham, "Violence Has Forced 60 Million People From Their Homes", *The Atlantic*, June 17, 2015, <http://www.theatlantic.com/international/archive/2015/06/refugees-global-peace-index/396122/>, accessed December 30, 2015.

Another element, which might be obvious while analysing the causes of political migration, is state fragility. It can be observed for example in those countries in which the economy is based on the power of warlords; in which there is a structural lack of a legitimate government apparatus; or where the effective control and the institutions is managed and controlled by elites who base their political influence also on the elimination or persecution of their political opponents (as it happens in Ethiopia and Burma).

Fragile States are usually subdivided and ripped by civil conflicts, or by a generalised violence (for example in Chad, in the Democratic Republic of Congo and Haiti). Moreover, these kinds of states find difficulties in resolving the economic collapse that may happen after a natural disaster (Zimbabwe could be seen in this case as an example)³⁵.

1.3.1. *The refugee*

Falling under the category of political and religious migrations, the refugee is probably the most high profile and researched category.

The notion 'refugee' can be explained from a sociological, political, or legal point of view³⁶. Generally speaking, a refugee is a person who leaves his or her habitual place of residence to search for protection in another country. Many reason can push people to leave their home for example: natural or man-made disasters, especially out of fear of persecution, war or other circumstances menacing their individual sphere of interest³⁷. Refugees are often returning to their countries when there is the possibility to do so, but they can also decide to remain in the country of arrival for an unlimited time.

They are colloquially referred to as "human rights abuses made visible"³⁸ for the fact that not only they are victims of persecution and conflict, but also they cross international borders and for this last reason states are often judged as good or bad at respecting human rights on the bases of number of refugees that they produce.

³⁵ Katy Long, "Forced Migration Research and Policy: Overview of current trends and future directions" (report commissioned by the Refugee studies centre, Oxford: University of Oxford, 2010) 5. <http://www.refworld.org/pdfid/4e5f388e2.pdf> accessed November 16, 2015.

³⁶ Dieter Kugelmann, "Refugees", (Oxford: Max Planck Encyclopedia of Public International Law, 2010), <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e866> accessed December 23, 2015.

³⁷ Ibid.

³⁸ Betts, *Forced Migrations and Global Politics*, 5.

While the other channels of migration (economic migration and family migration) have been shaped by States' immigration policies, the refugee's category has emerged and was defined with the development of International law³⁹. As refugees cross international borders they engage with state sovereignty and for this reason are a particular source of interest of world politics. Moreover their peculiar status of being at the same time immigrants, but also people requiring protection, States often engage in campaign for better politics for their protection in order to attract votes. In other words, from the moment when international institutions have become the subject for refugees' protection, this category of forced migrants has become strictly linked to international politics.

The phenomenon of the refugee started to be at the centre of the debate only during the twentieth century: as borders were becoming less porous and more controlled, humanitarian problem experienced an escalation. People fleeing their country for persecution or conflict needed documentation, but mostly protection. In addition to the economic migrant who represented a menace to the possibility of States to grant work expectancies to their population, the refugees were discriminated and seen with mistrust because of ethnicity and religion.

Russia produced the largest number of refugee during WWI and following Bolshevik Revolution. Jewish communities diffused in Europe and Russia where they encountered violence. States sharing borders with Russia prohibited the entry to Jewish people and in 1919 Britain, which had already promulgated the Alien Act in 1905, restricted even more immigration coming from Western Europe. Canada and United States followed in 1923 and 1924.

International refugee assistance was first provided by the League of Nations in 1921 under the leadership of Fridtjof Nansen, who served as the League's Commissioner for Refugees. The scope was at the beginning to represent a temporary agency that could deal with the Russian refugees⁴⁰.

At that time, Fridtjof Nansen was the head of the Commissioner office and he had to deal with legal problem posed by refugees who were entering foreign countries without a passport and identification. For this purpose, the High Commissioner created the "Nansen passports" for the refugees, whose scope was to permit temporary settlement

³⁹ Goldin, Cameron and Balarajan, *Exceptional People*, 339.

⁴⁰ Goldin, Cameron and Balarajan, *Exceptional People*, 199-200.

and the possibility to repatriate and was recognized from the majority of European states⁴¹.

During World War II, the numbers of refugees grew as a consequence of the devastation that was dominating Europe, but also because of the wide spread persecution that has hit the country.

Approximately 30 millions people were displaced at that time: Serbs were expelled from Balkans, Jews fled persecution from Russia and Italians escaped fascism.

For this reason, in 1951, the United Nations held a Convention Relating to the Status of Refugee, which was signed by 142 UN member states⁴². A later Protocol was added to extend the temporal competency of the Convention, which previously referred only to the category of refugees registered before the 1951.

Under international law, Art. 1 A (2) of the Refugee Convention defines the 'refugee' as a person who:

“Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it⁴³.

The Member countries, by signing the Convention and Protocol, engaged in the protection of people falling under this definition. More specifically, a person is recognized as a refugee if he or she meets four requirements: (1) the person must have a well-founded fear of persecution; (2) the persecution fear must be based on one of five reasons (race, religion, nationality, membership of a particular social group, or political opinion); (3) they must be outside their country of nationality, or, if they are stateless, they must be outside their country of habitual residence; and (4) they must be unable to return or, owing to their fear, unwilling to avail themselves of the protection of that country⁴⁴. Moreover, the responsibilities of the States who have signed the

⁴¹ Ibid.

⁴² Goldin, Cameron and Balarajan, *Exceptional People*, 199-200.

⁴³ *Convention Relating to the Status of Refugees*, United Nations, Geneva, July 28, 1951, Art. 1. A(2).

⁴⁴ David Weissbrodt, “The Human rights of Non-Citizens” (publication to Oxford Scholarship Online: Oxford, January, 2009) accessed February 6, 2016, doi: 10.1093/acprof:oso/9780199547821.001.0001.

Convention are monitored by the Office of the United Nations High Commissioner for Refugees (UNHCR), the new Office who became the successor of the previous International Refugee Organization.

Refugee protection is the only area of forced migration that historically had a specialized UN agency.

Historians reflect on the elements of continuity and discontinuity in the international engagement on refugee's protection. In fact, while the interwar period has been characterized by a gradually evolving concept of a collective "loss of protection"⁴⁵, after the end of Second World War the focus was put on giving a definition of what were the characteristics of the figure of the refugee, for this reason the 1951 Convention established that refugee's reason to flee his or her country must be a "well-founded fear of being persecuted" which represents the main criterion to be legally recognized at the international level.

It is important to clarify the meaning of "well-founded fear" and "persecution".

The first criterion refers both to a subjective emotional status, which is the fear, and to an objective basis, the well-founded. The subjective status refers to the individual emotional feature that depends not only on the individual experience, but also on the family background; on his or her membership in a particular religious, racial or political group and of course on how the person perceives the situation surrounding his or her habitat. These are all important factors that must be taken into consideration when determining if the applicant for the refugee status is personally experiencing persecution⁴⁶.

The objective requirement completes the definition: since it is acknowledged that fear is an emotional state of mind, States must evaluate the nature of the applicant's feeling, which should have an objective bases. To put it in another way, it should not be exaggerated or irrational. The applicants must then be evaluated on the bases of the fear: if it is provoked by an objective element or situation prevailing in his or her country of origin⁴⁷.

In parallel to consider the personal experience of the applicants, UNHCR underlines that States parties should be also aware of the general situation, in fact the Geneva

⁴⁵ Kugelmann, "Refugees".

⁴⁶ Weissbrodt, "The Human rights of Non-Citizens."

⁴⁷ "Advisory opinion of the UNHCR on the interpretation of the refugee definition", 3, accessed January 3, 2016, <http://www.refworld.org/pdfid/4551c0374.pdf>.

Convention states that the persecution may not be based on personal experience, for this reason it is important to consider also the persecution suffered by friends or relatives as an important factor that may influence the perception of the subject⁴⁸.

Moreover, past history of persecution must be added to the characteristics of the well-founded fear⁴⁹.

The term persecution was originally intended by the drafters of the 1951 Convention to allow a sufficient degree of flexibility for the protection of those who need it. Generally speaking persecution includes arbitrary killing, detention, disappearance, and torture⁵⁰. Professor of Law, James Hathaway, proposed an implementation of the definition of persecution, including the fact that also a systematic failure of a State in protecting its citizens in one of the core aspects regulated and recognized by the International community could represent a valid element of persecution. Accordingly to this definition, persecution regrouped the whole range of serious violation of human rights, recognized under the Universal Declaration of Human Rights⁵¹.

In fact the Handbook of the procedures and criteria to determine the status of refugee, specifies that even discrimination falls within the definition of persecution when it leads to consequences of a substantially prejudicial nature for the person concerned: for example livelihood restrictions, discrimination in the practice of religion or limitation on the normal access to available educational facilities⁵².

According to the third criteria to define a refugee, the person must be outside of his or her country of nationality. As a consequence, the category of refugee does not include internally displaced persons. Concerning stateless persons the fear of being persecuted and the impossibility to return to the origin country refer to the country of habitual residence. Finally, in the case a persons is entitled of more than one nationality, Article 1(2) of the 1951 Convention provides that the attendant must demonstrate the fear of being persecuted in each of these countries⁵³.

⁴⁸ Weissbrodt, "The Human rights of Non-Citizens."

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Weissbrodt, "The Human rights of Non-Citizens."

⁵² "Advisory opinion of the UNHCR on the interpretation of the refugee definition".

⁵³ Weissbrodt, "The Human rights of Non-Citizens."

History has shown how States have become less interested in receiving refugees. Since the end of the Cold War, States were no more seeing refugees as having strategic ideological or geopolitical value⁵⁴.

In fact, during that period, the reason to receive high number of refugees responded to a double need: the huge flows of refugees where directly the product of the long war, on one side the open border policy facilitated the inflows of those people coming from opposing ideological and political perspectives. On the other, the receiving inclined attitude put the States in the position of emerging as good States compared to the others, which were in this way discredited⁵⁵.

However changing priorities moved to the background the need of refugees to be protected. States are more concerned on protecting their own rights than the one of this vulnerable category. Culture and standard of living are considered as being in the risky position of being undermined by refugees' arrivals.

As a consequence refugees suffer from lack of appropriate living condition and of discrimination.

Although the majority of States have ratified the Convention granting specific rights to the refugee category, States are basically characterised by different cultural and historical features that influence them in adopting the Convention with different grades of accuracy. Western governments are increasingly trying to implement restrictive policies and practices in order to prevent refugees seeking protection in their territories by intercepting and interdicting measures, visa controls, carrier sanctions, 'safe third country' arrangements, administrative detention, and/or restrictive interpretations of the refugee definition⁵⁶.

States usually denounce the lack of resources as the primary reasons for failing in the right administration of refugees, however much energy and resources are spent in the procedures to recognize "who is a refugee" with the consequential reduction of the resources to be allocated to grant sufficient standard of reception⁵⁷.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Alice Edwards, "Human Rights, Refugees, and The Right 'To Enjoy' Asylum", *International Journal of Refugee Law*, Vol. 17, Iss.2, 2007. 293-330. Accessed February 6, 2016, <http://ijrl.oxfordjournals.org/content/17/2/293.full>.

⁵⁷ Ibid.

1.3.2. Asylum seekers

Even though the nature of asylum seekers and refugees is similar, in fact they both belong to the category of forced migration and are pushed to leave their countries of origin fearing of being persecuted, it is important to specify how they are recognized and managed differently at the International level.

Many refugees have been asylum seekers while waiting for this status to be internationally recognized, but some refugees; however, do not formally seek protection as asylum seekers.

In situation of mass inflows, such as the emergency we are living today, people are often declared refugee without having started any individual assessment of their claims. The reasons are to be found in the high number of people composing the influx and, as a consequence, the impossibility to arrange interviews and analysis of every single situation. Moreover, it is important to notice that, most of the times, the reasons for migrants to flee their country and to be, as a consequence, recognized as refugees, are self-evident.

In addition, refugees do not always have the possibility to claim for asylum, or they are simply unaware of this possibility.

International law makes a very important distinction between a person who asks for asylum - an asylum seeker - and a refugee.

Asylum is different from refugee status, the first refers to the institution for protection, whereas the second is attributed to a group of people who benefit from that protection⁵⁸

At first, considering the refugee status, a person does not become a refugee after he or she is formally recognized. They are refugee from the moment they flee their country due to a well-founded fear of persecution (as declared in the Geneva Convention); States are then supposed to grant protection and assistance starting from that moment, they should not wait for an asylum request.

⁵⁸ María-Teresa Gil-Bazo, "Asylum as a General Principle of International Law", *International Journal of Refugee Law*, Vol. 27, Iss. 1, 2015. 3-28. Accessed February 6, 2016, <http://ijrl.oxfordjournals.org/content/27/1/3.full>.

On the contrary, States should provide individually to the attribution of asylum: which can be a territorial asylum when it is granted to an individual in the territory of the State of arrival or in other places, not belonging to the States, but that are under the control of diplomatic representations or warship. Considering these aspects, asylum is presented as different from refugee status because it derives from state sovereignty⁵⁹.

Since sovereignty has no limitation in international law, States detain the liberty to choose whenever to grant or not asylum, however they should not violate the obligations derived from Art. 14 of Universal Declaration of Human Rights (UDHR) and from the 1967 Declaration on Territorial Asylum⁶⁰.

In the Preamble of the Declaration on Territorial Asylum, the UN General Assembly recognizes that a State who grants asylum is expressing an act of peace and humanity that should be respected and regarded as friendly by every States⁶¹.

While the right to be granted asylum depends on State sovereignty, the right to seek and enjoy asylum is protected by the Article 14 of the UDHR.

Even if these international instruments provide a definition, they do not specify the reasons for asylum seekers to be granted protection, moreover the dynamics of protection are not present too. In contrast, the Refugee Convention lists the relevant grounds of persecution and sets forth a regime of high complexity on the position of the refugee in the State of refuge⁶².

The adoption of the international standards to be applied for the treatment of refugees was the product of a raising attention from the International community expressed during the period between the two World Wars to provide a better solution to deal with this group of non-nationals. On the contrary, the level of protection concerning asylum has not found agreement at an international level yet.

Nevertheless the protection of the refugees began with the 1951 Convention and the International regime for the protection of human rights started with the UN era, on the contrary the practice of asylum has a longer historical tradition⁶³.

⁵⁹ Ibid.

⁶⁰ Edwards, "Human Rights, Refugees, and The Right 'To Enjoy' Asylum".

⁶¹ Kay Hailbronner, Jana Gogolin, "Asylum, Territorial", *Max Planck Encyclopedia of Public International Law*, 2013, accessed February 6, 2016, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e757?rskey=oO2d2G&result=2&prd=EPIL>

⁶² Kugelmann, "Refugees".

⁶³ Gil-Bazo, "Asylum as a General Principle of International Law"

The modern principle enshrined in the UDHR concerning asylum find its origin in the “right of sanctuary” in ancient Greece, imperial Rome and early Christian civilisation⁶⁴.

Asylum was in this sense connected with the right to find refuge mostly in religious buildings. With the growth of Nation States in parallel to the notion of territorial jurisdiction and sovereignty, the nature of asylum changed in something more complex involving a shift of responsibility: States were asked not only to grant refuge, but also protection⁶⁵.

At first, a draft of the proposal for protection of asylum seekers included the obligation “to grant asylum”, but it was not accepted. To preserve the principle of State sovereignty, the right to grant asylum remained a right of the State⁶⁶.

Nowadays, in the context of the refugee crisis, the security issue is of primary importance for the States, in particular for European Countries. As a consequence the arguments around State sovereignty are achieving a renewed importance as States focus on this principle to control and protect their borders in order to reject asylum-seekers.

In conclusion it is important to consider the temporal feature that contribute to distinguish between refugee status and asylum. While the former has a temporary connotation, the latter is a practice connected to permanence. In fact, the right to reside is one of the principal and essential content of asylum⁶⁷.

For this reason, States that grant asylum have to face the disposition and the problems connected to long-term stay, which sometimes lead to a denial of the assessment. Nevertheless, a State may be obliged to protect in any case the subject under the refugee law, as *de facto* refugee, for example avoiding to return the asylum seeker to a country where he or she may be persecuted or that put at risk his or her life.

In this sense, asylum is a more intensive concept than the protection of refugee⁶⁸, for this reason States are often reluctant when it comes to recognize asylum as an individual right.

⁶⁴ Edwards, “Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum”.

⁶⁵ Guy S. Goodwin-Gill and Jane McAdam, “The Concept of Asylum”, in *The Refugee in International Law*, ed. Guy S. Goodwin-Gill et al. (Oxford: Oxford Scholarly Authorities on International Law, 2007) available at <http://opil.ouplaw.com/view/10.1093/law/9780199207633.001.0001/law-9780199207633-chapter-7>, accessed February 6, 2016.

⁶⁶ Edwards, “Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum”.

⁶⁷ Edwards, “Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum”.

⁶⁸ Kugelmann, “Refugees”.

1.3.3. Internal Displaced person

People who are not fleeing their country, crossing international borders, but are remaining in their own country are called internal displaced person (IDP).

The spreading of many internal civil conflicts, mostly in Africa and in the Middle East has contributed to raise the number of IDP registered.

Internal displaced persons suffer from high vulnerability not only because they flee their home, but also because they remain in the proximity of civil wars and situations in which they may still encounter persecution, sexual assaults, and cannot often be provided of an adequate shelter. Demographically speaking, they belong to the most fragile groups of population: people who cannot escape outside their country are usually old people, ill people, women and children.

Other reasons for internal displacement can be found in widespread violence, natural and human-made disasters and also large-scale development projects⁶⁹. The last two decades have become more significant not only in the number of people involved in this type of migration, but also in the nature of the response given to this problem.

It is important to consider the chain effects that involved the phenomenon of IDPs.

Internal displaced persons are deprived of any aspect of human dignity and of course of fundamental human rights: at first, they are forced to leave their home; secondly they experience alienation when they are negated access to their home, to their family relations, to their lands and also to their personal documentation.

Also host communities have to face negative effects. The burden experienced by host communities is the fact that being IDPs means to be deprived of any basic needs; it is the responsibility of host communities thus to provide them with food, water and a shelter. Cultural barriers can affect in particular this vulnerable category: IDPs may be overcome by the impossibility to access to health care, education, employment, activities and electoral politics in their area of displacement. The longest the period of displacement, the worst the condition of IDPs gets. In fact, people who have been separated from their community for a long period of time experience the risk of not being able to restore their life and may become dependent to outside aids. They also

⁶⁹ UNHCR, "Protecting Internally Displaced Persons a Manual for Law and Policy Makers" (manual published by Brookings Institution, University of Bern, October, 2008) 2, accessed December 23, 2015, <http://www.unhcr.org/50f955599.pdf>.

are likely to be exploited for sexual purpose, and at work. In turn, this dependency reduces their chance to be integrated in society⁷⁰.

In 1993, at the request of the Commission on Human Rights, prior Representative of the Secretary-General on internally displaced persons Francis M. Deng prepared his first study of international standards relevant to internally displaced persons⁷¹. He underlined how doctrine provided exhaustive laws for the protection of internal displaced persons, but added that there were still gaps to fill.

Encouraged by the Commission of Human Rights and the General Assembly, Francis M. Deng prepared the Guiding Principles on Internal Displacement that were presented in 1998 to the Commission on Human Rights.

In the foreword to the Guiding Principles, the Under-secretary-general for humanitarian affairs, Sergio Vieira de Mello, said:

“it is important for the international community to see how best it can contribute to enhancing the protection of IDPs conflict and crisis situations. We must also design humanitarian assistance in such a way that it will promote the protection of IDPs⁷²”.

The United Nations have improved their efficiency in the protection and management of the problems regarding internal displaced persons and with the Principles they engage in the protection during all phases of displacement. M. Vieira de Mello said:

“They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a binding instrument, these Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law⁷³”

⁷⁰ UNHCR, “Protecting Internally Displaced Persons”, 2.

⁷¹ “International Standards”, United Nations Human Rights, accessed November 16, 2015, <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx>.

⁷² “Guiding Principles on Internal Displacement”, OCHA Online Publishing, accessed November 16, 2015, <http://www.ifrc.org/Docs/idrl/I266EN.pdf>.

⁷³ Ibid.

Not only humanitarian and international protection must be granted, but to reduce the problematic effects of IDPs' phenomenon, the Principles should also put the bases for the possibility for IDPs to return home. Principles from 28 to 30 explain how to deal with returnee:

"Principles 28:

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration⁷⁴."

Moreover, returnee must be protected from discrimination for their previous status of displaced persons. The UN High Commissioner for Refugees (UNHCR) encourages voluntary repatriation, or return, as the best solution for displaced people. The agency often provides transportation and other assistance, such as money, tools and seeds. Occasionally, UNHCR helps rebuild homes, schools and roads⁷⁵.

1.3.4. Environmental displacement

In 1985, Essam el-Hinnawi, who then started working for the UN Environment Programme (UNEP)⁷⁶, provided a definition for people involved in environmental displacement, calling them environmental refugees.

This definition was given after the catastrophes provoked by the gas leak in Bhopal in India and the explosion of the nuclear reactor in Chernobyl.

Environmental refugees are:

⁷⁴ "Guiding Principles on Internal Displacement".

⁷⁵ UNHCR, "Who is a refugee", accessed November 14, 2015, <http://www.unrefugees.org>.

⁷⁶ Camillo Boano, Roger Zetter and Tim Morris, "Environmentally displaced people: Understanding the linkages between environmental change, livelihoods and forced migration" (briefing made for the Refugees Studies Centre, Oxford, Oxford University, November, 2008) accessed November 14, 2015, http://www.unicef.org/socialpolicy/files/Environmentally_displaces_people.pdf

“[...]Those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardised their existence and/or seriously affected the quality of their life” (el-Hinnawi 1985:4)⁷⁷.

Even though this definition is quite explicative, UNHCR is very cautious when it comes to associate the term “refugee” with environmental causes, and prefers to consider environmental displaced people as people:

“who are displaced from or who feel obliged to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental, ecological or climatic processes and events” (Gorlick 2007)⁷⁸.

This explanation does not mention cross-border movement, nor identify causes such as persecution, armed conflict or human rights violation for the purpose of not making confusion between the different categories of refugee and environmental displaced people⁷⁹.

Environmental disasters determined mostly by men made intervention on the territory or for climate changes are the causes of this type of forced migration. Of course only the peaks of climate change can be committed to be the culprits of human displacement, for example talking about the disappearance of islands that obliges people to migrate and resettle their community elsewhere. Nonetheless, it is well known that environmental change are only one of a series of causes of forced migration rather than a source in its own right⁸⁰. For this reason, sometimes when an environmental change takes place it covers other causes that are involved in the displacement of people. In fact, sometimes people are not only responding to climate changes or environmental disasters when they start to migrate, but it can be the response to a combination of other causes such as the lack of primary resources, impossibility to have access to livelihoods, competition for resources and conflict⁸¹. Moreover, the fact that a certain population is more afflicted from sudden natural disasters can be the product of previous human made causes such as the fact that a country can be weakened after having experienced a long period of

⁷⁷ Boano, Zetter and Morris, “Environmentally displaced people”.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Betts, *Forced Migrations and Global Politics*, 7.

⁸¹ Ibid.

dictatorship, lacking the possibility of working and living with its own resources. For example, many people from North Africa become displaced persons in response to poverty caused not only by the destruction of their livelihood, but also by a long period of political instability.

A problematic aspect of displacement provoked by natural causes is its acknowledgment at the international level, in fact while some scholars sustain the fact that it is not a category that should be separately analysed because of its multiplicity facets of causes, others on the contrary find it necessary to have an international recognition or status for it.

The refugee term is often used to describe any type of forced migration, but if on one side an environmental disaster can be considered both a precursor of forced migration causes and also a well-founded fear, on the other it is widely recognized that people who experience natural disasters are not always escaping from violence and are not always crossing internal borders, but most of the times they are internally displaced.

However, governments are usually reluctant to broaden the definition of environmental displacement because if it falls within the category of refugee they would have to grant them protection would then have to take on the responsibility of many duties. Scholars agree that anyway putting even environmental displaced people in the refugee category will only weaken the possibility of this type of forced migration to be recognized and better protected by international law.

Environmental displacement is supposed to become a bigger phenomenon in the future. The International Federation of Red Cross and Red Crescent Societies (IFRC) calculated that in 2001 the number of people registered to be displaced for environmental disasters were surpassing the number of the displacement caused by conflicts.

The Intergovernmental Panel on Climate Change (PCC) predicts 150 million environmental refugees by 2050 – equivalent to 1.5% of 2050's predicted global population of 10 billion⁸².

While some disasters are managed by the countries involved alone, such as the Tsunami that hit Japan in 2011, others need a global response as it happened for

⁸² Boano, Zetter and Morris, "Environmentally displaced people".

example in Sri Lanka and Indonesia post-tsunami or in Burma in 2008. The action of International Organization and UNHCR is helping solving these situations with humanitarian interventions, but this alone is not sufficient to solve the problem. There is consequently a growing recognition that the environment and human displacement are issues that must be tackled at an international political level.

1.4. Irregular migration

As I have mentioned in the introduction, irregular migration interests both voluntary and forced migration. Doctrine prefers to address to it not using the term “illegal”, but with other terms such as undocumented, irregular, non-compliant migrants because the term “illegal” suggests a connection with criminality and for this reason migrants can suffer from a treatment which can in many cases not grant the respect of his/her basic human rights and dignity. For example, when considering the situation of an asylum seeker, it is very common that the person claims for asylum once arrived in the foreign country because the reason why he or she might had to flee homeland can be most of the time unpredictable. In this situation, asylum seekers are considered undocumented migrants. Unfortunately, calling asylum seekers illegal migrants can undermine their possibility to see their permission of asylum granted and can encourage a political climate of intolerance⁸³.

It is very difficult and rather complex to control and manage irregular migration because there are many ways to enter a country that can be considered irregular or that can be led in any case by illegal actions. In fact, migrants can enter a country by crossing the border unlawfully, in other words without the appropriate documentation and as a consequence they are categorized as undocumented migrants. Moreover, a migrant who has legally entered a foreign country, can change its status and become an irregular migrant from the moment he or she is employed while still benefitting of a visitor’s visa, or when the person is staying in the foreign country after the expiry of the temporary residence or work visa⁸⁴. Each of these types of irregular migrations are supposed to be analysed by States who are particularly involved in this kind of problem, especially developed countries.

⁸³ UWT and Sixth Framework Programme, “Undocumented migration glossary” (work package prepared by the Roskilde University and the Working Lives Research Institute, September, 2008) accessed November 14, 2015, http://www.undocumentedmigrants.eu/library/h11625_3.pdf.

⁸⁴ Brian Opeskin, Raymond Perruchoud and Jillyanne Redpath-Cross, *Foundations of International Migration Law* (Cambridge: Cambridge University Press, 2012) 47.

For its strategic position, in the heart of the Mediterranean Sea, Italy has always played the role of first destination of massive migrants flows, mostly irregular migrants involved in the practice of smuggling.

Smuggling is a variant of irregular migration that involves payment for assistance in making a clandestine border crossing⁸⁵.

This illegal activity involves criminal gangs who organize risky travels for migrants who most of the times spend a significant amount of money to pay for the journey. The largest flows involving this type of activity are two: one carrying persons from Latin America, especially from Mexico, to the United States, and another from Sub-Saharan Africa to Europe. According to the data collected by the United Nations Office on Drugs and Crime, in 2010 there were approximately 3 million people attempting irregular crossing of the southern border of the United States, most of them were helped by smugglers. The numbers involving Europe and Africa are smaller, around 150,000 per annum and once again it is registered that smugglers have provided high contribution to their irregular journey⁸⁶.

Precise data on the effective smuggling activity are difficult to obtain, but it is well-known how it has become a real profitable business: smugglers use the fact that migrants, who are willing to use this type of solution, are mostly escaping from human right abuses, armed conflicts, civil unrest, environmental degradation and are for this reason desperate, as a lever to take profits.

The most problematic aspect of irregular migration could be then human trafficking because it involves the violation of basic human rights. Women, men and children are exploited for sexual services, forced marriage, domestic servitude and other illicit activities concerning any form of abuses.

The problematic involving irregular migration represents a real challenge for developed countries. IOM stated that:

“When destination countries tolerate high levels of irregular migration, they undermine their own legal immigration systems. There is little credibility for immigration law if migrants and migrant smugglers and human traffickers are allowed to circumvent the

⁸⁵ Opeskin, Perruchoud and Redpath-Cross, *Foundations of International Migration Law*, 47.

⁸⁶ Opeskin, Perruchoud and Redpath-Cross, *Foundations of International Migration Law*, 48-49.

policies in place to determine who enters, for what purposes, and for what period of time⁸⁷.

All continents and regions have to deal with irregular immigration and its increasing difficulty, not only because the routes and the way in which irregular migration is expressing are getting more difficult, but also because its complexity menaces the correct administration of the great part of irregular migration which involves asylum seekers and unaccompanied minors.

The different types of irregular migrations, especially the situation involving smugglers and trafficking, are a great attraction for media that negatively influence the public opinion on the issue and contribute to “fuel the perception of the North being overrun by poor migrants from the South⁸⁸”

Guchteneire and Pécoud, respectively chef and member of the UNESCO section on International Migration, recognise that in Europe, the misconception that leads people to associate irregular migrants with the practice of smuggling, is very diffused⁸⁹.

For this reason, European policies on migration are usually concentrating much of their efforts and money on procedures designated to the tightening of border control and to the interception of smuggling operation. In reality, the situation is less frightening than what they show: many irregular migrants are actually people who do not return home after the expiry of their student or visitor visas.

There is evidence that the phenomenon of asylum seekers, who enter the country through irregular routes or without a proper documentation, is part of the problem, but it is usually accompanied to a wrong perception that asylum seekers are no more than economic migrants who try to enter European countries through alternative routes because they are not likely to see their qualification recognized. In this sense the “illegitimate” route is seen as something that an asylum seeker chooses to avoid stricter immigration laws. On one hand this interpretation is obviously a false oversimplification of the reality concerning asylum seekers, but on the other hand it carries some truth, as it is argued by Moreno Lax (EU Asylum Law Coordinator at the Refugee Law Initiative of the University of London). Lax declare in fact that European policies are getting more

⁸⁷ Khalid Koser and Frank Laczko, ed., “The Future of Migration: Building Capacities for Change” (World Migration Report made by IOM, Geneve, 2010) accessed November 20, 2015.

⁸⁸ Opeskin, Perruchoud and Redpath-Cross, *Foundations of International Migration Law*, 50.

⁸⁹ Helen O’Nions, *Asylum – A right denied: A critical analysis of European Asylum Policy* (Surrey: Ashgate, 2014) 2.

and more involved in strategies that involve the reinforcement of border control and securitization rather than the protection of refugees and asylum seekers⁹⁰. For this reason, smugglers sometimes represent the only solution possible for refugees to overcome their journey and enter European territory.

In other words, there is a sort of vicious circle in which irregular immigration is seen as a potential threat to the Community and for this reason it is basically fought with border control and with difficult entry procedures that migrants have to face once trying to reach European countries. The difficulties are a strong deterrent to migrants who are induced to use irregular routes and ask for smugglers' help. As a consequence politicians and the public opinion are fuelled by negative and opposing feelings towards asylum seekers or people who enter through irregular routes. It is legitimate therefore to get to the conclusion that a great part of the irregular migration involving asylum seekers and refugees is created by restrictive European policies.

On the 26th of October 2004, the Council of Europe, pursuing Articles 62(2)a and 66 of the Treaty of the European Community, established the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, which took the name Frontex⁹¹.

"Frontex promotes, coordinates and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management⁹²". The Agency operates for the area within the 26 countries part of the Schengen Agreement and its purpose is to support the border control of the States, particularly the external borders, to prevent as much as possible the illegal entrance of immigrants and to avoid the creation of cross-border crimes.

As a continuation of the cooperation promoted by the Schengen Agreement on the liberal circulation of people and goods, Frontex promotes a cooperation in the management of the external borders, assisting States in all the operation that need technical and organizational competencies, for example in mass operations involving the return of irregular migrants⁹³.

⁹⁰ O'Nions, *Asylum*, 2.

⁹¹ O'Nions, *Asylum*, 79.

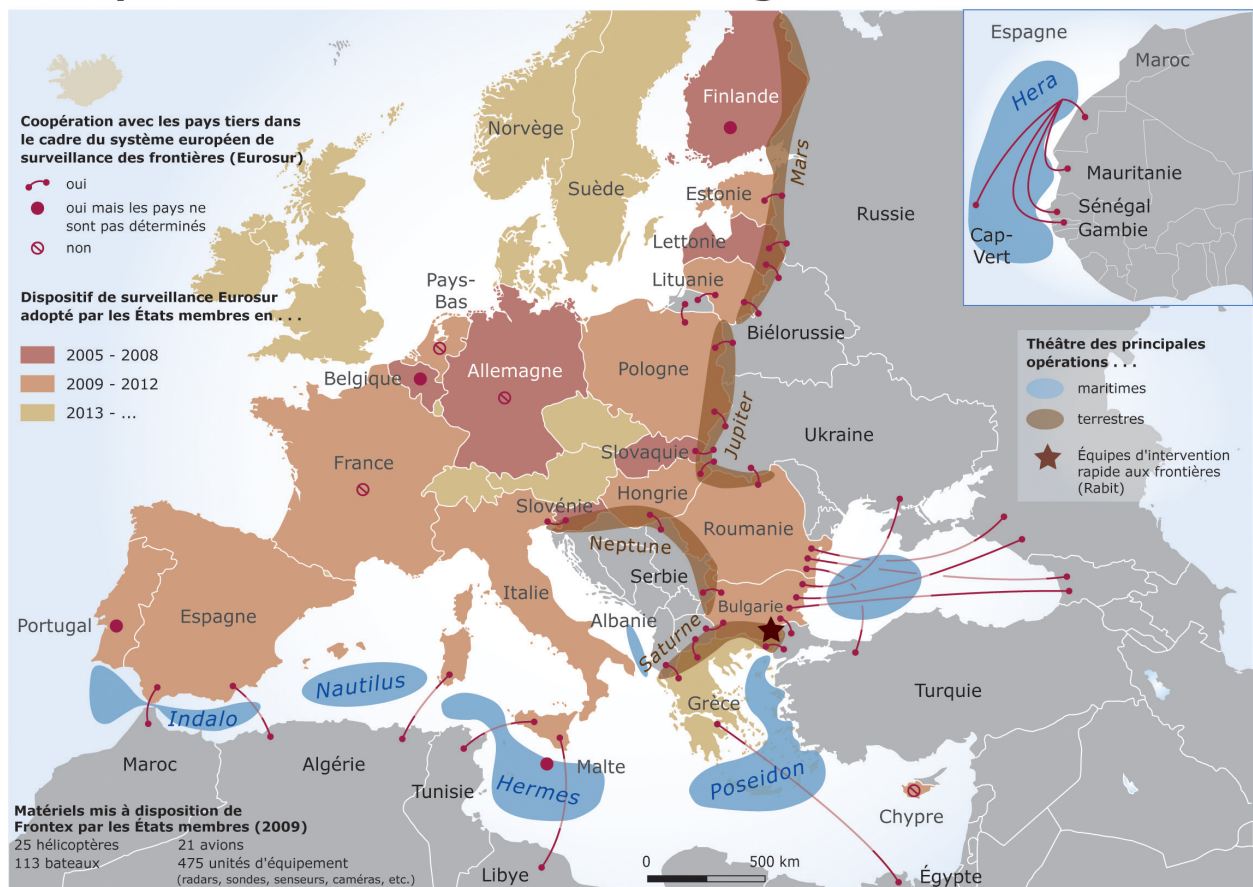
⁹² "Origin of Frontex", Frontex, accessed December 20, 2015, <http://frontex.europa.eu/about-frontex/origin/>.

⁹³ O'Nions, *Asylum*, 79.

Frontex interventions involve in particular the so-called grey area of migration control in which borders are not well defined. These interventions are played in three different areas:

1. Maritime;
2. Terrestrial;
3. Aerial.

Les opérations de surveillance de l'agence



Sources : Rapports annuels de l'agence Frontex ; European Commission, *Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council establishing the European Border Surveillance System (Eurosur)*, Commission staff working paper, COM (2011) 873 final.

© Migreurop (2012) *Atlas des migrants en Europe. Géographie critique des politiques migratoires*, Paris, Armand Colin, 144 p. 94

The map shows, using different colours, the operations that have involved the Agency in the terrestrial and maritime areas. The air operations involve the control of passports at the airports and the exchange of information between airports. Air operations alone are a real challenge for Frontex because the irregularity of migrants is much more

⁹⁴ "Frontexit map", accessed December 20, 2015, <http://www.frontexit.org/en/resources/maps>.

difficult to find and because of the numbers involved, in fact the Agency has denounced that 1.2 million irregular migrants enter the EU every year through its airports⁹⁵.

The map, dated 2012, lacks of the latest operations involving the Mediterranean area, the operation Triton. Triton Operation started the 1st of November 2014 and took the place of the precedent Italian operation Mare Nostrum. The range of Triton operation is less extended than Mare Nostrum, which covered 175 Miles from the Italian coasts involving the Libyan coasts too. Triton instead focuses only on a restricted part of the Mediterranean, an area of 30 Miles around the Sicilian coasts.

The majority of the Agency funds are spent in the maritime operations: for example in 2009, 34,4 million of euros, representing half of its allocated funding, were spent in the sea operations in the Mediterranean⁹⁶.

The function of Frontex has transformed what was in the past a matter of internal politics of the countries into a shared management of the issue. Even though Frontex operations have successfully reduced illegal migration, it is true that most of its operations are covered with secrecy and are contested to have repeatedly violated the principle of non-refoulement.

The justification of the Agency has been that being a non-state actor and a EU agency, its operations are the primary responsibility of individual States. However, its competency has to take into consideration all the relevant European Union law on the issue that includes the Charter of Fundamental rights, international laws, the Refugee Convention and all the obligations concerning the international protection, in particular the principle of non-refoulement and fundamental rights⁹⁷.

⁹⁵ "Air operations", Frontex.

⁹⁶ O'Nions, *Asylum*, 80.

⁹⁷ *Ibid.*

Chapter 2

Migration Law

2.1. International Migration Law Framework

Before entering in the detail of the law concerning migration in the EU, it is important to identify the principles that are at the base of the international framework⁹⁸. The international tools for the regulation of migration are both legally binding, composed by laws and normative, and non-legally binding, in other words practices and principles⁹⁹. States have been united in the ratification of some Conventions, for example the 1951 Convention and the 1967 Protocol Relating to the Status of the Refugees, while other instruments did not involve much contribution such as the UN Convention on the Protection of All Migrants Workers and Members of their Families¹⁰⁰. States are often more inclined to ratify the Convention when their sovereignty is not put at risk, moreover the promotion of interventions on a national and local level is another characteristic that induce States' ratification. Another incentive is represented by Conventions that propose concrete inter-state cooperation actions in the fight of irregular migration. In conclusion, the perception of being able to control who enters and how many persons leave the territory is the most persuasive element that States may consider before ratifying a Convention.

International laws contribute to the creation of a shared normative and legal framework concerning for example the powers and responsibilities that each State has in regards to the movement of people across its borders, the rights and responsibilities of migrants and most important the cooperation between States in the management of the migrating fluxes.

⁹⁸ Sara De Vido, "Refugees: the International Legal Framework" (presentation held at the conference "A quest for solidarity in a fractured Europe", Manchester, December 15, 2015).

⁹⁹ Susan Martin, "The legal and normative framework of international migration" (paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, 2005) accessed December 23, 2015, https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/Tp9.pdf.

¹⁰⁰ De Vido, "Refugees: the international Legal Framework".

As in regards to the different categories of migrants that I have analysed in the first part of the thesis, the two categories that suffer mostly from the lack of international regulations are the economic migrants and family reunification migrants.

States are entitled of the sovereignty on their territory, in other words, even if this power does not necessarily means an absolute control, States can regulate the movement of foreign nationals across their borders and decide who can be admitted on the territory and for how long. In fact, States provide laws and regulations for the issuance of passports, can decide on the admission or expulsion of foreign people and are responsible for border security. Differences can be found in the strictness used for these types of regulations, but they generally adopt rules to govern the entrance and the exit of foreign people from their territories.

Although States have specific rights, migrants benefit form unalienable rights recognized by international law, such as:

“the right to life, liberty and security; the right not to be held in slavery or servitude; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right not to be subjected to arbitrary arrest, detention or exile; the right to marry and to found a family¹⁰¹”.

Additional rights are conveyed by the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child (CRC)¹⁰².

More specifically related to the movement of people across international borders are the provisions granting rights in the Convention Regarding the Status of Refugees, the Convention against Torture, the Convention on the Rights of All Migrant Workers and Members of their Families, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both of which supplement the United Nations Convention against Transnational Organized Crime¹⁰³.

To be informed about the State is the first step migrants have to take to see their rights granted and to avoid difficult situations and abuses. In many states exist programs

¹⁰¹ Martin, “The legal and Normative Framework of international migration”.

¹⁰² Ibid.

¹⁰³ Ibid.

dedicated to migrants who want to learn the language of the country and who seek assistance at first in the search for a job and after in monitoring their working situation. The better-informed workers are prior to migrating, the better they are able to assert their rights¹⁰⁴. Not only their working conditions are monitored, but also their repatriation. In addition to these programs, migrants are helped by Consular officers who can protect and monitor their security at work. Their work is very useful also because they have the power to intercede when host countries are not adopting all necessary moves in favour to the migrant worker.

States are always willing to collaborate when it comes to the fight against trafficking and smuggling. The Protocols on these issues concentrate basically on the exchange of information, the training for the prevention of illegal actions involving migrants and the diffusion of public information about smuggling and trafficking.

As I have previously mentioned, the majority of the States have ratified the UN Convention of Geneva on the Refugees, sharing the idea that the management of this category of forced migration has to be on the international level because not only it is considered as the product of international policies, but also because the phenomenon cannot be solved with a unilateral intervention. States that have ratified the Convention are sharing responsibilities in the assistance, protection and finding solutions for the persons who are escaping from a government on which they can no more rely.

Through time, States have gradually come to the agreement that managing international migration must be a shared burden. However, disagreements among States about the identification of the causes and the consequences of migration flows has led many times several States to take decisions on the restriction or liberalization of inflows. This behaviour is in total contrast with the necessity of States to grant a complete and liberal circulation of people, goods, capitals and services. In other words, if on one hand States want to grant as much liberty as possible, on the other people's circulation should be restricted depending on the need of the country.

Nevertheless a great consensus is expressed on the fact that a well-regulated and more comprehensive framework for managing international migration would be the best option for both States and migrants.

¹⁰⁴ Martin, "The legal and Normative Framework of international migration".

2.2. European Migration Law

2.2.1. Brief History

What is currently the European legal tool about managing migration is the product of two main and concurrent historical developments that have involved the EU. The first one is the European integration, namely, the long process which is still on-going that have brought a gradual harmonization of various European policies together with the territorial expansion of the Community through which a single European living space has come into existence, with a distinct and supranational legal order¹⁰⁵.

The second development is the process that transformed Europe from being at first a continent of emigration into being progressively a continent of immigration. This change has forced governments of European countries to rethink about the politics involving migration concerning third-country nationals and people who are not European citizens¹⁰⁶.

The following part will shortly read through historical developments, focusing specifically on what have influenced the migration policies in Europe.

At the end of the Second World War, the process involving European Integration was dominated by three crucial words: reconciliation, reconstruction and security¹⁰⁷. This general sense of cohesion determined a significant growth of migration policies.

The two priorities to be tackled were on one hand the establishment of free movement of nationals of EU Member States through the Community territory, on the other an implemented control of migration inflows from non-EU countries.

Migration law started to be recognized as a separate field of European law. Its foundation was with the 1957 Treaty of Rome. However the Treaty was not mentioning immigration from third countries, their regulation was taken into consideration only in recent decades.

As soon as European economy was hit by stagnation, States being part of the community started to adopt restrictions for the entrance of foreign workers, and work

¹⁰⁵ Boeles et al., *European Migration Law*, 25.

¹⁰⁶ Third Country National is a term often used in the juridical context of migration when law referred to individuals who come from a country, which is not part of the EU (in European context). Generally speaking it refers to every person who apply for a visa or is transiting in another country different from his or her country of origin.

¹⁰⁷ Boeles et al., *European Migration Law*, 25.

permits were assigned only to high-skilled professionals. With these types of policies, people who were trying to enter European territory, covering the political nature of their migration with the economic purpose, were forced to reveal their asylum claim. People escaping from conflicts had to apply for residence as refugees or had to cross borders in illegal ways. It appears that poverty was one of the greatest push factors for migration and people applying for asylum were augmenting. Although the phenomenon of asylum seekers and refugees was not new in the last part of the XX century, European Law came only in 1992 with the Maastricht Treaty and then with the 1997 Amsterdam Treaty that added common measures to face the problematic involved.

Various Directives on asylum seekers and family reunification were adopted since 1997. In addition, measures to contrast illegal migration were presented by the European Commission on the purpose to deal better with the problem of human trafficking, smuggling and in general with the wide-spread phenomenon of irregular migration. Finally with the Treaty of Lisbon, the entry and the return of migrants to and from the territory of the Community was regulated.

2.2.2. The current juridical European framework

The Lisbon Treaty, which poses modifications to the previous Treaty on the European Union, to the Treaty on the European Community and to other acts, protocols and declarations, was stipulated in Lisbon on the 13th of December 2007, but it actually came into force on the 1st of December 2009, after the ratification of Czech Republic.

The Treaty has greatly modified not only the composition of the European institution, but also the competencies of the EU¹⁰⁸.

In regards to migration, European States engage in respecting the common rules on: the entry and residence conditions of migrants; the procedures for issuing long-term visas and residence permits; the rights of migrants living legally in a EU country; the tracking of irregular immigration and unauthorised residence; the fight against human trafficking; the agreements on the readmission of citizens returning to their own

¹⁰⁸ Chiara Favilli, "La competenza dell'Unione europea in materia di visti, asilo e immigrazione alla luce del trattato di Lisbona", (paper published for Associazione per gli studi giuridici sull'immigrazione) last updated December 10, 2009.

countries; the incentives and support for EU countries to promote the integration of migrants¹⁰⁹.

In addition, States adopt common measures that include: EU-wide rules that allow citizens of countries outside the EU to work or study in an EU country; the possibility for citizens of third-countries, who are legally staying in the EU territory, to benefit of family reunification and to be granted long-term residence; and finally a shared visa policy between Member States that enables non-EU citizens to travel freely for up to 3 months within Europe's single travel zone, the Schengen area¹¹⁰.

One of the most significant modification is the elimination of the three pillars structure that was instituted with the Treaty of Maastricht, which represented the first instrument to grant competency on visas, asylum and immigration cooperation inside the Justice and Home affairs Council (JHA), all regrouped under the so-called third pillar.

With the Treaty of Amsterdam, the cooperation of the JHA was divided between the first pillar, which had the competency on the circulation of people, borders, visas, asylum, immigration and judiciary cooperation in civil matters, and the third pillar, which had instead the competency on police cooperation and on a juridical criminal level.

These competencies now fall within the Treaty on the Functioning of the European Union, in particular at Title IV "Free movement of Persons, services and capitals" and at Title V "Area of Freedom, security and Justice".

The general rules proposed by the Treaty apply to 24 European members.

The following exceptions apply to: Denmark that does not follow common rules on immigration, visa and asylum; to the United Kingdom and Ireland that obtained the permission to analyse case by case whether to adopt EU rules on immigration, visa and asylum policies or not.

The European migration policy marks a definite distinction in how to deal with regular and irregular migration. In this context the distinction of the different categories of migrants are not following the scheme which I have previously used, which is basically regrouping the different figures of migrants in the two main categories of Voluntary migrants and Forced migrants. The management of migration has evolved, but it is still

¹⁰⁹ "Explaining the rules", Eu Immigration Portal, accessed December 24, 2015, http://ec.europa.eu/immigration/who-does-what/more-information/explaining-the-rules-why-are-there-eu-rules-and-national-rules_en.

¹¹⁰ Ibid.

based on two main principles: the improvement of the free circulation of migrants' workers in the general framework of the Schengen Area and the protection of borders that is still leaving wide range of choice to States when they have to decide who is supposed to enter or to exit, remain or return. In parallel to these topics, European Union is taking the challenge to grant protection to refugees and prevent abuses of asylum seekers.

2.2.3. Economic migration

In December 2009, the European Council adopted the Stockholm Programme. The Programme recognized labour immigration as a real engine to increase not only European competitiveness, but also to implement economic vitality in a complicated context in which European countries try to find the best solution to face the demographic challenges of the Union. The Commission and the Council is thus invited to implement the Policy Plan promoted in the Stockholm Programme and incentive legal migration.

European Union provides favourable conditions to certain types of economic migrants in particular it covers the entrance and residence students, researchers and highly qualified workers who are subjected to EU Blue Card Directive.

Family reunification and long-term residents are also provided for these categories¹¹¹.

The importance of these specific categories lies in the future perspective that they can give to the Union. In fact, due to the great welfare that European countries are experiencing, the ageing of the population is a natural consequence that Europe has to take into consideration when thinking about its economy. Migrants, in particular high-skilled or young qualified students, provide to the development of the economic and research field together with the demographic growth of the population.

In 2011, the European Commission finally approved and adopted the Single Permit Directive. It took few years for the Directive to be adopted because of ethical and legal problems. As it was in the past, the difficulties that States find in accepting third-country

¹¹¹ "Legal Migration", European Commission, accessed December 24, 2015, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/legal-migration/index_en.htm.

nationals workers are still numerous. The new Directive allows migrants to apply once for both purpose of residence and work permission, all with a single administrative act. In this way migrants can benefit from the sparing of time brought by this measure, and countries can better control the legality of residence and employment¹¹².

The two purposes of the Directive are: the simplification and harmonisation of the procedures that third-country nationals have to overcome before obtaining a job and a residence permit in a member state. Secondly it represents an important step in the elimination of the gap that exists between the rights granted to European workers and non-EU migrants¹¹³.

However, the Directive was criticized for being very limited in its scope, in fact, as it is specified at Article 3, it applies only to two main categories of third-country nationals. The first category is composed by non-EU citizens who ask for residence permit in a member state for work purpose, to whom the single application procedure is applicable. The second group covers family members of migrants who are already residing in the European country, along with students or researchers. These people must have already been admitted to a member state for the purpose of working, studying or family reunification. If these two categories are recognized to be legally staying in the EU they must be awarded of the same rights.

To cover the categories that were not taken into consideration with the 2012 Directive, in 2014, two additional Directives were added to tackle the management of entry and residence of seasonal workers and intra-corporate transferees¹¹⁴.

To complete the scope of creating a more unified and complete regulations on the economic migration, the EU launched in 2011 "The EU Immigration Portal". The Portal is a useful tool to every foreign nationals who is interested in moving to the EU. It also offers various information about all the different policies in strength in the 28 European countries and it is addressed also to migrants who already reside permanently or temporarily in the territory of a member state but are willingly to move to another EU country.

¹¹² EU Directive 2011/98/EU.

¹¹³ Yves Pascouau and Scheena McLoughlin, "EU Single Permit Directive: a small step forward in EU migration policy" (policy brief published for European Policy Centre, Brussel, January 24, 2012) accessed December 24, 2015, http://www.epc.eu/documents/uploads/pub_1398_eu_single_permit_directive.pdf.

¹¹⁴ "Legal Migration", European Commission.

The Directive of 2012 and 2014 were not considering high-skilled migration, which is a category already benefitting from privileged policies.

As Europe pushes for competitiveness at a global level, it needs to attract as much qualified workers as possible.

To accomplish this task, EU has issued a “EU Blue Card” designated to workers who fall within this category. With the Blue Card, high-skilled workers benefit from facilitated access to the labour market, in addition they are assisted in family reunification and in their movement within the EU territory.

Moreover, attention is put on developing countries that suffer from high level of brain drain. The Blue Card Directive limits recruitment of workers coming from these countries.

Although the EU Blue Card represents a favourable treatment of a certain category of economic migrants, it is important to notice that it does not create a right of admission¹¹⁵, in fact it is given to a worker when he or she has already provided a work contract and the period of validity varies between one and four years (with the possibility to renovate it).

While Europe faces the problem of finding the best condition possible for the entrance and most of the time for granting permanent staying for high-skilled workers, a totally different question is posed to another category of economic migrants: the seasonal workers. In fact, a considerable number of migrants who come to Europe to find a temporary employment, which are registered to be over 100,000 non-EU citizens, are irregular migrants.

As high-qualified workers contribute in the development of working high-profile categories, EU economies need seasonal workers too. They are destined to fill the gap of certain employment especially in the field of agriculture, horticulture and tourism. Unfortunately, the economic crisis has greatly shortened the possibilities for seasonal workers to find job opportunities and the situation is only getting worst. In addition to this, seasonal workers are often the subject of exploitation, which represents a real menace for their wealth and security. Finally, the sectors that involve seasonal workers are the ones most hit by irregular migration: many non-EU nationals are staying in a EU country without the right permission to work as seasonal workers.

¹¹⁵ “Legal Migration”, European Commission.

The recent Directive on seasonal workers, adopted by the European Parliament and the Council on the 26th of February 2014, sets the conditions of entry and stay for third-country nationals who are willingly to stay in a European Member State for the purpose of seasonal employment. In addition, the Directives sets specific rights to which seasonal workers are entitled to in order to prevent their exploitation during their stay.

One of the aspects of irregularity that may affect seasonal workers is the length of their stay. In fact, as the nature of their migration implies, seasonal workers are supposed to stay for a limited period of time in a European country, however, they might extend their period of permanence and work. The Directive provides instruments to prevent temporary stays from becoming permanent¹¹⁶.

Although the Directive aims to harmonizing the politics adopted to regulate this category of migrants, Member States still have the right to control the numbers of accepted seasonal workers coming from non-EU countries and they keep the possibility of rejecting applications.

To conclude, the EU incentives a circular movement of seasonal workers: the return home is encouraged and facilitated in its procedures, but seasonal workers are also benefitting from facilitated re-entry procedure for subsequent seasons. In this way European countries can rely on a continuative flow of workers, income, skills and investments.

An important aspect that globalisation has imported to business and multinationals is the possibility of transferring temporarily employees from a firm to a subsidiary or to another branch. This mechanism is called Intra-corporate transferees (ICTs) and is a potential resource for EU because it not only brings innovation, but it also enhances competitiveness, increases the investment flows and many other positive aspects.

Nevertheless, these opportunities are currently blocked by the lack of cohesion among European regulations on that matter.

To solve this situation, the European Commission adopted in 2014 a Directive for the regulation of intra-corporate transfer of non-EU skilled workers.

¹¹⁶ Council of the European Union, "Council adopts directive on third-country seasonal workers" (press release of the Council, Brussels, February, 2014) accessed December 24, 2015, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/141044.pdf.

The Directive was designed to grant a common set of rules and requirements for companies outside the EU, the need for EU companies to provide a talented team that is going to be the basic resource for the creation of an innovative economy that attracts investment and that creates jobs. Moreover, together with the single application for a work and residence permit combined together, the Directive includes the possibilities of a facilitated family reunification and an enhanced mobility within the EU.

2.2.4. Family migration

Family reunification is a necessary aspect in the life of an immigrant. The phenomenon of family migration has interested Europe for the past 20 years; the reunification with a member of one's family has been one of the strongest push factors in European migration history. Moreover, the Union puts a lot of efforts on the achievement of economic and social cohesion, for this reason policies are getting more favourable to family migration in the perspective of simplifying the process of integration of non-EU nationals within EU States¹¹⁷.

In December 2003, the Council of Europe adopted The Directive on the right to family reunification, whose purpose is: "to determine the conditions under which non-EU nationals, residing lawfully in the territory of EU countries, may exercise the right to family reunification¹¹⁸". This Directive applies to 25 of the 28 Member States; in fact Denmark, Ireland and the United Kingdom provide different policies. In addition, if national laws on family reunification are already granting more favourable conditions, the Directive gives to them further priority.

The Directive presents some conditions, for example it is addressed only to non-EU citizens, this excluding in this way the possibility for EU citizens to use this legal tool for the application for family reunification. Moreover non-EU refugees who are still waiting for their status to be recognized or who are temporarily benefitting of some sort of protection cannot take advantage of this instrument. All others non-EU citizens can apply to it, provided that they hold a valid permit for at least one year in one of the EU countries and the possibility of a long-term residence permit¹¹⁹.

¹¹⁷ "Legal Migration", European Commission.

¹¹⁸ EU Council Directive 2003/86/EC, Summary, accessed December 26, 2015, <http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32003L0086>.

¹¹⁹ Ibid.

Taken these conditions for granted, non-EU nationals are authorized to bring to the European country in which they reside a member of their family, as a spouse, children who are under-age and the children of the spouse¹²⁰.

Concerning other family members, Member states adopting the Directive can authorise the reunification with a partner not being officially the husband or the wife, with an adult dependant children or with other old dependant relatives. Once arrived in the EU with the legal residence permit, the family members can have access to schools and education, to job and professional training as much as the others non-EU residents. The permission granted as a family member, expires after a maximum of five years.

After this time, if the family still exists, the family member who is arrived through the permission accorded by the Directive must apply for an autonomous residence permit.

Another restriction of the Directive interests polygamy, which is not recognised: reunification is granted only to one spouse. As a consequence, even the children born with a later marriage are not recognized and are excluded from all the rights of reunification. However the 1989 Convention on Children Rights poses a provision that specify that children should benefit from these rights whenever they are of a great interest¹²¹.

Member States can also require a minimum age for the spouse that is often 21 years old. Other restrictions must not violate human rights, as it was specified by the European Court of Justice (Case C-540/03).

The procedure starts with a EU country analysing the request for family reunification of a foreign national. The member in question is supposed to remain outside the European territory for the period of the evaluation of the request (though some exceptions are present). The relationship between the members of the family must be examined with the use of appropriate documentation and it takes approximately a period of 9 months to give a resolution.

¹²⁰ "Legal Migration", European Commission.

¹²¹ *Convention on the Rights of the Child*, United Nation, November 20, 1989, Art. 10 par.1:

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

Available at

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A7ECB0B31D8DC C1EC12563CD0051F716>.

States may require that the person should be provided with an adequate accommodation, health insurance and a sufficient amount of money as a proof that the person can sustain his or her life and the one of the family members during the permanence.

Furthermore, the sponsor is often required to be regulated by national integration law and should have lived in the EU country in question for a period of at least two years before asking for family reunification.

Noticeably, the family member should pass security controls: in other words a State must prove that the person does not represent a threat for internal security and public health. Moreover, falsification of documents and marriage of convenience are not admitted but condemned. The same motivation can be the reason for the withdrawal or non-renewal of a permit that has already been granted¹²².

Refugees, whose status has been already recognized, are usually not subjected to a minimum period of permanence in the country of arrival before being authorized to ask for family reunification. Furthermore, they are not supposed to fulfil the requirements of health insurance, good accommodation and economic resources if the application for family reunification is submitted within 3 months after their refugee status has been given¹²³.

The scope of the Directive was principally the one of creating a harmonisation in such an important task in migration policy as family reunification. In reality, after the adoption of different NGOs, the Directive emerged to produce very little harmonisation.

In addition, States have provided restricted rules over the first years after the adoption of the Directive and have even called for a modification. The main scope of the modifications was to be able as much as possible to manage huge flows of migrants and better prevent the abuses¹²⁴.

In order to respond to these questions the Commission initiated a public debate on family reunification and provided the compilation of a Green Paper. The Paper

¹²² EU Council Directive 2003/86/EC, summary, September 22, 2003, accessed December 26, 2015, <http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32003L0086>.

¹²³ EU Dir. 2003/86/EC.

¹²⁴ EU Commission, "Summary of Stakeholder responses to the green paper on the right to family reunification of third-country nationals" (summary paper of stakeholder's responses to the Commission's Green Paper on the right to family reunification of third-country nationals under Directive 2003/86, Brussels, November 15, 2011) 2, accessed December 26, 2015, <http://www.eesc.europa.eu/resources/docs/summary-of-stakeholder-responses-to-the-green-paper-on-the-right-to-family-reunification-of-third-country-nationals.pdf>.

consisted in a questionnaire that stakeholders should fill about how more effective rules can be provided to better the process of family reunification in EU and about the available information and data collected after the adoption of the Directive to have a more detailed framework of the responses¹²⁵.

The results showed that the majority of States considered that it was necessary to limit the discretion of Member States on family reunification, a liberty that was given by the Directive itself. Secondly, Member States focus on the need of keeping integration as a national competency and proposed to give up the creation of common rules at the EU level.

Always talking about integration, many States felt the need of a clarification on the matter of how many requirements should be asked for integration to be granted.

Another problem was the lack of information on forced marriage and marriage of convenience. Only Germany and the UK provided realistic statistics on the problem while the majority of States presented very little numbers.

Opposite point of view were posed on the problem of subsidiary protection: some States sustained the opinion that a subsidiary protection was useful and were happy that it was part of the Directive, while on the opposite side, other States were refusing the idea of granting subsidiary protection, arguing that the nature of the status was temporary and for this reason there was no need to implement protection.

In conclusion, States did not want and opposed to a more detailed specification on the procedural rules of the Directive.

The product of the Green Paper tackled all the different aspects and critics the Directive had raised. Member States adopted different approaches in responding to the problems: for example about the minimum age that the spouse should have when asking for family reunification was proposed initially to prevent forced marriage. But while some States kept on sustaining the need for a minimum age or proposed to even lower to 18 years old, others such as Luxembourg and Estonia, thought there was not a considerable evidence that forced marriage was connected to age¹²⁶.

¹²⁵ EU Commission, "GREEN PAPER on the right to family reunification of third-country nationals living in the European Union", November, 2011, 1-2, accessed December 26, 2015, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0735:FIN:en:PDF>.

¹²⁶ EU Commission, "Summary of Stakeholder responses", 7-8.

In general, the European Commission underlined the need for the Member States to do apply their margin of discretion and interpretation to the Directive, provided that they would not undermine the primary objective of family reunification and its effectiveness. Member States should not avoid the respect of the principles on sharing available information; grant the interest of the child; the individual assessment and the right to legal challenge¹²⁷.

The Commission responded as regards for the family reunification of refugees, that the application coming from this category should not be denied only on the bases of lack of documentation. Member States should take all possible measures to establish family links even if this imply the use of written or oral registration, interview with the family and other alternative measures. Sponsor should be allowed to present an application on the territory of the Member State to provide a more efficient way to monitor the effectiveness of the procedure. In conclusion the Commission ask and encourage Member States to find and apply common rules on subsidiary protection¹²⁸.

2.2.5. Border crossing

Since the achievement of the border-free Schengen Area, EU citizens, non-EU nationals and visitors can come and move within the EU territory freely and in security. EU states have common rules on the government of border checks on person and the regulation of the period of permanence in the Schengen Area. Harmonisation of the rules on this matter follows the principle that EU pursues to render the managing of migration more efficient and transparent for its users: both migrants and Member States¹²⁹.

The institution of a Visa Code has brought great harmonisation in the procedures for the issue of a short-stay visa (period that do not exceed the three months length). Implementation was also brought by the Regulation (EC) No 539/2001 that provided a list of countries whose citizens are subjected to a visa requirement when entering the

¹²⁷ "European Commission publishes guidance for Member States to guarantee right to family reunification", ECRE Weekly Bulletin, April 4, 2014, accessed December 26, 2015, <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/660-european-commission-publishes-guidance-for-member-states-to-guarantee-right-to-family-reunification-.html>.

¹²⁸ Ibid.

¹²⁹ "Border Crossing", European Commission, accessed December 24, 2015, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/index_en.html.

EU and a list of countries for which this requirement is waived (long-stay visas and residence permits for visits exceeding three months remain subject to national conditions)¹³⁰.

The regulation of the Common Visa Code interests the procedures for issuing short-term visas of a period of 90 days in any 180 days period. In addition, it regulates the transit through the EU countries and the countries that are associated with the Schengen Agreement¹³¹.

The Regulation (EC) 539/2001 provides a list of the non-EU nationals who are required to present a visa when crossing the external border of the EU: for example Afghanistan, Iraq, Egypt, China and many others. Not only, Regulation (EC) No 810/2009 also add a list of the non-EU countries whose nationals must present an airport transit visa for passing through the international transit areas of EU airports¹³².

The procedure for issuing a visa consists in a EU country that is responsible for the visa application examination. The competence is determined when the country is the unique or the prevalent destination of the visit. If the destination of a person is not precise or determined in advance, the first EU country in which the migrant enters is the first responsible to visa examination. In case of transit, as it comes with flight that have a stopover, the EU country involved in the transit is competent in the analysis of the visa. If the transit is multiple, the first country through which the migrant passes by is responsible. When the country of competence is decided, the application must be submitted to its consulate.

EU countries are supposed to cooperate with a common application centre or through co-location.

The application for a visa must be programmed at least three months before the departure and the procedure to prepare an application requires the migrant to appear in person, unless this requirements has been waived, and he or she must present the application form which is presented in Annex 1 of the Regulation 810/2009, a valid travel document, photographs, documentation which supports the reason of the journey

¹³⁰ "Border Crossing", European Commission.

¹³¹ EU Council Regulation 539/2001, March, 2001, accessed December 27, 2015, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>.

¹³² EU Law, Visa Code, summary, accessed December 27, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:jl0028>.

and, if present, the proof of having a sponsor in the country of arrival and the adequate accommodation whenever the country asks for that. Finally the migrant must present the proof of possessing travel medical insurance, if applicable.

The applicant usually must pay for visa fee and allow the collection of his or her fingerprints, when they are required.

Visa fees are different and can be reduced or cancelled in particular situation for example in case of cultural, foreign and development policy reason for migration.

When all these requirements are satisfied and verified, the competent authority creates an application file in the Visa Information System (VIS)¹³³, following its procedures. The VIS programme examines the application and checks if the person fell within the conditions set in the Schengen Borders Code and do not represents a threat for the security of the country or is supposed to be a risk for illegal immigration for example a prolonged stay after the expiry of the visa.

The decision about the admissibility of an application must be taken within 15 days from the date it was lodged, but the time is subjected to exception: in fact in some cases it can be extended. The decision to be made interests the option between concede a visa valid for the entire area covered by the Schengen Agreement, and a limited visa that is valid only in some territories. The difference involves not only the area covered by the visa, but also the time of validity, in fact while a uniform visa grants to the immigrant the possibility to enter once, twice or multiple times in a country and has a maximum validity of five years, the limited visa or transit visa, which includes also the airport transit visa, lasts for the period of time needed for the transit plus a period of 15 days.

In this situation, when the decision is supposed to be taken in charge by a representative of a EU country, it can be transferred to a relevant authority.

It is important to consider that the visa, both uniform and limited, does not automatically provide the right to entry in a EU country. There are different reason in which a visa is not issued, for example, as I have previously mentioned, when the holder represents a menace for the security and integrity of the country. Moreover false or non-valid

¹³³ The Visa Information System (VIS) allows Schengen States to exchange visa data. It consists of a central IT system and of a communication infrastructure that links this central system to national systems. VIS connects consulates in non-EU countries and all external border crossing points of Schengen States. It processes data and decisions relating to applications for short-stay visas to visit, or to transit through, the Schengen Area. The system can perform biometric matching, primarily of fingerprints, for identification and verification purposes ("Visa Information System", "What is VIS?", European Commission, accessed December 27, 2015, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system/index_en.htm).

documentation are causes of refusal of the applicant. The reason to cross European border must be specified and the immigrant is supposed to proof that he or she can afford the costs for the whole duration of his or her stay and for the return home.

Other reasons for refusal can be found in the expiry of the time established by the visa, the three months of the current 6 months period, and finally when the applicant is already advocating the alert of the Schengen Information System (SIS)¹³⁴ for refusing the entrance.

2.2.6. *Forced Migration*

Before tackling the European legal framework on forced migration, it is useful to understand how this category is managed at the international level. This part of the thesis will be more detailed than the part concerning the international law on economic and family migration simply because, while for economic migration and family reunification, the EU has provided its own Treaties and Directives to regulate it, the international framework offers a solid base on which European migration law on forced migration, especially on refugees, has developed¹³⁵.

For instance, as I have mentioned, the definition of the refugee is inserted in the United Nation Geneva Convention of the 1951. The Convention now represents a centrepiece for International refugee protection today¹³⁶.

The 1951 Convention came at first as an instrument designated to operate only for persons who were fleeing events occurring before the 1st of January 1951 and within Europe. For this reason, the 1967 Protocol was added to remove temporal and specific limitation and it transformed the Convention in a universal covering instrument. Many regions have afterwards improved protection with subsidiary measures and also human right law has developed in this way.

¹³⁴ Schengen Information System works for the EU enabling the relevant authorities to have access to notifications on persons and property via an automated search procedure. It is mainly used for the purposes of border checks and other police and customs checks. In some cases, it is also used for issuing visas, residence permits and for the administration of legislation in the context of the Schengen Convention. ("Glossary", European Commission, accessed December 27, 2015, http://ec.europa.eu/immigration/glossary_en#glosS).

¹³⁵ De Vido, "Refugees: the International Legal Framework".

¹³⁶ UNHCR, Introductory notice to *UN General Assembly, Convention Relating to the Status of Refugees*, accessed November 14, 2015, <http://www.unhcr.org/3b66c2aa10.html>.

At Article 1, the Convention describes a refugee as “someone who is unable or unwilling to return to his/her country of origin owing to a well-founded fear of being persecuted¹³⁷”.

Moreover, it is important to consider the fundamental principles that are at the base of the Convention: non-discrimination of race, religion or country of origin, non-penalization of sex, age, disability, sexuality or other grounds of discrimination, and to these well-known principles it added a new one, the non-refoulement. The principle of non-refoulement is presented at Article 33:

“Article 33: Prohibition of expulsion or return (non-refoulement)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion¹³⁸”.

Despite being a fundamental principle, it provides some exception:

2. “The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country¹³⁹”.

A very frequent situation that occurs when a person, mostly an asylum seeker, is suddenly forced to migrate is that he or she enters the country as an undocumented migrant. The Convention provides specific exceptions for these cases: refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules¹⁴⁰.

Finally, the Convention grants important rights to refugees and do not process States which are willing to offer them more favourable conditions. Basic rights and fair treatments must be given for example: access to court, to education, to work and also to the possibility of having documents such as passport or travel document.

¹³⁷ Convention Relating to the Status of Refugees, Art.1.

¹³⁸ Convention Relating to the Status of Refugees, Art. 33 par.1.

¹³⁹ Convention Relating to the Status of Refugees, Art. 33 par.2.

¹⁴⁰ UNHCR, Introductory notice.

The Convention presents some exceptions in its application; in fact it does not include all persons who might otherwise satisfy the definition of a refugee in Article 1. The exceptions regard persons who are committed of serious war crimes or crimes against humanity, serious non-political crimes, or are guilty of acts contrary to the purposes and principles of the United Nations¹⁴¹. The Convention also does not apply to those refugees who benefit from the protection or assistance of a United Nations agency other than UNHCR, such as refugees from Palestine who fall under the auspices of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Nor does the Convention apply to those refugees who have a status equivalent to nationals in their country of asylum¹⁴².

The asylum seeker concept, at the international level, does not have a Convention to refer to, but it is laid down in Article 14 of the Universal Declaration of Human Rights (UDHR)¹⁴³:

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution¹⁴⁴.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations¹⁴⁵.

Moreover, another international instrument of Protection of asylum seekers rights is the 1967 Declaration on Territorial Asylum¹⁴⁶. The Declaration, based on the principle of Article 14 of the UDHR and 13, which states that every person must be granted the freedom to leave a country, recommend that:

“Without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:

¹⁴¹ UNHCR, Introductory notice.

¹⁴² Ibid.

¹⁴³ De Vido, “Refugees: the International Legal Framework”.

¹⁴⁴ Universal Declaration of Human Rights, Art. 14 par.1.

¹⁴⁵ Universal Declaration of Human Rights, Art. 14 par.2.

¹⁴⁶ De Vido, “Refugees: the International Legal Framework”.

Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.
2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.
3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum¹⁴⁷.

The other Articles of the Declaration pose the attention on the cooperation between states in the management of asylum seekers flows without prejudice and avoiding for any reason to reject them at the frontiers pushing for the return to countries in which they fear for their life. However, at Article 3 par.2 there is some sort of exception:

“Article 3:

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.
3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State¹⁴⁸.”

Finally, States according rights to asylum seekers must control and monitor their activities in order to avoid the asylum seekers to engage in activities that are contrary to the principles recognized by the United Nations.

The widest category of forced migration registered in UNHCR data is the internal displaced persons, who, as we have seen in the first part of the thesis, are people fleeing their home, but are not crossing national borders.

The International instrument recognized for the protection and the states responsibility on IDP are enshrined in the Guiding Principles on Internal Displacement, which were

¹⁴⁷ UN General Assembly, Declaration on Territorial Asylum, December 14, 1967, A/RES/2312(XXII), Art.1, available at: <http://www.refworld.org/docid/3b00f05a2c.html> [accessed December 27, 2015].

¹⁴⁸ Declaration on Territorial Asylum, Art.3;

presented to the UN Commission on Human Rights in 1998¹⁴⁹. These principles are specifically concerned with the category of internal displaced person and integrated, while reinforcing also, the principles of the international human rights law and the international humanitarian law.

In September 2005 in New York for the World Summit, the Guiding principles were recognized as an “important international framework for the protection of internally displaced persons¹⁵⁰”.

The responsibilities that States must demonstrate when they have to deal with internal displacement are exposed in the two key tenets of the Guiding Principles:

“1. Sovereignty entails not only the right of each state to conduct its own affairs but also the primary duty and responsibility to provide protection and assistance without discrimination to its population, including the internally displaced, in accordance with international human rights and humanitarian law¹⁵¹ .

2. While those displaced within their own country remain entitled to the full protection of rights available to the population in general, displacement gives rise to particular vulnerabilities on the part of those affected. Therefore, and in order to ensure that the displaced are not deprived of their human rights, states are obligated to provide special measures of protection and assistance to IDPs that correspond to these vulnerabilities in order to ensure that IDPs are treated equally with respect to non-displaced citizens¹⁵²”.

International Instruments for the protection of forced migration presents some gap. In fact, it is important to notice and practice a distinction between *de jure* refugees for example, which are defined by Geneva Convention and in this way are granted protection, and *de facto* refugees that are effectively refugees especially asylum seekers whose status is not being recognized yet¹⁵³. Their application is still pending or it has been denied, but are still in the country of arrival and have not been returned to their motherland because of humanitarian reason¹⁵⁴. The 1951 Convention does not mention *de facto* refugees, but still they are in some sense comprehended by it because some provisions are addressed to every refugee who falls under a State jurisdiction or enters in its territory. However is the State of refuge who is responsible for

¹⁴⁹ UNHCR, “Protecting Internally Displaced Persons”, 3.

¹⁵⁰ Ibid.

¹⁵¹ “Guiding Principles on Internal Displacement”

¹⁵² “Guiding Principles on Internal Displacement”.

¹⁵³ De Vido, “Refugees: the International Legal Framework”.

¹⁵⁴ Kugelmann, “Refugees”.

the legalization of the stay and for this reason it is up to its discretion whenever to attribute to *de facto* refugees certain permission. It is true that *de facto* refugees, as the *de jure* refugees enjoy human rights, but those rights do not necessarily grant the right of work and residence into a State. It always falls under the competency of the State of refugee the decision on the conditions of his or her residence and on his or her equipment with rights¹⁵⁵.

Finally, International law do not provide any legal status for *sans-papier* or clandestines who “are persons who have left their home State and live in another State without possessing a formal legal admission of the authorities¹⁵⁶”.

They are part of the category of illegal migration because their entry in a State territory is not regulated or because they stay in the State of arrival for a period of time superior to what is allowed by their visa. Irregular migrants can only enjoy human rights, however they do not claim their rights in case of necessity because they fear expulsion due to their illegal stay.

When *de facto* refugees or clandestines migrate in search for a work opportunity, they may fall under the international labour law, in particular the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

At this point it is fundamentally important to see how European law manages forced migration.

As I have mentioned in the introductory part on European migration law, an important step towards the establishment of a shared and concrete protection of forced migrants was made with The Treaty on the Functioning of the EU. The Treaty has brought harmonisation, has strengthen the Judicial oversight and has given a central role to the European Parliament that is now responsible in law-making from the moment that the asylum matters are now part of the ordinary legislative procedure¹⁵⁷.

Asylum is recognized as a matter of shared responsibilities of EU countries. The central part that the TFEU dedicate to the right of asylum is set at Article 78:

¹⁵⁵ Kugelmann, “Refugees”..

¹⁵⁶ Ibid.

¹⁵⁷ O’Nions, *Asylum – A right denied*, 75.

“Article 78

(ex Articles 63, points 1 and 2, and 64(2) TEC)

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection¹⁵⁸.

As reported in the Article, the European Parliament and the Council require uniformity in the status given to the persons who have been granted international protection¹⁵⁹.

On the 1st of December 2009, with the entry into force of the Treaty of Lisbon, the European Charter of Fundamental Rights became legally binding on the EU institutions

¹⁵⁸ Consolidated version of the Treaty on the Functioning of the European Union, European Union, Lisbon, 2009, Art. 78, available at <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:12012E/TXT>, accessed December 28, 2015.

¹⁵⁹ O’Nions, *Asylum – A right denied*, 75.

and on national governments, just like the EU Treaties themselves¹⁶⁰. The Charter contains both a right to asylum and the prohibition of refoulement:

“Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as ‘the Treaties’)¹⁶¹.

Article 19: Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment¹⁶².

Even if the obligations of the Charter are addressed only to European Institutions, their inclusion represents a very significant step towards the advancements of the refugee protection.

The improvement brought by the Article 78 of the TFEU in the administration of asylum is about creating a shared and harmonised policy rather than one based on particularism, in other words concentrated only on Member States interests as it was in the past. This was made possible with a reduction of the role played by the Council together with an implementation of the one of the European Parliament.

Nevertheless a contradiction is present, because while on one side European Union struggles to find a common European policy on asylum, trying to separate from a previous vision based on the distinction between legal and illegal entry in its territory, it is still deeply blocked in its nature. Although being a Community, EU countries are still separate entities and necessarily need to express their sovereignty. For example in the migration issue, Member States still have great liberty of decision on the entry and expulsion when it comes with non-EU nationals.

¹⁶⁰ EU Charter of Fundamental Rights, European Commission, 2000, available at http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm, accessed December 28, 2015.

¹⁶¹ EU Charter of Fundamental Rights, Art. 18.

¹⁶² EU Charter of Fundamental Rights, Art. 19.

2.2.7. The Dublin regulation

All Member States of the European Union are considered safe places for asylum claim. Based on this principle, the “Dublin machinery”¹⁶³ was born to prevent the movement of asylum seekers within European countries. This principle is in total opposition with the liberal circulation of person and goods sponsored by the Schengen Agreement.

In fact, as all EU Member States are perfectly able to grant security and asylum to every person who seeks it, it is not necessary for this category of migrant to move to a different country. Nevertheless asylum is complicated to obtain.

In 1990, in Dublin, 12 member states of European Union (Belgium, Denmark, Germany, Greece, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, and United Kingdom) signed the Dublin Convention hoping to achieve the goal of harmonizing the politics of asylum and to grant refugees an adequate protection. The Convention was then substituted by the Dublin II Regulation, signed by EU countries in 2003 and then modified in 2013 and nominated Dublin III Regulation¹⁶⁴.

More in detail, the Dublin regulation has the function of regulating the responsibility of EU Member States in the process of asylum seekers request. At first the Dublin Convention was supposed to avoid the accumulation of asylum requests, in fact sometimes asylum seekers, while trying to enter a country, were asking many countries for asylum in this way trying to higher the possibility of having the status granted. This led to complications and to burden the bureaucratic process of asylum analysis.

With the Dublin Convention, the country where an asylum seeker first enters is responsible for registering the asylum application and taking fingerprints¹⁶⁵ which are then registered in the common data bank service called EURODAC¹⁶⁶, a useful service that permits States to verify if a person has already asked for asylum in another state member.

¹⁶³ O’Nions, *Asylum – A right denied*, 99.

¹⁶⁴ Agnese Ananasso, “Rifugiati, cosa prevede il Trattato di Dublino. E perché è contestato”, *La Repubblica*, September 10, 2015, accessed November 16, 2015, http://www.repubblica.it/esteri/2015/09/10/news/il_trattato_di_dublino-122610371/.

¹⁶⁵ Patrick J. Lyons, “Explaining the Rules for Migrants: Borders and Asylum”, *The New York Times*, September 16, 2015, accessed November 16, 2015, http://www.nytimes.com/2015/09/17/world/europe/europe-refugees-migrants-rules.html?_r=0.

¹⁶⁶ Eurodac database system has been operation since 2003 and has proved to be a very successful IT tool to collect fingerprints which are necessary in the asylum claims analysis (European Commission, ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/identification-of-applicants/index_en.htm, accessed November 18, 2015).

Nevertheless there are exceptions concerning family reunification: for example when an asylum seeker is an unaccompanied minor, his or her application must be taken in charge from the Member States where a member of his or her family is legally present. When a family member is not found, the administration of the asylum request must be processed as normal, in other words by the Member State which receives the minor. Concerning adults, asylum request can be examined by the State that has already granted legal asylum protection to a family member.

In addition, the exam of asylum requests coming from different members of the same family but received by the State in different days shall be taken into analysis at the same time¹⁶⁷.

Sometimes countries send back asylum seekers to the first State who had processed the application; this process is called “Dublin transfer”. Migrants who avoid registration and refuse to leave fingerprints represent another problem. This refusal is mostly due to the fact that migrants often do not want to reside in the first country of arrival, but prefer to reach other destinations; this is the case of Italy and Greece. Despite their role as first welcoming Member States, migrants usually prefer to move to Germany or northern Europe and to avoid the risk of staying in temporary detention centres, they try to escape from registration and to achieve asylum request process from the country of preference. However European Union do not consider the possibility for asylum seekers to choose their destination.

The Dublin Regulation III was supposed to increase the efficiency of the system and to provide higher standard of protection for asylum seekers¹⁶⁸ for example the improvement of the sharing of information collected by member states on migrants, individual interview together with a mechanism of warnings and preparation to use in response to critical situation.

Criticism on Dublin Regulation has emerged during the last year. The Regulation is seen as responsible for the worsening of refugees’ conditions. Its application can cause serious delays in the analysis of asylum claims and sometimes it happens that an

¹⁶⁷ Dublin II Regulation (EC) No 343/2003, European Council, February, 2003, summary available at eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l33153, accessed November 16, 2015.

¹⁶⁸ “Who are asylum seekers”, Settlement services international, accessed November 16, 2015, <http://www.ssi.org.au/faqs/refugee-faqs/150-who-are-asylum-seekers>.

asylum claim is never heard. Moreover, the well-spread use of detention centres has created a situation of immobility in the system and migrants are usually far from achieving family reunification. Transfers within states members are too often practiced and integration is rarely possible while migrants are supposed to wait for their application to be analysed in a country with which they might not have any type of connection.

To conclude, the pressure on member states, which represent the external border of European Community, is enormous. Most of the times they cannot provide adequate protection and the administration is slowed by the quantity of asylum claims to be examined. This has led to social and economic problems in these countries, which are now claiming for a European sharing of burden.

2.2.8. CEAS

The negotiations for the creation of a Common European Asylum System started during the EU Council summit in Tampere in 1999¹⁶⁹.

EU Member States wanted to harmonise the administration of the common problematic that arose in the asylum system. Apart from the already well-known problem of the “asylum shopping”, States were gradually perceiving asylum seekers as people gravitating towards countries that were granting more social benefits. For this reason they felt the necessity to reduce the differences between countries on asylum regulation.

Under the CEAS, in 2013, EU countries have agreed on the setting of new common rules concerning high standards and cooperation in the treatment of asylum seekers:

1. The revised Asylum Procedures Directive;
2. The revised Reception Conditions Directive;
3. The revised Qualification Directive;
4. The revised Dublin Regulation
5. The revised Eurodac Regulation

¹⁶⁹ “History of CEAS”, ECRE, accessed January 4, 2016, <http://www.ecre.org/topics/areas-of-work/introduction/194.html>.

1.

The new Asylum Procedures Directive focuses on creating a coherent system in which Member States are supposed to follow the same standard when analysing the application. The decision undertaken by Member States must be as much as efficient and fair as possible. Secondly it addresses to asylum seekers, in fact the Directive sets specific and common rules to apply for asylum. This change is likely to permit acceleration in the examination of the requests. The time for an asylum procedure will be reduced to a maximum of 6 months thanks to a Programme promoted by the Directive that aim to train the decision-makers in order to make them more efficient in the analysis of the different situations.

In addition to the reduction of time, the investments in a better preparation of decision-makers are supposed to result in a spare of money too. Asylum seekers will stay less time in state-sponsored reception and wrong decision will be avoided.

A supplementary help will be given to people in special need. People who experience particular disadvantages for a matter of age, disability, illness, sexual orientation or traumatic experiences, for example, will benefit from support and an extra period time to explain their situation. Moreover, a representative chosen by the national authorities will support unaccompanied children¹⁷⁰.

In parallel with special support and treatment granted to people fleeing a recognized well-founded fear, cases that are not entering this category are dealt with special procedures in order to avoid the risk of lacking attention to the most urgent cases.

Asylum seekers who are rejected can appeal in front of a court, but while in the past this process was rather confused, the new Directive clarifies the rules. In this way it reduces the enormous pressure that was put on the Strasbourg Court of Human Rights, readdressing the cases to specific Courts. This procedure permit as the others a spare of money and is supposed to grant a functional legal tool to migrants who experience this problem.

To support the general scope of the Dublin Regulation, the Directive blocks repetitive application for asylum coming from people who have already been registered as not being in need for protection.

¹⁷⁰ European Commission, "A Common European Asylum System" (EU publication, Belgium, 2014), accessed December 28, 2015. doi:10.2837/65932.

2.

As the name of the Directive suggests, the new Reception Conditions Directive put the attention on the question of having a more harmonised standards of reception conditions in the whole European Union.

To achieve this goal, EU countries must adopt common rules in the management of detention centres. While staying in detention, asylum seekers must be granted of their fundamental human rights; their time of permanence must be as short as possible and it can be even reduced when it interested special migrants such as vulnerable persons and minors who also can benefit from psychological support. Migrants must have free access to legal assistance and information about how to appeal against a detention order. Moreover, when subjected to detention, migrants are entitled to have facilities such as the access to fresh air and the possibility to communicate with lawyers, NGOs and family members.

Finally, a period of 9 months is set as the maximum time of wait for an asylum seeker to have access to employment.

3.

The third Directive that was implemented is the Qualification Directive. In the past, qualification was not much precisely determined, in fact countries analysed asylum claims on very different bases.

The new Directive puts the basis for granting international protection for the achievement of both a more efficient asylum process and the prevention of fraud.

It extends the right of access to employment and healthcare to all the migrants who have been recognized to be beneficiaries of international protection. Secondly it prolonged the duration of residence for person in need of subsidiary protection. Thirdly it takes into consideration other qualitative aspect in the analysis of an application for example if the migrant is a child or gender-related aspects. Finally it improves the access of international protection to rights and integration measures and takes into account the specific difficulties that people who need international protection may face.

4.

The revised Dublin Regulation wants to better deal with critical situation in which asylum seekers play a lot of pressure on certain EU countries and has the purpose of clarify the procedures to grant protection and to implement the efficiency of the whole system.

For example it provides better instrument for the protection of applicant such as interviews, guarantees for minors and extended possibilities to reunify a child with his or her family. It gives the possibility to migrants who have appeal to court against their transfer to suspend it for the duration of the appeal. It provides free legal assistance when requested and bases the detention only when there is the possibility that the immigrant flee to another country illegally, but the detention must be of a reduced time. More protection is given to asylum seekers who are returned home, who can in any case appeal for their transfer. All these new implementation must be granted in a general framework characterised by clarity and uniformity.

The time dedicated to the whole procedure of the Dublin Regulation do not have to last for more than 11 months, while for the process of returnees they should not wait more than 9 months to be returned home, except for the people who are accused of absconding or are imprisoned.

5.

Finally the last renovated Directive interests the Eurodac Regulation. Despite being pretty new, it has to be regulated and implemented. With the new system, fingerprints take less time to be transmitted from a country to the central unit of Eurodac.

The system has been updated with the latest legislation on asylum, but its purposes have enlarged. It is no more dedicated only to the collecting of fingerprints and information about asylum seekers, but it collaborates with national police forces and Europol for the investigation on criminals. This, as it is underlined by the report of the European Commission on CEAS will be used only for the scope of “prevention, detection and investigation of serious crimes and terrorism¹⁷¹”.

Prior to the use of the Eurodac system, authorities are obliged to make a comparison of the fingerprints against the Visa Information System, only when permitted. This system is not part of the routine, but must be used only as a last resort, in other words when all the conditions for access are fulfilled. The data, which are collected by Eurodac, shall not be shared with third countries¹⁷².

Nevertheless the CEAS Programme was criticized because, despite the efforts to harmonize Member States actions, asylum seekers are still seen as a matter of irregular migration that must be limited and controlled.

¹⁷¹ EU Commission, “A Common European Asylum System”.

¹⁷² Ibid.

Although European Union struggle to find a better programme and solutions for the common management of migrations, in particular the category of asylum seekers, some critics emerged on the way these policies are operating.

European Union security and the one of each of its member States has always represented a priority for policy-makers, but this problem was transformed in a real urgency after the 11 September 2001 terrorist attacks in the United States and the 11 March 2004 in Madrid¹⁷³.

A predictable pressure was put on the European Institutions from the citizens of EU countries to take a more effective and common approach to face “cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organised crime, as well as the prevention thereof¹⁷⁴”. Notably in the field of security, the coordination and coherence between the internal and the external dimension has been growing in importance.

¹⁷³ “The Hague Programme: strengthening freedom, security and justice in the European Union”, EU Council, Brussels, December 13, 2004, 3, available at http://ec.europa.eu/home-affairs/doc_centre/docs/hague_programme_en.pdf, accessed December 29, 2015.

¹⁷⁴ Ibid.

Chapter 3

The Refugee Crisis

3.1. Introduction

In the first part of the thesis was presented a general overview of the historical events that have been crucial for the phenomenon of migration together with an explanation of the different categories involved. In addition it represents the legal European and International framework for the actual debate I am going to tackle in this section.

In 2015, Europe has experienced the worst “migration crisis” since Second World War, at least for the numbers involved. The term “migration crisis” started to be widely used during April 2015 after a series of dramatic events that have interested migrants.

I will borrow the term “migration crisis” for the purpose of being more direct in the explanation of the causes and effects of the actual situation, but it will be explained later how this term is politically exploited and the fact that it represents only a little part of the situation.

The areas involved in the crisis are in particular the Middle East (Syria and Iraq), Africa (Eritrea, Niger, Somalia and Sudan), South Asia (Afghanistan and Pakistan) and part of the Western Balkans. People coming from these countries are forced migrants who decide to begin their journey to reach Europe mostly by sea, crossing the Mediterranean Sea routes, both central and eastern, or take the journey through Western Balkan routes.

The Missing Migrant Project, which is a joint initiative of IOM’s Global Migration Data Analysis Centre and Media and Communication Division, provides the number of people who have crossed the European Routes together with the data of the missing people who have lost their lives during their attempt to reach the country.

Only in 2015, the Programme registered 1,003,124 arrivals by sea, of which 3,771 were missing¹⁷⁵.

Syrian people constitute the greatest number involved in the migration towards Europe and they have experienced an escalation since the situation in Syria has dramatically evolved after the mutilated Arab Spring they have lived in 2011. After four years of war, the situation has not made any progresses towards a diplomatic resolution, on the contrary many people are dying every day and the country is almost entirely destructed. Not only Syria is living a tragic part of its history, but the conflicts have unrested in many part of the Middle East and Africa, the most hit countries are: Iraq, Afghanistan, Eritrea, Somalia and Niger.

Why are they coming to Europe? The answer is quite simple, the central Mediterranean Sea route, which connects Libya with Italy, has always represented the more direct way to enter into European territories, in particular for those nationalities coming from countries in which it is not easy to obtain even a tourist visa. Then the routes changed and migrants decided to take their journey using the Easter-Mediterranean Sea route, from Turkey to Greece. The journey is less complicated and less dangerous than the central route. After all, the migrants who attempt to continue the journey were then facilitated in reaching the countries situated in the North of the EU thanks to the removal of the Macedonia's blockade. As a response to the fast changes of the situation, now the Balkan route is the most used way also because it is directly connected with Turkey, first country of entry for people coming not only from Syria, but also from Iraq.

The route has changed also for its characteristic of being less expensive. To reach Greece from Turkey, traversing the sea, it takes less than one our, sometimes even twenty minute are sufficient to make the journey, it depends on the shore of departure. Migrants need to spend less money on smugglers to reach Greek coasts than what they need to make the journey from Libya to Italy. This is one of the causes for the augmentation of the number of migrants: in fact the people who did not have the money to undertake the journey towards Italy, have now the chance to leave for Greece.

¹⁷⁵ "Missing Migrants", IOM, accessed January 5, 2016, http://missingmigrants.iom.int/sites/default/files/infographic/img/Mediterranean_Update_31_December_0.png.

The escalation interested principally the hot months in the summer because the sea routes are safer. During the other seasons the Mediterranean is more likely to be hit by storm and strong wind. However people who decide to take these dangerous journeys are already aware of the difficulties and the risk of losing their lives, but the reason to leave their countries are even worse than what wait them at sea.

Another tragic data recorded by UNICEF is that 1 of 5 migrants is a child. In 2015, 10 per cent of migrants who have reached the Italian shores crossing the central Mediterranean route was represented by children, and the data registered for Greece are even higher: 26 per cent of migrants were children¹⁷⁶. Not only this vulnerable category of migrant is forced to undertake a perilous journey that put at a serious risk their lives, but also they often arrive in Europe as unaccompanied minors and ask for asylum having anybody to represent them, not a family member, nor a guardian.

It was the missing life of a Syrian child, lying on the Turkish beaches near the resort town on Bodrum that put the final pressure on European Community to give a concrete response. The tragic event marked a turning point in our current history, but many others have proceeded. The media have been invaded by images of deaths and desperation which have not only contributed to diffuse an emotional sense of participation in the tragedy by many European citizens and politicians who started calling for a European shared intervention, but had also fuelled nationalisms and a wide spread fear of “being invaded” by thousands of migrants avoiding the proper control. Europe has been divided on how to deal with these two opposing feelings and about the management of the influx and the resettlement of the migrants¹⁷⁷.

The nature of division is not to be considered as the product of the sole refugee crisis, on the contrary, the emergency came as a further breach in an already fragile Union. In fact it is important to consider the fact that the refugee crisis overlapped with the long lasting economic crisis that had already weakened the cohesion between north and south European Countries.

The whole European structure based on political, economic and idealistic cohesion has been put at risk and resulted to be much more fragile than what it seemed.

¹⁷⁶ “Missing Migrants”, IOM.

¹⁷⁷ “Migrant crisis: Migration to Europe explained in graphics”, *BBC News*, last updated January 28, 2016, accessed January 4, 2016, <http://www.bbc.com/news/world-europe-34131911>.

Concerning the economic level, it seems evident that many States entered the Union attracted by the benefits granted by the customs union and by the facilities in the circulation of goods and services, many have also taken a step forward introducing the single currency, the Euro. The attractiveness of these policies represents nowadays the principal incentive also for Turkey to ask for European admission.

Despite the positive aspects, with the passing of time, it appeared how the combination of the different policies adopted by Member States in the Eurozone with the unsuitability of these States' economies in the adjustments to be operated for the common currency resulted in a dramatic crash of the system: Mediterranean States were heavily hit by the economic crisis and were not able to recover with their own resources. As a response, richer and wealthier countries, especially in the North of the EU, appeared to be standing alone and were gradually assuming the role of the leader. Germany played a thankless job in this situation, promoting austerity for the indebted countries like Greece with the production of a rampant sense of dissatisfaction among the population of the country. After a first reduction of the Greek debt, Angela Merkel found a compromise with Minister of German Finance Wolfgang Schäuble who wanted the temporary expulsion of Greece from the Euro for a period of five years. International press denounced the proposal to be the expression of a "violent" Europe. The German leadership was accused to be not comprehensive of Greek population, forced to live with a salary of approximately 200 euro per months, but more concerned on extinguishing the fear that indebted countries would have dragged EU monetary system to a collapse. As a result, Europe appeared divided and gradually less interested in a "share of the burden" created by the economic crisis. Germany soon was painted as the cruel European leader whose interests were not addressed to poor and indebted countries.

Returning to the levels of cohesion, at the political level the sense of a European unity find its bases in the European Council, the European Commission, the EU Parliament and the Court of Justice. The all four administrative bodies have different areas of competencies, but they were instituted to create participation within the Member States in the political and economic decisions concerning the EU. Even though these organs lead to a sense of unity, States detain the most important decisional power. Of course States are bound to duties and responsibilities determined by the Treaties they have signed, but every country preserves their national interest when it comes to the practice. Nevertheless, European intervention as a united political power is called out to respond

to crisis: for example when the refugee crisis reached its maximum the last summer, Member States such as Italy called for a European intervention and asked Brussels to give a concrete European action plan. Even though the plan presented in May by the European Commission tried to give directions to be followed to a better administration of the refugee's burden, we will see how States have responded and, once again, followed national interests rather than a community plan.

Finally, the third level menaced by the crisis is the ideological one. European Union is founded on shared values of human dignity, equality, the respect of the rights of minorities, non-discrimination, tolerance, justice, solidarity and equality between men and women. Sharing these values represents one of the elements required for the admission in the EU contained in the Copenhagen Criteria. However slightly different interpretations are given by States with different cultural traditions and history undermining in this way the homogenous application of these values. Although being them one of the pre-requisites to be part of the Union, these principles are still idealistic to be shared at the same level by all the 28 Member States, in fact differences have emerged in response to the current crisis and are an ulterior weakening of a unified action.

The fragilities that the EU has demonstrated in response to both the crisis it has experienced have led to a general lack of credibility on the European unity both from the inside and from the outside. Fractures and instabilities have unfortunately affected the migration management producing tragic effects at the expenses of the protagonists of the worst refugee crisis in the history of the Union, the refugees.

3.2. The European Agenda on Migration

European political intervention in the management of the influxes of refugees and migrants came late in the history of the whole crisis. In fact, Syrian refugees (just to mention the biggest group of migrants involved in the phenomenon) were already fleeing their motherland in 2013 after two years since the explosion of the Arab spring in the country. Even though the crisis had everyone's eyes on, Europeans were defending their role of observer until the end. When finally the pressure on neighbouring countries became too heavy to be contained within geographical borders, Syrian refugees together with Eritrean, Nigerian and Somalis surpassed the Libyan and Jordan

territories, took the boats and finally reached European shores. As a result, European media started concentrating again on the tragedies in the Mediterranean sea; suddenly the boats transporting thousands of desperate migrants attracted once again the attention of the public opinion and Member States, such as Italy and Greece, for their role of countries of first arrival, started calling for a European intervention.

In reality, Italy has a long history of claims for a more concrete European help in the management of the huge influxes coming to the country, but until 2013, Italian government was considered by the Commission as already benefitting of sufficient European funds to protect its borders and for sea surveillance. In October 2013, under the presidency of Prime Minister Enrico Letta, the Italian government launched the operation *Mare Nostrum* whose action covered a wide area in the Sicily Strait: about 70,000 square Km, three times the Region of Sicily¹⁷⁸ for the scope of maritime security, patrol sea lanes, combat illegal activities, especially human trafficking, and tackle the Mediterranean humanitarian emergency in the Sicily Straits. Unfortunately the operation resulted to be once again insufficient to respond to the entity of the phenomenon in the Mediterranean Sea and was stopped by the Italian Government in October 2014. The suspension of the Italian operation was considered one of the reasons for the reduction in the use of the Central Mediterranean route, but the truth is quite more complicated. The most probable cause for the reduction of entry through this route during the second half of the past year should be found in the deterioration of the situation in Libya¹⁷⁹.

Nevertheless, when Jean-Claude Juncker was elected President of the Commission, the problematic issue of migration and asylum was still on the table of priorities to be tackled and soon he announced that the Commission was working on a competent agenda.

At first the intervention in the Mediterranean Sea was entrusted to the new Triton Operation that was the product of a combined action of 29 European Member States and Frontex Agency. At first the mission was declared not being the real substitute for *Mare Nostrum*: even though the operation involved European actors, the objective was not the one of rescuing lives at sea with a range of intervention extended until Libyan

¹⁷⁸ "Mare Nostrum Operation", Ministero della Difesa, accessed January 26, 2016, <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>.

¹⁷⁹ "15 July 2015, Security Council briefing on the situation in Libya, Special Representative of the Secretary-General for Libya Bernardino Leon", United Nations, accessed January 11, 2016, <http://www.un.org/undpa/speeches-statements/15072015/libya>.

waters, but of border control. *Mare Nostrum* saved more than 140,000 lives since October 2013¹⁸⁰, nevertheless the operation was accused to contribute to the illegal activity of smugglers who were embarking people for cheap journeys that will not last the entire route and then leave the migrants to deal with tragic shipwreck and wait for Italian rescue operations. In addition the costs of the operation was considered too expensive for its purpose. However, as the migration crisis aggravated, President Juncker's agenda established a triplication of the budget disposed for Triton operation but without extending its range and scope.

The critics addressed to *Mare Nostrum* revealed to be wrong: for the first half of the 2015, the number of illegal entries into Italian territory remained high at 91,302 while the numbers of deaths raised¹⁸¹.

Member States seemed to be relatively supporting the changing nature of the mission in Mediterranean waters because Triton was supposed to prevent and intervene in smuggling operation, limiting the rescue operation to the ship individuated near Sicilian coasts. Partnership with African countries were fostered and intensified to prevent migrants to leave motherland and being involved in smuggler's traffic. Even though the evidence was that vessels were gradually reducing in numbers, the reasons were not to be found in the changing nature of the European operation, but as the combination of two causes mentioned above: Libyan instability together with the changing of weather condition. In the firsts months following operation Triton approval, the cold weather discouraged migrants to leave Libya or in general North Africa where they waited until warmer months¹⁸².

During the winter, EU's agenda on migration and asylum went ahead as planned. When weather conditions improved, migrants continued their journey towards European coasts, most of them irregularly. By spring 2015 the numbers of irregular migrants registered hit record highs, but it also brought new fatalities and deaths.

As a consequence, political European leaders were, once again, meeting in Brussels to talk about migration. The tragedies had left the whole Commission shocked, but determined to find rapid and long-lasting solution.

¹⁸⁰ "Mare Nostrum to end – New Frontex operation will not ensure rescue of migrants in international waters", *Ecre Weekly Bulletin*, October 10, 2014, accessed January 11, 2016, <http://ecre.org/component/content/article/70-weekly-bulletin-articles/855-operation-mare-nostrum-to-end-frontex-triton-operation-will-not-ensure-rescue-at-sea-of-migrants-in-international-waters.html>.

¹⁸¹ Jeanne Park, "Europe's Migration Crisis", *Council on Foreign Relations Publications*, September 25, 2015, accessed January 11, 2016, <http://www.cfr.org/migration/europes-migration-crisis/p32874>.

¹⁸² "European Migration Agenda: Quo Vadis?", *Foundation for European Progressive Studies*, July, 2015, accessed January 16, 2016, <http://www.feps-europe.eu/assets/de16c810-82ad-40c9-832d-011fe4b0c48f/feps-policy-brief-migration-agendapdf.pdf>.

In fact, after several months of discussion, the European Commission, proposed the final programme on the migration issue called European Agenda on Migration. The plan was presented the 13th of May 2015 and its aim was to provide immediate measures to respond to the critical situation in the Mediterranean, as well as providing a series of action to be taken in the coming years intended to provide a more efficient management of migrations¹⁸³.

In opposition to a general lack of participation expressed by Member States during the economic crisis and toward the administration of the asylum assessments which had been, until that moment, competency of few Member States as an effect of the Dublin system, the European Commission stated that no Member States should have been left alone in providing actions to this huge migratory pressure, for this purpose the Agenda underlined the importance of collaboration between internal and external policies, Member States, EU institutions, International Organisations, civil societies, local authorities and third countries¹⁸⁴.

The European Action was not supposed to be addressed only in response to the crisis happening at its borders, but it acknowledged the importance of taking provisions to tackle the problem at its source.

The new Presidency realized that in parallel to showing a strong position in the management of the crisis and in the revision of the European migration system, it had to reassure Member States on the security issue. As European Union's priority is of course the one of granting protection to its citizens and to spread a common sense of security and of competency in the management of migration, the Commission focused in a great part on the control of the forced migration inflows to avoid economic migrants (high-skilled workers, researchers and students) to lose confidence in the European migration system and keep on contributing to the development of the country.

In the next part I will follow step by step the Plan proposed in the European Agenda on Migration at first tackling the immediate action and then focusing on future plans.

¹⁸³ "Managing migration better in all aspects: A European Agenda on Migration", European Commission, (press release of the presentation of the European Agenda on Migration, Brussels, May 13, 2015) accessed January 5, 2016, http://europa.eu/rapid/press-release_IP-15-4956_en.htm.

¹⁸⁴ Ibid.

3.2.1. Shifting of priorities in the operation in the Mediterranean Sea

The immediate action proposed by the Commission covers different topics. At first, it wants to provide a concrete response to the tragedies involving the migration in the Mediterranean Sea by triplicating the funds to allocate for Frontex Joint-Operations Triton and Poseidon. In addition, the geographical presence of the Agency will be expanded and Member States will also have to provide ships and aircrafts¹⁸⁵.

These operations are a clear expression of the line followed in the administration of migration at Sea: in fact, tragedies are seen as a product of illegal activities such as smuggling and trafficking that exploit the desperation of migrants to gain money organizing dangerous journeys on board of unstable little boats that are overloaded with thousands of people not being sufficiently equipped with even basic security tools.

As a response, funds will be dedicated to operations to systematically identify, capture and destroy vessels used by smugglers.

This operation will be realised with an implementation of the Europol's information operation JOT MARE¹⁸⁶ that will identify and target smugglers. Europol will also tighten its collaboration with Frontex in the individuation of vessels that are likely to be used for smuggling activities and monitor their movements.

Recently, the role of the Internet has growth in importance for the promotion of smugglers activities through websites and advertisements. For this reason, Europol will also have the responsibility of identifying illegal Internet content used to attract migrants and refugees, and ask for its removal.

On the 18th of May 2015, the Foreign and Defence Ministers gave their consensus to the creation of the EU naval force, EUNAVFOR Med, and launched a Common Security and Defence Policy (CSDP) operation in the Mediterranean¹⁸⁷. EUNAVFOR Med's

¹⁸⁵ A European Agenda on Migration, European Commission COM(2015) 240 final, Brussels, May 13, 2015, available at http://see.ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf, accessed January 5, 2016.

¹⁸⁶ JOT MARE stands for Joint Operational Team (JOT) Mare, which is an operation established by Europol in March 2015. Its scope is to investigate on organised crime groups involved in migrants smuggling by boats across the Mediterranean Sea and directed to Europe and it is also responsible for their later movements (EUROPOL, accessed January 5, 2016, <https://www.europol.europa.eu/content/jot-mare>).

¹⁸⁷ Anita Orav, "First measures of the European Agenda on Migration" (briefing proposed by the European Parliament Research Service, June 17, 2015) accessed January 7, 2016, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/559509/EPRS_BRI\(2015\)559509_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/559509/EPRS_BRI(2015)559509_EN.pdf).

mission is composed by three phases: the first is to collect information on existing smuggling activities and networks and their surveillance; the second consists in searching and diverting vessels in territorial water and in high water. For territorial water action the operations must be anticipated by an authorization given by the UN Security Council or by the State concerned. During the third and final phase vessels and related assets of human smugglers would be destroyed and smugglers apprehended¹⁸⁸.

By discovering smugglers and destroying their networks, the mission hopes to save lives, put at risk by the criminal activities of smugglers.

The command is left to Italy that is supposed to operate in the southern central Mediterranean, in collaboration with Libyan authorities. Although being approved during the meeting between Federica Mogherini (current High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission in the Juncker Presidency) and the Foreign and Defence Ministers, the mission cannot operate in third-countries water, in this case the Libyan inshore waters, unless UN issue a mandate to authorise it.

Even if High Representative Mogherini is confident in the approval of the Security Council, the mission has raised many perplexities in the Meijers Committee¹⁸⁹. For example it is questioned how could the purpose of saving lives at sea still be the priority as all the operations that have succeeded have evolved in other directions. Starting from Italian operation Mare Nostrum, whose competency extended till Libyan waters for a more effectiveness in saving lives, to the operation Triton, more concerned in border control, to the final proposal of the military operation EUNAVFOR Med¹⁹⁰.

Secondly, it is well known how complex and delicate is the environment in which the mission will operate. In fact, it is characterised by the overlapping rules of refugee law, international human rights law, the law of the sea, and international rules on the use of

¹⁸⁸ "Military action against human smugglers: legal questions concerning the EUNAVFOR Med operation", CM1513, available at <http://www.statewatch.org/news/2015/sep/eu-meijers-cttee-eunavfor.pdf>, accessed January 7, 2016.

¹⁸⁹ The Meijers Committee is a unique group of professors, judges, attorneys and academics in Europe, who systematically assess European legislative proposals in the areas of criminal law, migration law, privacy, and discrimination on their conformity with the requirements of a democratic constitutional state. Since its foundation, the Meijers Committee has made a significant contribution to the constitutional quality of European legislation thanks to its early responses and the contacts it maintains with with European legislative assemblies. The Committee's advice is regularly the subject of Parliamentary debate and questions or is frequently incorporated in legislative amendments (Meijers Committee, accessed January 7, 2016, <http://www.commissie-meijers.nl/en/meijers-committee>).

¹⁹⁰ "Military action against human smugglers".

force¹⁹¹. Moreover, Libya is still a country in anarchy, since 2011 Arab Spring, for this reason it is considered by UN a sensible country.

In addition, the Security Council does not gladly authorize the use of force, unless the action is recognized as being necessary to maintain or restore international peace and security, as it is stated at Chapter VII of the UN Charter¹⁹². On this topic, the Meijers Committee do not think that the mission, despite its humanitarian aim, respond to the criteria.

In the past the Security Council has authorized the use of force to stabilize the situation of countries involved in refugees crisis, for example in Iraq, but this operation will prevent and block people who are searching for protection elsewhere, and will not stabilize the situation in their countries of origin. In addition, it is important to note that people are currently obliged to take dangerous journey brought by smugglers, because they have no other secure way to travel. In this sense, the military intervention of EUNAVFOR Med is considered to be destroying the unique possibility for migrants to escape and reach Europe.

The mission has received the green light from UN with 14 positive votes, but before voting the resolution, Russia asked a revision of the text with the intent of excluding the intervention in Libya. For the moment, the mission will be limited to international waters and for this reason it represents a potential problem. For instance the lack of Libyan participation to the mission means not only that the country can oppose to it with the military intervention of the Libyan militia, but also can provoke the reaction of the Islamic State¹⁹³. This will generate an escalation of the conflict with a consequently inevitable involvement of the NATO.

Moreover, IOM worries for the lives of the migrants involved in the smugglers activities stating that they will inevitably be put at risk if the escalation of the military intervention takes the connotations explained above.

The second phase of the operation started on the 7th of October when the Political and security Committee agreed to start the operation consisting in boarding, search, seizure

¹⁹¹ "Military action against human smugglers".

¹⁹² Charter of the United Nations, United Nations, Chapter VII, available at <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>, last, accessed January 7, 2016.

¹⁹³ Orav, "First measures of the European Agenda on Migration".

and diverse suspicious vessels found navigating in high water, all under regulation of international law. The operation was also renamed “Sophia” that is the name of a baby born on a ship participating the operation¹⁹⁴.

The intervention on vessels, smugglers and asylum seekers and refugees on board must be better defined. Concerning vessels for example: the UN Convention on the Law on the Sea (UNCLOS), at Article 87 states that in high seas it must be granted the freedom of navigation. In case of stateless ships or vessels, in other words that have no recognized flag, a ship (in this case the military ship of EUNAVFOR Med’s mission) can operate an inspection of the vessel. However, UNCLOS do not provide any legal jurisdiction on the people who are found on board.

IMO Guidelines¹⁹⁵ defined how to deal with the people at sea especially the importance to do not provide disembarkation of asylum seekers or refugees in countries shores where they can find persecution or where they may fear for their lives. This principle was supported also by the European Court of Human Right in the case Hirsi¹⁹⁶.

Another controversial aspect is the treatment of smugglers: in fact UN Smuggling Protocol at Art 7(8)¹⁹⁷ states that the vessels committed to be used by smugglers activities should be managed with the appropriate measures, intending even the use of force.

However, unlike piracy, there is not a universal criminal jurisdiction under international law that provides indications about how to deal with these criminals.

About this topic, the Committee points out that, although EUNAVFOR Med is executed by military forces, the EU cannot use the measures adopted during wartime. For this

¹⁹⁴ “Timeline - response to migratory pressures”, European Council, available at <http://www.consilium.europa.eu/en/policies/migratory-pressures/history-migratory-pressures/?p=1>, accessed January 8, 2016.

¹⁹⁵ Guidelines on the treatment of the persons rescued at sea, Resolution MSC.167(78), May 20, 2004, Annex 34, available at [http://www.imo.org/en/OurWork/Facilitation/personsrescued/Documents/MSC.167\(78\).pdf](http://www.imo.org/en/OurWork/Facilitation/personsrescued/Documents/MSC.167(78).pdf), accessed January 7, 2016.

¹⁹⁶ In the case Hirsi Jamaa and Others v. Italy, the Court considered the plight of 24 people from Somalia and Eritrea who were among more than 200 people intercepted at sea by Italian authorities in 2009 and forced to return to Libya, their point of departure. The practice violated international obligations to not return individuals to countries where they could be at risk of human rights abuses (Amnesty International <https://www.amnesty.org/en/latest/news/2012/02/italy-historic-european-court-judgment-upholds-migrants-rights/>, accessed January 7, 2016).

¹⁹⁷ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, United Nations General Assembly resolution 55/25, November 15, 2000. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TransnationalOrganizedCrime.aspx>, accessed January 7, 2016.

reason, EU must adopt peacetime regulations and, once captured the smugglers, they should be taken before a judge and be processed on respect of human rights.

3.2.2. The problems of relocation and resettlement

The second step of the Agenda aims at relieving the entity of the pressure exercised by asylum claims. For the first time the Commission adopted the third paragraph of Art. 78 TFEU, which states:

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament¹⁹⁸.

For this purpose, the Commission proposes two programmes: the relocation of a total of 40,000 refugees temporary hosted in Italy and Greece in the other Member States and the resettlement of the people in need of international protection in the European territory.

In this way the Commission wants to ensure an implemented protection for the people who arrive in Europe, and a fair participation of all EU countries.

The criteria for the distribution will consider the respective GDP, size of population, rate of unemployment and also past rates of asylum seekers and refugees present of each country.

To permit a right functioning of this procedure, Italy and Greece must provide effectively controls on the migrants that arrive at their shores. For this purpose the Commission will set a new “Hotspot” approach in which European Asylum Support Office (EASO), an agency of the European Union that plays a key role in the implementation of the Common European Asylum System, together with Frontex and Europol work together to fasten the identification procedure such as the registration of fingerprints of incoming migrants. People who claim for asylum will be immediately readdressed to EASO that will take in charge asylum procedures in this way helping as well to accelerate the whole process.

¹⁹⁸ Art.78.3 TFEU.

Moreover, the Commission will provide an additional emergency funding of 60 million euro to provide also healthcare for migrants in the Member States under particular pressure¹⁹⁹.

This step is not only directed to immediate action, but it represents a blueprint for a solution that is supposed to last in the future. In fact, the plan aims at managing future situation of huge inflows of migrants: Europe has to provide a permanent system in which Member States share the responsibility on the refugees and the asylum seekers issue. The voluntary actions undertaken by Member States previously to the European Agenda proposal will be taken into consideration in the redistribution of the migrants.

Different from the relocation, the programme of resettlement interest migrants who have not arrived in the EU soil yet, but who are recognized as being in need for international protection. To avoid the possibility of those people falling in the illegal traffic of smugglers, the Community will work in collaboration with the UNHCR to have a complete perception of the people who are still waiting to reach European territory and provide them safe travel to reach EU. To transform the operation in an effective one, UNHCR has planned a target of 20,000 resettlement places for the EU per year by the year 2020²⁰⁰.

Even though the resettlement will be operated in respect of the countries' prerequisites declared for the relocation of migrants and be financed by an additional 50 million euro fund, it was not welcomed with a wide spread positivity among EU countries. There is still a huge disparity between Member States who offers a real contribute to resettlement and those who are not giving any contribution nor are financing the operations. In fact, it is not a surprise that States usually do not sustain resettlement as a useful manoeuvre to respond to the crisis even if it would obviously relieve States of first arrival. For this reason migrants remain in detention centres for a period of time superior to the expectancies, stressing the structures which host them to face the problems linked to long lasting permanence. This reticence in using resettlement program is the expression of a policy more concerned on the protection of the integrity of territories. As a consequence returning migrants to their country of origin is seen as a better option than offering them permanent asylum.

¹⁹⁹ "A European Agenda on Migration".

²⁰⁰ Ibid.

The topic of redistribution immediately became the centre of the debate between Members who strongly opposed to the “quota” system, and others who expressed their support for its effort to contribute to solidarity and to a better share of the burden.

It is important to notice that the Agenda welcomes spontaneous proposes coming from States who may be willingly to host more refugees than the numbers determined in the Agenda’s Plan. But the Member States who have demonstrated reticence not only argued against the numbers involved, but also about the criteria used for the distribution. The Agenda is criticized for not being necessarily taking into consideration the particular situation of each Member State, stressing that the rate of unemployment was one of the data that the Commission has not really examined together with the efforts that some countries have demonstrated at border control²⁰¹.

The adoption of the relocation and resettlement scheme follows two different procedures. The first requires a qualified majority vote in the Council to be adopted and the European Parliament has a role only for consultation. Concerning the resettlement, it has been proposed as a recommendation and for this reason it do not have a binding connotation nor it has to be approved by the Council or the European Parliament²⁰².

As I have previously mentioned, the first relocation proposal, which has to be operated in two years time, has a voluntary base and it involves 40,000 migrants in need of international protection, while the resettlement involves 20,000 migrants. The means of “real need of international protection” is explained in the answer/questions provided by the Commission on the Agenda and serves as a measure to grant effective actions to the people in real need. Following Eurostat Data, the migrants who have been for the 75 per cent recognized as being in real need for international protection are Eritrean people and Syrian people²⁰³.

As emergency actions to help states at the borders, the principal aim of the Proposals is to share the burden of Italy and Greece: 24,000 people from Italy will be relocated in the Member States and the other 16,000 will be taken from Greece. The proposal found a slight consensus as it was planned to sustain countries that were mostly afflicted by the crisis. Although the data collected in 2015 by Frontex and UNHCR registered that a

²⁰¹ Orav, “First measures of the European Agenda on Migration”.

²⁰² Ibid.

²⁰³ “First measures under the European Agenda on Migration: Questions and Answers”, European Commission, (fact sheet on the European Agenda on Migration, Brussels, May 27, 2015) available at http://europa.eu/rapid/press-release_MEMO-15-5038_en.htm, accessed January 7, 2016.

great number of refugees changed route and arrived at Greece shores instead of Italian shores, for this reason the division of people to be relocated was criticized to be reflecting 2014 reality rather than the actual situation.

Being in the position of deciding whenever to adopt or not each of the proposals on migration, UK has confirmed that it will not join in the redistribution of migrants. Denmark of course is not tied by the proposals as its role of outsider in the EU policies on migration, but it can still participate on a voluntary base.

Not only Member States exposed their perplexities on the relocation and resettlement plans, but also The European Council on Refugees and Exiles (ECRE) that underlined the fact that the Commission has not taken up what could be the refugees wills.

Refugees are not considered to be the subject of any decision in the relocation process: family reunification is not going to be respected if the system works only on the numbers, in addition the Plan do not consider the fact the migrants may choose to reside in a country with which they feel a certain type of connection or in which they have pre-existing networks.

Although the plan includes a restriction on relocating away from the original Member State of relocation within five years, the migrants can ultimately move to other Member States.

Resettlement scheme was also criticized this time by Amnesty International that sustains that the Plan represents a first step in the right direction, but it accuses Europe to be complaining about relative small numbers compared with the total of migrants involved in this crisis in fact 4 million refugees are produced by Syria only.

In September 2015, the voluntary welcoming process of relocation was implemented by the definite quota system that interested 120,000 more migrants in real need of international protection²⁰⁴. After this ulterior augmentation, Hungary, Czech Republic, Romania and Slovakia raised their voices to protest against the issue and for this reason the provision lacked of unanimity.

Nevertheless President Juncker stated that he would not accept Member States refusal on the relocation Programme and added that unless the quota would be respected, he would provide penalties for those States who opposed to the Plan. This strong position

²⁰⁴ “Il piano di ricollocamento dei migranti va malissimo”, *Il Post*, January 6, 2016, accessed January 8, 2016, <http://www.ilpost.it/2016/01/06/ricollocamento-migranti/>.

did not take into consideration the fact that refugees subjected to the relocation would encounter the possibility to be sent to States who have demonstrated from the very first moments of the Agenda their intent of not accepting relocated migrants and, as a consequence, be forced to experience discrimination and an inadequate treatment.

3.2.3. Collaboration with third Countries

To summarize, the immediate action proposed by the Agenda seems to operate in a sort of naïve way: it wants to distribute the burden created by the huge numbers of refugees arrived at European shores among the Member States and obtain the double effects of protecting the integrity of European territory and saving lives at sea with the use of military action against vessels used for smuggling activities. The first phase demands a level of cohesion that states have already demonstrated being inadequate or simply not interested in pursuing. Concerning the second topic, the military intervention as a tool to preserve the lives of the migrants travelling by Sea raised valid perplexities.

The third step of the European Commission is to push for collaboration with third countries as well. To resolve the immediate crisis and possible future ones it is necessary to intervene in regions of origin or transit of migrants.

The Commission will work in partnership with the European External Action Service (EEAS) together with partner countries in the effort to avoid and prevent dangerous journeys.

The first step will be creating or developing, when already existing, Regional Developments and Protection Programmes in countries of North Africa, Horn of Africa and in the Middle East. This year the Commission promises to save 30 million euro for the promotion of these Programmes, which should be also financed by Member States.

A second step interests information: the Commission sustains that, once obtained a realistic picture of numbers of migrants and of the expected journeys in the countries of origin, the help and the assistance provided to the people in need will be more efficient and concrete. To achieve this goal, it proposes collaboration between EU countries, the International Organisation for Migration (IOM), the UNHCR and Niger authorities to build a centre, located in Niger, which is going to monitor the situation on the field.

Thirdly, border management will be strengthened in countries in which missions of Common Security and Defence are already in charge for example in Niger and Mali.

Finally, the Agenda proposes the ambitious task of achieving stability for fragile countries that are the protagonists of the crisis, for example Syria.

Libya will be encouraged in the setting up of Government of National Unity and the efforts already made in Syria will be implemented and supported with a fund of 3.6. Billion of euro to spend in humanitarian, stabilisation and development assistance inside the country and to help the Syrian refugees who are searching for protection in third countries like Lebanon, Jordan, Turkey and Iraq.

Further discussion on the European intervention on the countries of origin will be made later in this thesis, for the moment it is important to recognize to the Juncker Presidency its efforts in considering that the action on third countries are part of both immediate and future plan.

3.2.4. Future Plans

The problems faced during the crisis revealed not only the different position of EU Member States, but also the deficiencies of the actual European migration policy. As a response, the European Agenda on Migration provides four pillars that are responsible to promote long lasting plans to try to find better solutions for asylum and visa policies. Firstly the Commission underlines in its report that EU countries should follow a harmonised path towards the encouragement of economic migrations that provides important steps in the achievement of a vibrant economy, but also recognizes that this category of migrants is not always separated from the forced migration category. In other words, people who enter the European territory as asylum seekers and respect the criteria to be granted protection and asylum should be then integrated in the society and be treated with the same rights as the other migrants. Discrimination often undermines their possibilities to be employed and for this reason they do not contribute to the economy of the country in which they reside.

Nevertheless to protect legal migration, the Agenda stresses the importance of reducing irregular migration.

The root causes of irregular migration have to be searched at first in the reasons why people decide to move: people are forced to leave because of poverty, persecution, natural disasters or lack of opportunities, as a consequence European intervention should be addressed to these causes in a way that provide the understanding and

acknowledging that they are only point of departure of other critical consequences. Once again, the Commission stresses the importance of preventing forced migrants to fall in the irregular activity of smugglers. Moreover, it considers that once forced migrants arrive in the destination country, being them vulnerable people, are likely to be exploited and for this reason they may enter in the category of irregular migrants.

EU delegations in key countries should, as a consequence, make the migration issue a core of their actions. They will have to report the major developments of migratory flows in the host countries and contribute to the development of cooperation between Europe and the host countries.

Turkey already represents an example of this cooperation. In 2014 Turkish efforts in the management of the refugees crisis and in the prevention of hazardous journey in the Mediterranean Sea was helped by 79 million euro. The Agenda wants to implement Turkey's collaboration through the deployment of a dedicated Frontex liaison officer in the country²⁰⁵.

A part from addressing to long-term root causes in fragile countries, Funds will be implemented for humanitarian action in states where for example refugees and internal displaced persons are experiencing dramatic situation for a period of more than five years.

As it was tackled for the immediate response to the current crisis, European Commission wants to improve the collaboration and cooperation in sharing information about smugglers and traffickers. In this way operations will be sustained both by European intervention and by third countries that are responsible for huge migrants flows. In addition, the Commission underlines another priority in the fight against irregular migration: in fact the threat does not come only from smugglers or from illegal entry, but also from inside the Union. Employers are in fact potential exploiters of vulnerable categories of migrants. The Commission, while pursuing the priority of reaching a better integration into the labour market of legal migrants, proposes the Employers Sanction Directive that will prohibit the employment of people who are not legally staying in the EU.

The European system of return is also a weak point in European migration policy. To avoid the penetration of smugglers also in this procedure, it is necessary for the European Union to work with third countries. Member States should be harmonised in

²⁰⁵ "A European Agenda on Migration".

their operations of return by following the Return Directive, which will be also clarified in its scope and measures by the Return Handbook that gives guidelines for the adoption of the Directive. Considering the past lack of cooperation, the Commission will increase the role of Frontex in the return issue.

The European Commission considers the realistic possibility of being involved in future crisis, for this reason it sustains the importance of establishing models for future operation to save lives at sea. For example, Triton operation but also Frontex operations in general are perceived as a model of successful solidarity and cooperation between member States. Moreover, the Commission underlined also the importance of collaboration with coastguards in the rescue and securitization activities.

However this future plan seems rather insignificant as a European response to further humanitarian crisis of the same entity as the current one and it appears evident how the rescue operations are left to single national administration that have to coordinate the work of coastguards.

3.2.5. Management of borders and the Asylum System

Border management is still not harmonized at the European level, even though new technologies have greatly contributed to the work of different tools used in the administration of migration: for example asylum claims have been better analysed with EURODAC system, and the whole procedures of visa analysis experienced great development and securitization with the Visa Information System and the Schengen Information System. In line with these innovations, the Commission launches the “Smart Borders” initiative. The initiative will increase the efficiency of borders crossing on one hand promoting the entry of *bona fide* third country travellers, on the other preventing the entry for irregular migrants. For monitor the latter, the project aims at having a record of all the movements undertaken by third country nationals²⁰⁶.

Despite having attempted many times to create a common and functional European asylum policy, the system has always presented some weakness in its structure, for example the lack of mutual trust between Member States. Asylum system has in fact been fragmented and not homogeneous in its managements: some States are more permissive than other and for this reason, the discrepancies between different policies

²⁰⁶ “A European Agenda on Migration”.

have brought to the huge phenomenon of “asylum shopping”. Not only, the public opinion is also influenced by this lack of harmonisation and it has often judged this administration as unfair.

To solve these problems, the Agenda proposes more monitoring procedures for States, but also provides more assistance in the analysis of asylum applications given by the EASO. Following the guidance of the Commission, Member States are supposed to adapt their regulations to common standards about the reception conditions and the asylum procedures. Quality indicators will be better defined and simplified and protection will be reinforced, in particular the one of vulnerable category, especially children.

EASO will also concretely play the role of collector of information about origin countries of migrants. In this way Member States can use it to uniform decision on refusing or accepting asylum seekers.

Data collected in 2014 registered that 55 percent of the people who claimed for asylum were considered not adequate.

A part from considering the countries involved in the actual refugee crisis, it is important to consider even the part of asylum seekers who arrive from “safe-origin” countries. In other words people who do not have to present a visa when entering the Union. To separate these cases from the countries that, on the contrary, must present proper documentation, the Commission proposed the Safe Country of Origin provisions of the Asylum Procedure Directive “to support the swift processing of asylum applicants from countries designated as safe²⁰⁷”. Another important aspect consists in readdressing people who do not fit in requisites for asylum claim to countries considered as safe, in other words, where their lives could not be put at risk.

At this point, talking about the revision of the common European asylum system, we immediately think about the Dublin Regulation.

The Dublin Regulation already presented some gap and in 2013, after the revisited Dublin III Regulation, it was still considered not concretely reaching the goal of achieving a common share of the asylum claimers burden. In fact, in 2014, the majority

²⁰⁷ “A European Agenda on Migration”.

of the asylum applications (72 percent) were managed by only five Member States of the whole group of EU countries that adopted the Regulation.

The Commission sees in the help of the EASO a reduction of the burden undertaken by Member States who are the frontline of Europe. Each State must take the fingerprints, but the procedures of identification are probably going to be implemented by EURODAC biometric identifiers such as facial recognition techniques.

The Commission waited for the modification of the Dublin Regulation hoping in the good results of the relocation and resettlement disposition. However the failure of the two programmes urged for the revision of the Regulation that has been suspended in some EU Member States as a response to the refugee crisis.

3.2.6. Sustain voluntary migration

Concerning voluntary migration, the European Commission understands that the country will progressively need for migrants with high work competency, students and researchers. The problem is that, despite having provided the Blue Card Directive, in its two years life only 16,000 cards were emitted and 13,000 were issued by only one Member State²⁰⁸. These data suggest that the Directive must be reviewed and changed to include more protection for entrepreneurs who are willing to invest in Europe together with an improvement of the mobility possible for Blue Card owner within Europe.

More certainties will be given also to people working in the services field who need to come to Europe for a short period of time to provide services to businesses or governments.

Communication will be another task to be improved and to involve every single aspect of economic migration. Starting from establishing a platform of dialogue where business, trade unions and other social partners can exchange information and maximize in this way the benefits of both European migration and the condition of migrants too.

Some portals of communication already exist such as the Europe's Job Mobility Portal or the EU Migration Portal, but they will also have a role in filling the gaps in certain economic sectors that suffer from lack of workers. European Commission also engages in a more comprehensive recognition of qualifications and degrees that represent a real

²⁰⁸ "A European Agenda on Migration".

problem for migrants who achieve a title and then see it denied once arrived in another country.

In 2014, the Commission already proposed a revision of the Visa Code consisting in the insert of a Touring Visa especially designed to encourage tourism and facilitate the visits by professionals. Another goal envisaged by this new Visa was to limit the risk of irregular migration.

Always talking about the Visa, the Commission wants to look through the list of countries that must provide a Visa when entering the Union considering the possibility to suspend some Visa requirements for some countries, if the country in question will agree on the reciprocity of the action. In parallel some countries that are not present in the list may be considered to enter.

Integration is another important aspect tackled in the evaluation of a new policy on legal migration. The purpose of the Commission is to allocate 20 percent of the European Social Fund to integration of migrants, especially asylum seekers, refugees, but more in detail to children. The fund will be used to provide language course, a better access to services, professionals training for achieving work competencies and also to promote campaigns to make EU countries, migrants and also countries of origin aware of the importance of integration.

The development of countries of origin is also an important task in the EU legal migration policy. To pursue this issue, the United Nation will shortly adopt the Sustainable Development Goals (SDGs)²⁰⁹ that are going to promote an overall enhancement of the opportunities to work, especially for young people and of social protection in the home of many migrants.

European action will also consists in funds to be spent for improving mobility between origin countries and also to avoid exploitation of workers. Mobility should also be facilitated for remittances that are a useful way in which Europe can improve the sustainability of countries of origin.

²⁰⁹ "A European Agenda on Migration".

3.3. Economic migrant or refugee?

After having examined the whole plan proposed in the European Agenda on Migration, it is important to make some further consideration, for example the fact that the Agenda repeatedly stress on the importance of categorizing the protagonists of the phenomenon, in other words it tries to put order in the various categories of migration. In fact, the Agenda plans different provisions for regular and irregular migration, but more importantly it focuses on the clear separation between economic migrant and refugee. This kind of classification has led Member States to act in a slightly insensible and drastic way sometimes lacking the sensibility and a comprehensive view of the whole situation concerning these two types of migration.

In fact to separate economic migrants from refugee, States have to go back to the basic principles that define the reasons why people decide to migrate and what they will look for once arrived in the country of preference, the so called push and pull factors.

The push factors that may lead migrants to begin their journey can be different depending on the internal situation, but sometimes they may change with the passing of time. Considering the critical and unstable situation in the regions responsible for the biggest migrants flows, it is very complicated to create a concrete separation between people who escape from persecution and war, and people who search for better opportunities outside. Moreover, sometimes people who look for a better life in EU soil is escaping from a country that has been destroyed by war.

The whole European Migration policy has concentrated on two basic principles: protecting the people who are recognized as being in need of international protection (following the definitions and respective Articles) of the 1951 UN Convention, and promoting the economic migration that may represent an opportunity of development for the Union. In a situation in which economic migrants, mostly unskilled, and refugees are mixed together and both claim for protection, the EU is responding as it has always done. Returning policies wait people who are not recognized as being refugees and relocation and resettlement for people who escape conflicts and persecution.

In reality, even if refugees seem to be entitled of a higher level of protection, they often see their opportunity to find protection undermined by the other categories of migrants. Moreover, States usually claim that as refugees are recognized as people being in search for protection, they should remain in the first country of arrival and not try to reach other States. The fact that they do not want to stop at countries like Lebanon or

Turkey can lead to think that they are more than refugees, but also economic migrants attracted by countries who benefit from a higher welfare States. This analysis may cover the truth behind refugees' decision to ask for asylum in other countries of preference: in fact, people who flee their country are not considering the good economic resources as a priority, but what influences their decision the most are the political manoeuvres that a State takes in response to the crisis. Nowadays the improvement of internet and networks providing information are also used by refugees who can, in this way, be informed of the latest news on migration policies and as a consequence chose the state that correspond to their needs. For example, as Germany decided to do not put a limit on Syrian refugees' reception, people who were not directing to the country decided to change their destination²¹⁰.

The debate about "refugee or economic migrant" involves many other considerations. For example the fact that civil wars do not usually involve the countries in their whole territory, this means that when someone escapes from a "safe" part of the country but as a consequence of the lack of job opportunities or after having lost job for the effects of the war, States are asked to respond to this problematic question: is the migrant a refugee or an economic migrant? Considering the real routes of his motivations, in other words the war, can lead countries to consider he or she being a refugee. On the contrary, considering his or her provenience, a safe area in which he or she has lost work opportunity, may convince countries of arrival on the economic nature of his or her migration.

The same problem of recognition is when a person escapes from a poor country where people are being discriminated and persecuted for religion, sexuality and so on even not being the subject of these persecution: is he or she a refugee or a migrant?²¹¹

Countries of arrival have always been obsessed with the importance of this distinction, but the status of emergency declared by the EU has probably intensified the necessity of operating such a separation.

²¹⁰ Lizzie Dearden, "Refugee crisis: 'Economic migrants' and asylum seekers are coming to Europe for the same reasons, report says", *Independent*, December 29, 2015, accessed January 11, 2016, <http://www.independent.co.uk/news/world/europe/refugee-crisis-economic-migrants-and-refugees-are-coming-to-europe-for-the-same-reasons-report-says-a6779616.html>.

²¹¹ Richard Spencer, "What is the difference between a refugee, a migrant and an asylum seeker?", *The Telegraph*, September 22, 2015, accessed January 11, 2016, <http://www.telegraph.co.uk/news/worldnews/europe/eu/11883027/What-is-the-difference-between-a-refugee-a-migrant-and-an-asylum-seeker.html>.

What is perhaps evident is the fact that while being busy to do this type of classification, States are missing some crucial information of the whole issue. It is obvious that people who arrive at European frontline States and then continue their journey have the economic resources to do so, in fact, smugglers activities have been denounced by migrants themselves to be quite expensive: migrants spend from 2,000 to 6,000 euros to pay their journey and sometimes the money have been collected by all the family members of a migrant. Despite the high costs of the journey, the fact that most of the migrants do not leave with their whole family, but usually leave great part of their family behind, is the product of an underestimate decision: a migrant or a refugee leaves for reason of persecution or poverty, but also try to find better life perspective outside his or her country to provide the family the resources to grant it a better life and to avoid other members to leave and face the same dangerous journey as he or she has already experienced. For this reason the fact that a migrant looks for economic opportunities once arrived in a European countries should not be a source of discrimination in his or her evaluation, because it represent one of the strongest factor that contribute to countries of origin stability and to the reduction of people migrating. In fact, when a migrant or a refugee is integrated in the new society and is granted the opportunity to work, he or she can use the system of remittances to send money back to the family and this mechanism represents one of the real solution to tackle origin countries problem²¹².

It is not by returning economic migrants to their State of origin that EU will successfully resolve their problem at home. Migrants will turn to other solution, maybe other family members will try to leave and take the journey to Europe, hoping in a better luck.

In June, when the EU countries expressed their opinion on the “quota system”, the Italian Prime Minister Matteo Renzi stated that Italy would be receiving refugees. Italian Regions were asked to collaborate in this operation while also contributing in the return of the economic migrants²¹³.

The contradiction emerges when considering the composition of nationalities of the migrants who disembark into Italian territory: the majority of them are Eritrean, Nigerian

²¹² Georgia Cole, “It makes no sense to separate refugees from economic migrants”, *Independent*, October 8, 2015, accessed January 11, 2016, <http://www.independent.co.uk/voices/it-makes-no-sense-to-separate-refugees-from-economic-migrants-a6685911.html>.

²¹³ “Renzi, accogliere solo chi chiede asiloTusk: «Sulle quote non c'è consenso»”, *Il Corriere della Sera*, June 25, 2015, accessed January 11, 2016, http://www.corriere.it/politica/15_giugno_25/renzi-richiedenti-asilo-si-accolgono-migranti-motivi-economici-vengano-rimpatriati-ed8329ec-1b0d-11e5-8694-6806f55cfc9e.shtml.

and in general people coming from the sub-Saharan Africa. Syrian refugees are not searching for asylum in Italy, while people from African countries are more likely to settle there to find a job because the conditions that they find in the country are already greater than what they left at home. The countries that are responsible for the majority of the Italian influxes are for example former Italian colonies such as Eritrea and Somalia ruled by decades of dictatorship and violent government that suppresses their opponents and deprive their population of any liberty. For this reason, it seems quite simplistic to categorize them as economic migrants because their motivation to leave their motherland can be the product of both economic and political reasons.

To conclude, Germany decision to accept countless Syrian refugees provoked immediate reaction in the migrants too: many of whom have created false identity cards pretending to be Syrian, others loose their passports or documentation on purpose thinking they could have more chance in reaching Germany or other EU countries. In this context it seems evident how political decision and the strict controls over the two categories is going in an alarming direction, the one of discrimination. The question is: why some nationalities seems deserving a better treatment than others? People classified as economic migrants are often escaping from countries that have been previously destroyed by the war, most of the time involving European or in general foreign military intervention, but as these people are escaping from a country which is not at war at the moment or in which people are not suffering for persecution, they will never see their asylum claim granted. Moreover, the importance of Syrian civil war and the criminal intervention of ISIS is seen as a matter of urgency because the Middle East has always raised an economic and political interest that is superior than other areas situated in Africa for example or simply for a matter of "timing": the nature of instability in Africa is simply too old to be the subject of immediate action by European powers.

3.4. The responses to the Agenda

On the 7th of January 2016, the European Commission published a table with the results of the Agenda and the data about relocation showed a very bad response: only 272 migrants of the 160,000 planned have been relocated from Italy and Greece to the other Member States. The number represents only the 0,17 percent of the established

quota, and only the 0,03 of the total number of 1,008,616 migrants who have arrived in Europe in 2015²¹⁴.

Nineteen countries that were bound to the provision of relocation have not accepted any migrants. Finland received 111, Sweden 39, Luxembourg 30, Portugal 24, Germany 21, France 19, Spain 18, Belgium 6 and Lithuania 6²¹⁵.

In September, the Commission also decided to help frontline countries in border security by sending agents from other Member States. Although Hungary was the principal supporter of this manoeuvre, it sent only 4 agents. France is the country that most participated to this operation by sending 59 agents in total²¹⁶.

The reaction of migrants was not following the expectancies of the Agenda too, in fact many people did not wait in the countries of first arrival because they fear the relocation will not suit their expectations and for this reason they fell within the illegal migration channels to reach other countries alone, escaping from the European Programme.

This lack of participation among Member States is also the product of the escalation of nationalist parties in many countries and the wide spread fear of the Islamic terrorism have lead to a general scepticism of Europe being really able to implement the asylum system and the immigration reforms²¹⁷.

In this section I will analyse the responses of some of the Member States trying to underline how the changing of routes undertaken by migrants together with the proposals of the European Agenda affected them. Greece and Italy are not the sole countries to be considered of first arrival, on the contrary as I have mentioned above, the shifting migratory patterns over the past two years have contributed to the involvement of Hungary as the first country responsible for the asylum seekers travelling to reach Western countries, most of them travelling illegally.

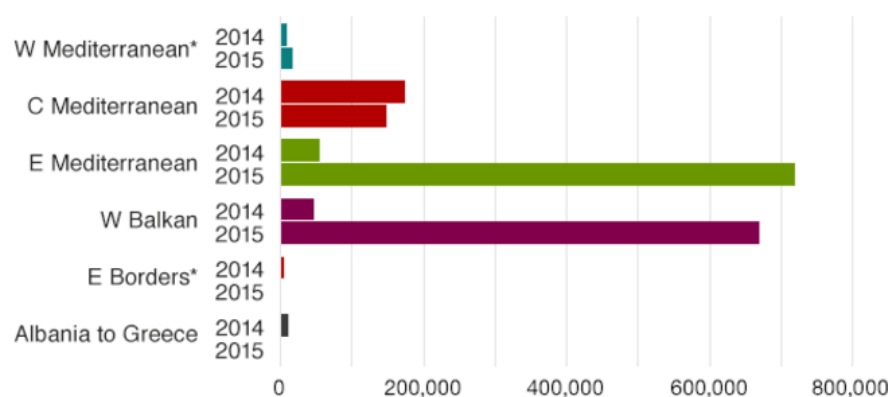
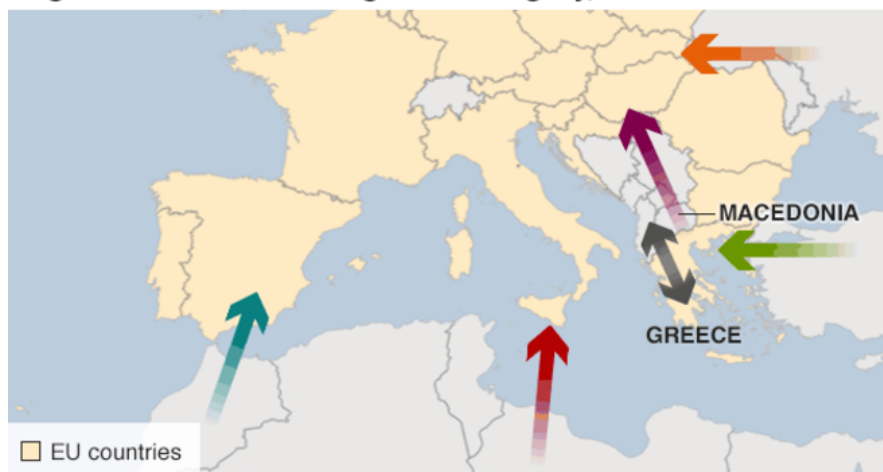
²¹⁴ "Il piano di ricollocamento dei migranti va malissimo".

²¹⁵ "Member States support to Emergency Relocation Mechanism", available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf, accessed January 8, 2016.

²¹⁶ Ibid.

²¹⁷ Park, "Europe's Migration Crisis".

Migrants detected entering the EU illegally, Jan-Nov 2015



*Figures for Jan to Oct 2015

Source: Frontex

BBC

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The image shows the principal routes taken by migrants and the numbers involved.

The data that immediately attract the attention are the one concerning the Eastern Mediterranean, which involves the passage between Turkey and Greece, and the Balkan routes from Greece to the Balkan bloc. Those two routes have experienced an escalation in numbers of migrants involved in a relatively short period, in fact in one year the number have increased from approximately 50,000 to more than 600,000 people.

As I have previously mentioned, also the route interesting the Central Mediterranean passage connecting Libya with Italian coasts has experienced changes becoming less frequently used. This route was definitely the most trafficked to reach Europe in 2014: Frontex reported more than 170,000 illegal border crossing into Italy²¹⁹.

²¹⁸ Image taken from "Migrant crisis", *BBC News*.

²¹⁹ Park, "Europe's Migration Crisis".

With the worsening of the situation in both Libya and other third countries of first arrival like Lebanon, Jordan and Turkey, it came natural for migrants to advance to European countries. The first that they encounter following the Eastern Mediterranean route is Greece.

As a consequence, the country has become once again, after the big illegal inflows registered in 2012, a central point for migration. Frontex reported that in the first half of 2015, 132,240 people entered illegally the country²²⁰.

Syrians and Afghans have contributed to the largest number of people involved in the journey from Turkey to Greece (primarily to the Greek islands of Kos, Chios, Lesbos, and Samos) in the first seven months of 2015²²¹.

Unfortunately the country must face the refugee crisis after having experienced six years of economic crisis. Greek Prime Minister Alexis Tsipras stated that Greece could not respond to the huge numbers of people reaching its shores alone and asked European's help²²².

On October 25, an emergency summit was held in Brussels and eleven EU countries joined to discuss on the Balkan Route. One of the decisions taken during the meeting was to give a monetary help to Greece to be spent in the next four months for the construction of temporary shelters for refugees²²³. As a response, Greece engaged, with the help of UNHCR, in temporary hosting 50,000 refugees waiting for relocation in other European countries.

Despite the positive humanitarian efforts spent by Greece to respond to the emergency, the country found itself not sufficiently prepared to respond to the huge pressure. In fact Greece was barely standing on its feet after the strenuous experience of the economic crisis that had left a huge part of the population in serious condition of poverty and with a wide spread feeling of euro scepticism. To worsen the situation, Greek Prime Minister accused Europe to be failing in the management of the crisis and complained on European Countries being more concerned on their protection rather than on the one of people in need.

²²⁰ Park, "Europe's Migration Crisis".

²²¹ Ibid.

²²² "Immigrant flow to Greece is beyond what we can handle – Alexis Tsipras", *The Guardian*, August 7, 2015, accessed January 11, 2016, <http://www.theguardian.com/world/2015/aug/07/immigrant-flow-to-greece-is-beyond-what-we-can-handle-alexis-tsipras>.

²²³ "Tsipras 'ashamed' of Europe's handling of refugee crisis", *Press TV*, October 30, 2015, accessed January 11, 2016, <http://217.218.67.231/Detail/2015/10/30/435600/Greece-EU-Tsipras-refugee-crisis>.

The image of the little child whose life was taken by the Aegean Sea that had shocked the whole Union was the purpose of Prime Minister Tsipras's discourse against European actions: "I feel shamed as a member of this European leadership, both for the inability of Europe in dealing with this human drama, and for the level of debate at a senior level, where one is passing the buck to the other²²⁴", and added "these are hypocritical, crocodile tears which are being shed for the dead children on the shores of the Aegean. Dead children always incite sorrow, but what about the children that are alive who come in thousands and are stacked on the streets? Nobody likes them²²⁵".

More restrictive countries such as Germany, Hungary, Slovenia and Poland defended their position and criticized the work of Greece as being not exhaustively efficient in the control of migrants. Greece is accused of having failed to register people, to prepare checkpoints for refugees and irregular migrants at so-called hotspots on time, and to relocate as many refugees as it promised to²²⁶. Nevertheless the situation is quite more complicated: Athens accused they did not receive the help promised during the Emergency summit on the Balkan route. Not only the Country has received less Eurodac machines for taking fingerprints than expected, in addition Frontex help was supposed to be composed by 775 board guards furnished by EU Member States and Schengen participants, but by October 2015 only 291 were operating in the country and only 133 more joined them in November²²⁷. Despite Frontex desperate call for a more incisive European cooperation, it appears once again that the programme lacks of participation among Member States.

Perhaps Greece took the most significant distance from the line followed by the European Union by refusing to let to Frontex Agency the control of its border with Balkan countries. The administration of Frontex was meant to operate like a filter for the migrants who take the route to the Balkans. The filtration bases on nationality, something that not only is considered illegal by European and international standards but that will also transform Greece in a transit country where people considered adequate can continue their journey, while for all the others wait a block.

²²⁴ "Tsipras 'ashamed' of Europe's handling of refugee crisis"

²²⁵ Ibid.

²²⁶ Apostolis Fotiadis, "Kicking Greece out of Schengen won't stop the refugee crisis", *The Guardian*, December 2, 2015, accessed January 11, 2016, <http://www.theguardian.com/commentisfree/2015/dec/02/refugee-crisis--greece-schengen-europe-border-controls>.

²²⁷ Ibid.

As a consequence for the refusal, Europe menaced Greece to push it outside the Schengen Area, in this way trying to forcibly stop part of the inflows. But, it seems evident that this manoeuvre will not turn into a reduction of irregular migration, in fact people involved in the crisis are not travelling by trains or airplanes, but most of them are trying to cross borders on foot or by other ways that escape from ordinary controls. For this reason the suspension of Schengen for Greece will only undermine its economic resources from the moment that the country main activity is tourism; such manoeuvre will inevitably translate in a clear cut of the already unstable link that connects the country with Europe.

In a situation in which Greece menaces once again the credibility of the Union and European countries struggle to find cohesion in the adoption of the new Agenda, Germany played its part and once again Chancellor Angela Merkel defended its position of unquestionable leader trying to give example to its European partners: she stopped the Dublin regulation for all Syrian refugees and declared that Germany was not putting a limit on the number of Syrian refugees in search for protection in its territory.

The plan, which expected 200,000 asylum claims, had to deal, only in 2015, with a reality of 800,000 assessments. For this reason, Germany is the country that most strongly supports the quota system. German government argued that it is not only the responsibility of one country to deal with the crisis, but that the relatively welcoming German policy wanted to be an example for the other Western countries that have the possibility to take into their territories great numbers of refugees.

As a matter of fact Germany is the first preferred destination for migration, it is second only to United States and this is the product of a series of historical and demographical changes.

In fact, historically speaking, the country has often shifted from a restricted immigration policy towards more permissive regulations: during the fifties, Germany benefitted from the economic boom that permitted the country to adopt favourable conditions to foreign workers migrants who were employed in the industries responding to the need of an empowered production, the so called *gastarbeiter*.

In the sixties, to stop the great inflows of migrants, more restrictive policies were adopted and continued also as a consequence of the oil crisis²²⁸.

In 2013 Germany adopted the common European migration policies, in particular the Blue Card and all the facilities to permit a type of migration involving high-level workers, researchers and students.

Integration is still a debated issue, but Germany need to go further in favouring the entrance of foreign, young workers because the country is third only to Italy and Japan for the ageing of the population. In fact, Germany suffers not only from a relative old population, but also from the lowest birth rate in Europe.

Of course the manoeuvre taken by the Chancellor must not be seen as a simple generous act, but it is in fact quite selective and discriminating, moreover it is the product of a wider plan to sustain European Union credibility.

Angela Merkel has reported that, even though the country will be open for refugees, all other migrants entering illegally or coming from countries that are not Syria will not benefit of the same treatment, on the contrary they will be returned to the country of departure and banned to a second attempt to enter German territory.

Despite Syrian refugees being the most numerous migrants attempting to reach the country, Germany appeared to be a real calculating country. In fact, Syrian people are welcomed because they are in general richer than the other migrants who try to reach Northern Europe. As a consequence, Syrian refugees usually arrive more quickly than the others because they have the possibility to pay smugglers or they are able to take faster means of transport. Moreover, the Syrian population on the move is composed mainly by students, high-skilled workers and researchers. All these figures are what Germany needs to push its economy and to solve the problem of the ageing of its population. In conclusion, many Syrian migrants already have a sponsor in Germany who can help the newcomers to better integrate in the society and in the working field.

However the attitude expressed by Angela Merkel was considered quite out of character by many newspapers and policy makers: one week before opening the borders to Syrian refugees she was telling to a little Pakistani girl that she was not likely to see her permission of residing in Germany prolonged. She shifted from playing the part of the severe defender of rules and austerity (during the Greek crisis) to the warm-

²²⁸ "L'immigrazione selettiva della Germania", *Il Post*, August 12, 2014, accessed January 14, 2016, <http://www.ilpost.it/2014/08/12/immigrazione-germania/>.

hearted defender of the Syrian people. In reality her decision aimed also at rising up again the image of her country that had been partly ruined by its role during the Greek debt crisis and also the credibility of European Union in general. Representing the most successful leadership in the history of the whole Union, if she would not have given a concrete and strong response to the migration crisis, nobody would have done it at the expenses of the detriment of the entire Unity.

Migrants who are not stopped at Greek borders head to Hungary, the first European Country they find after Greece being part of the Schengen Agreement.

During the months of July until November 2015, the pressure of migrants' inflows pushed transit countries like Macedonia to build up fences to stop the huge fluxes and to control illegal entry. The tension grew at these borders until the country decided to adopt restrictive manoeuvres only for economic migrants. Once again an operation of classification was put in place and refugees coming from war zones like Syrian, Afghans and Iraqis were granted the permission to pass, while for the other nationalities the block forced them to wait for weeks at the borders.

Between the people who managed to arrive in Hungary from January to July 2015, Frontex reported 102,342 cases of undocumented migrants²²⁹.

A general sense of insecurity spread through the country, and public opinion surveys report that the majority of Hungarian people will gladly do not allow even asylum seekers enter. As a response the Hungarian's parliament passed a series of laws to control the flow of migrants. The provisions consisted in tightening the borders control giving more power to the police officers to not only check people, but also provide punishments and arrest people caught in illegal border crossing.

Hungarian police forces have been building a razor-wire fence along the border with Serbia that has now extended to Croatian border too to stop the inflows, in this way leaving all the pressure to the neighbour countries that, as a response tried to fasten the passage of migrants to Hungary²³⁰. Migrants accused to be part of a cruel game between those countries that are just passing the problematic ball one another. Serbia

²²⁹ Park, "Europe's Migration Crisis".

²³⁰ Harriet Salem, "Razor Wire, Soldiers, and Mud: Hungary Is Sealing Itself Off From Europe's Migrants", *Vice News*, September 29, 2015, accessed January 13, 2016, <http://news.vice.com/article/razor-wire-soldiers-and-mud-hungary-is-sealing-itself-off-europes-migrant-route>.

and Croatia justify themselves saying that migrants are not planning to remain in their territories, on the contrary they are just passing by as an obligated route towards EU countries like Austria or Germany, for this reason they have been trying to provide fast and free trip with public transports for migrants to reach the Hungarian border, where, unfortunately wait them only fences and military border control. Despite the new laws provide stricter penalties for those people who try to cross or damage the fence, the government kept possible for asylum seekers to present their claim at the border. The request is then taken in charge by competent authorities.

Prime Minister Viktor Orban, belonging to the right-wing party, has taken controversial action: he has protested against the quota system from the beginning but also asked Brussels for a more effective help to tackle the huge inflows involving his country. However he has always remained attached to his reticence about accepting non-Christian migrants in Hungarian territory.

In fact, it is also on the religious issue that Europe appears to be fragile in its unity. The whole Eastern bloc have expressed his will to grant protection for the minorities of Christian people who undertake the journey and ask for asylum in their territory, while for the majority of Muslims refugees and migrants, the countries have started repulsive policies. Slogans to discourage Muslims to enter Balkan territories have been largely used, despite the accuses they have collected of being racist and discriminatory.

Slovakia is justifying its policy arguing that the country do not dispose of any Mosques to welcome Muslim, moreover they accused migrants of demonstrating no disposition to live in the country:

“In Slovakia, we have a really tiny community of Muslim people. We even don't have mosques. That's the reason we want to choose people who really want to start a new life in Slovakia. And Slovakia, as a Christian country, can really help Christians from Syria to find a new home in Slovakia²³¹”.

Said Slovakian interior Minister to EUobserver on the 20th of August.

The truth is that the reaction to the refugee crisis involving them and to the measures of relocation proposed by the EU Commission is a product of their internal political

²³¹ Andrew Rettman, “EU states favour Christian migrants from Middle East”, *Euobserver*, August 21, 2015, accessed January 13, 2016, <http://euobserver.com/justice/129938>.

composition. The response was in fact a mix of reactions from powerful far-right movements, nationalism, racial and religious prejudices as well as posing the economic arguments that they are not as able as their neighbour rich countries to support the pressure of receiving so many migrants²³².

The requisites that former Communist countries have been asked by European Union to join the Community were the same as for the other Member States: the support of the same values, collaboration for an open market, a transparent government, the respect of an independent media, open borders, cultural diversity, protection of minorities and the rejection xenophobia. It is evident how these requisites revealed too difficult to respect for the former communist bloc.

Oligarchs, cronyism and endemic corruption remain a part of daily life in many of the countries, freedom of the press is in decline while rising nationalism and populist political movements have stirred anti-immigrant tensions²³³.

“This refugee flow has outraged the right wing,” said Kenneth Roth, executive director of Human Rights Watch. “If you scratch the surface, why are they so upset? It’s not about jobs or the ability to manage them or social welfare. What it is really about is that they are Muslim²³⁴.”

Compared to Western Europe, whose States have become more and more multi-ethnic in their demographic composition and have a long history of accepting immigrants coming from different countries and cultures, former Communist states find difficulties in managing huge inflows of migrants and in their integration. Their composition is quite homogeneous; Poland’s population for instance is composed by 98 percent of white people and 94 percent of the total is Catholic²³⁵.

Nationalist parties are more likely to take control of a homogeneous country where the “foreign” people are only an irrelevant percentage. In fact the countries have strongly contested the policy adopted in Brussels and have put pressure on the Union’s headquarter to provide a better policy in defence of their own security.

²³² Rick Lyman, “Eastern Bloc’s Resistance to Refugees Highlights Europe’s Cultural and Political Divisions”, *The New York Times*, September 12, 2015, accessed January 13, 2016, http://www.nytimes.com/2015/09/13/world/europe/eastern-europe-migrant-refugee-crisis.html?_r=1.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Lyman, “Eastern Bloc’s Resistance”.

Balkan countries are also experiencing a wide spread sense of frustration for the detriment of their economy after the fall of the Communist regime. They still feel like they are the poorest one deserving helps and they accuse the refugees to come into their territory asking for the economic resources that are not sufficient even to satisfy the need of their nationals. This feeling of dissatisfaction lead people to think that they are not supposed to help people suffering because they have for a long time been playing that part and now it is not easy to accept that there can be populations who are needing their help, as Csaba Szaló, professor of sociology at Masaryk University in Brno said²³⁶.

In addition the region finds it very difficult to accept people who come from very different cultures. Not only it is difficult, but also the will to put efforts in this operation is quite weak. People do not know how to react to the crisis because they do not have the right structures to welcome migrants, moreover they do not have a solid social system to provide integration, nor they want to create one. It comes easier for countries like France, UK or Italy to provide help as they have longer histories of receiving migrants.

Even though illustrating the social and political framework in which Balkan countries operate can better explain the public opinion reaction and the pressure that Hungary is putting on Brussels, it do not clarify how is it possible for Member States to build fences along the borders.

In fact, as it was pointed out by Amnesty International, Hungary is violating International law and human rights in its management of the inflows.

The money spent by the Hungarian government for receiving asylum seekers are three times less than what it has spent for building the barrier around its borders. Amnesty International declared, in its briefing called “Fenced out” that: “more than 100 million euros were spent on razor-wire fencing and border controls to keep refugees and migrants out²³⁷”.

The images showed by media in October were alarming: people were casted at the main train station of Budapest blocked in their journey to Northern EU countries.

²³⁶ Lyman, “Eastern Bloc’s Resistance”.

²³⁷ “Hungary: EU must formally warn Hungary over refugee crisis violations”, Amnesty International, October 8, 2015, accessed January 13, 2016, <http://www.amnesty.org/en/latest/news/2015/10/hungary-eu-must-formally-warn-hungary-over-refugee-crisis-violations/>.

In addition to ask clarification to the Hungarian government about the policy undertaken to deal with migrants, Amnesty International add that the Union should take action to prevent ulterior violation of basic human rights which are constantly denounced of being violated at the borders: military action to stop the inflows include tear gas and water cannons at crowds of migrants. Moreover, discrimination of religion opposed to one of the basic principle of the EU. Hungary is gradually isolating itself from Europe and from the crisis at the wholesale expense of the respect for human rights.

Even though public opinion easily divides between “good” and “bad” countries’ responses to the migration crisis, the truth is that the Agenda on migration do not specify how States should be limited in their operation. In fact, they are gradually choosing to act in the best way they think it may grant their security. Hungary together with Slovenia and Croatia have probably taken the most drastic measures by building fences at their borders, but northern countries like Germany or Sweden are just taking advantages of this situation. In fact, fences are blocking a huge number of irregular and economic migrants who are travelling to reach Northern Europe, for this reason governments are not taking concrete action to stop this inhuman operation.

Syrian refugees who do not stop at Germany, usually ask for asylum in the United Kingdom often because English is considered as a second language for Syrian people and for this reason they feel as having more opportunities of integration inside the country. However, UK has decided to do not participate to the programme of relocation supporting its decision with the numbers of migrants already present in the country. In fact UK has already registered 330,000 migrants in 2014 and the perspective of incentivising and receiving more is inevitably supposed to raise the protests of the right oriented press. The truth that should be disclosed about these data is that the number corresponds principally to the people travelling from EU countries towards the UK, in this sense the majority belongs to a category of migrant who can move freely in search for job opportunity. In fact, only 25,000 were registered as being refugees²³⁸.

As Germany has represented the moral pioneer in receiving Syrian refugees, Prime Minister David Cameron sustained his manoeuvre stating that UK will not support

²³⁸ Gwynne Dyer, “La crisi dei profughi è solo all’inizio”, *Internazionale*, September 4, 2015, accessed January 15, 2016, <http://www.internazionale.it/opinione/gwynne-dyer/2015/09/04/profughi-unione-europea-germania>.

ulterior migration movement through the risky Mediterranean route, for this reason the government will contribute by resettling 20,000 Syrian refugees from United Nations camps bordering the country, rather than those who have already journeyed into Europe²³⁹.

In this way Britain operation will target only the refugees already recognized and hosted in the camps and will not risk taking into the resettlement the economic migrants against which the government want to fight: “For those economic migrants seeking a better life, we will continue to work to break the link between getting on a boat and getting settlement in Europe, discouraging those who don’t have a genuine claim from embarking on these perilous and sometimes lethal journeys²⁴⁰” the Prime Minister said and added: “For those genuine refugees fleeing civil war, we will act with compassion and continue to provide sanctuary²⁴¹.”

Even though UK has a tradition of being a relatively welcoming country for refugees, public opinion together with other European countries have put gradually more pressure on Prime Minister to adopt less hard-hearted measures. A small change was made in September when Cameron declared that UK were prepared to receive 15,000 more refugees coming from Syria and that the government would have contributed with an extra fund of 100,000 pounds to support the refugee camps in the countries bordering with Syria. However the position of the English Prime Minister has not changed on the matter of military intervention in Syria against ISIS. He had already demonstrated his reluctance in supporting the operation at Sea targeting the rescue of migrants travelling through smugglers’ channels, while being a supporter of the military operation against smuggler. UK contributed to operation against the latter with the intervention of the National Crime Agency together with the Gchq, the agency working for the electronic espionage against smuggler’s organizations.

The military line undertook by the government goes in parallel with a wide spread sense of urgency diffused in the country: surveys demonstrated that the majority of people agree with a military intervention in Syria representing the sole solution to the problem (56 percent), while only 22 percent opposes to this perspective²⁴².

²³⁹ Dearden, “Refugee crisis”.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² “Gb non parteciperà al piano profughi Ue, ma accoglierà 15 mila migranti”, *La Repubblica*, September 6, 2015, accessed January 15, 2016, http://www.repubblica.it/esteri/2015/09/06/news/gb_non_parteciperera_al_piano_profughi_ue_ma_accoglie_ra_15_mila_migranti-122303278/.

However, the tendency demonstrated by UK shows how its plan to resolve the crisis are in contrast with the majority of the Member States who are still cautious in declaring the will to intervene in Syria with force. This will probably lead to weaken its inclination to remain in the EU and could influence the referendum that will be held in 2017 asking the population if being pro or against the UK being in the Union.

Another country outside the common European laws on migration is Denmark. Not participating to the quota system, in 2015 the country declared to have received 20,000 refugees far less than its neighbour country Sweden, which welcomed 163,000.

Danish MPs are now debating a controversial immigration bill that would allow the government to seize valuables from refugees arriving in the country²⁴³.

Under the proposed legislation, the police will have the power to confiscate gold, money and other valuable things from refugees whose income surpasses 400 euros (10,000 kroner).

With a recent amendment, asylum seekers are now allowed to keep items that have sentimental value. In addition all the items that are considered of necessary use could not be confiscated, for example mobile phones and watches.

UNHCR has strongly contested the law because not only it seemed comparable to the treatment that Nazi Germany reserved to Jews, but also it is accused to fuel xenophobia and fear of the refugee.

"Refugees have lost their homes and almost everything they possess," UNHCR spokesman William Spindler told the BBC²⁴⁴.

Nevertheless, the ruling centre-right Venstre party defended the law, calling it the "most misunderstood bill in Denmark's history²⁴⁵".

In fact, as the Integration Minister said, similar laws already apply to Danish nationals in case they ask for unemployment benefits. Before taking the money from the welfare state, the government consider the individual economic situation: if the person in question has valuables for more than 10,000 kroner, it may be required to be sold before being permitted to have unemployment benefits. However, it appears that this

²⁴³ "Refugee crisis: EU ministers vote to end passport-free travel", *The week*, last updated January 26, 2016, accessed January 15, 2016, <http://www.theweek.co.uk/refugee-crisis/63401/denmark-debates-seizing-valuables-from-refugees>.

²⁴⁴ Ibid.

²⁴⁵ "Refugee crisis: EU ministers vote to end passport-free travel"

sort of treatment will not have the same consequences on refugees as they might have been on Danish people.

3.5. Broadening of the borders

To summarize the previous consideration it can be said that the European Agenda on Migration basically failed in bringing some sense of participation in the so-called migration crisis. Although the efforts coming from the Juncker Presidency to push for cohesion and solidarity for example in the redistribution of migrants, national interest prevailed and many Member States seem now pursuing different ideals and values than the ones they promised to protect when they were maybe too enthusiastic of the power of globalization.

Nevertheless the crisis is obviously not supposed to end soon, on the contrary the situation is getting even worse with the passing of time. Migrants are experiencing on their skin the fact that European countries are missing their responsibilities and are trying to pass them to the neighbours complaining they are not rich enough to sustain the costs or that they have already welcomed a sufficient number in their territories, in other words trying to find excuses to do not put at risk their interests and integrity. Even though the worst effects turn to migrants, States are gradually facing the consequences of their policies.

As the situation in third countries keep on aggravating, the operations managed by European Union are seen as not playing a sufficient role in the solution of the crisis: EU Member States are seen as the spoiled child who complains about little things, which means that EU is demonstrating relative small efforts to help third countries in the managements of the fluxes.

To contrast this image, on the 8th of October 2015, The European Ministers of Foreign Affairs and the Ministers of the Internal Affairs met with the representatives of Turkey, Lebanon, Jordan and western Balkans in Luxembourg at the High-level Conference on the Eastern Mediterranean - Western Balkan Route. At the Conference participated also associated countries like Swiss, Norway, Liechtenstein and Island. At first the representatives of UNHCR, IOM, World Food Programme together with Frontex and EASO have presented the situation on the territory taken into consideration and then key point were discussed, for example: the necessity to increase the support to countries that are hosting the majority of Syrian refugees such as Jordan, Lebanon and

Turkey; secondly the necessity to consider not only the countries of arrival, but also the transit countries that need support in reception and registration of the asylum seekers; thirdly, how to provide an efficient response to fight smuggling and trafficking of human beings along the whole route and finally the countries examined together the causes of displacement and the better way to tackle illegal migration²⁴⁶.

For the first time, the representatives of European Commission seated at a conference to talk about the migration issue together with the representatives of the countries involved in the route.

Jean Asselborn, Minister for Foreign and European Affairs, said that the migration crisis must be tackled at its origins and underlined the importance to find political and diplomatic responses to the conflicts in Syria. The priority must be given to fight against poverty and inequality and not to military action that will only bring instability to the country.

Nevertheless the collaboration has transformed into 3 billions euros given to Turkey²⁴⁷ to block people in its territory, and 1 billion promised to Jordan and Lebanon to manage the camps for refugees.

Another important Conference was held in Valletta on the 11th and 12th of November 2015. The summit on migration brought at the same table European and African Heads of State and Governments together with representative of UNHCR, Frontex, Interpol, EASO and many others²⁴⁸. As it was for the Conference on the Eastern Mediterranean-Western Balkan route, the summit's sponsored intentions were part of the great project of obtaining a better perspective of the situation at its origin and find solution together with the countries involved.

The key arguments tackled the root causes of irregular migration and forced displacement; focused on a enhancement of cooperation for legal migration and

²⁴⁶ "The Conference on the 'Eastern Mediterranean – Western Balkans Route' was held to discuss the 'common challenge' with all relevant partners on the migratory flows coming from the Middle East to 'to respond collectively with solidarity'", Grand Duchy of Luxembourg, last updated October 9, 2015, accessed January 9, 2016, <http://www.eu2015lu.eu/en/actualites/articles-actualite/2015/10/08-conf-balkans/>.

²⁴⁷ "Migranti, Ue: "3 miliardi alla Turchia per controllare confini e fermare siriani". Ma i leader frenano", // *Fatto Quotidiano*, October 15, 2015, accessed January 9, 2016, <http://www.ilfattoquotidiano.it/2015/10/15/migranti-ue-da-3-miliardi-alla-turchia-controllera-confini-per-fermare-siriani/2132546/>.

²⁴⁸ "Valletta Summit on migration", European Council (press information of the Valletta Summit on Migration, Valletta, Malta, November 11-12, 2015) available at <http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>, accessed January 9, 2016.

mobility, underlining the fact that it represents a resource for European country and not just a menace of instability; the need to reinforce the protection of migrants and asylum seekers and implement the efforts to stop irregular use of smuggling and trafficking. Finally European Countries worked on a plan to readmit the highest number of migrants to the origin countries.

As it was during the other Conference in Luxembourg, EU formally launched, during the summit, a EU Emergency Trust Fund to finance operations in Africa.

Sixteenth points were discussed for the Action Plan that is supposed to be realised by the end of 2016. Some of them interest the creation of more possibilities of study and work for professionals and for enterprises; launch of projects to develop the area that most suffer from poverty, marginalisation, exclusion and destitution, especially targeting the young population; organize a better system for remittances and encourage the private investment in the African agricultural system. Another important aspect regards the facilitation of legal migration from the EU countries to Africa and vice versa, especially for students through the implementation of the Programme Erasmus+ and the gradual process of visa facilitation. The enhancement of protection will work to better address to the people who are suffering from long-term displacement and their host communities, focusing especially on long-term solutions. Smuggling and trafficking will be fought with an enhancement of awareness through informative campaigns to let the population living in the areas more affected from the phenomenon know about the problem and how to avoid the risks of this activities. Moreover a pilot project will provide a joint investigation team in Niger against migrant smuggling and trafficking in human beings networks. Finally the task of return operation will consist in joining forces between the European system for return operation and the country of origin that will demonstrate a faster and more effective response to the reintegration of the migrants that are sent back to their motherland. In addition, migration officials from African countries will be sent to Europe to help in the identification of the nationalities that are not included in the pool of nationalities benefitting from international protection²⁴⁹.

²⁴⁹ “Valletta Summit on migration”, European Council (Action Plan proposed at the Valletta Summit on Migration, Valletta, Malta, November 11-12, 2015) available at <http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>, accessed 9 January 2016.

As it happened for the Conference held on the 8th of October, the Summit raised critics. Most of them came from public opinion, NGO but also African countries. On one side it was argued that the Trust Fund consist in a blackmail made by Europe to African countries: the monetary help to respond to instability and poverty in the countries, in reality will be given under condition that the countries collaborate to stop migrants flows and secure their borders²⁵⁰. Moreover, at the summit no representative of the civil society has been consulted²⁵¹. On the other, polemics were addressed to the reticence that Member States had demonstrated in the collection of money for the Trust Fund: only 78 million of euros were collected. “For the saving of banks, in one night we have hundreds of millions of euros. For saving lives, we are relatively reluctant²⁵²” said Martin Schulz, the president of the European Parliament. Also Macky Sall, the president of Senegal said, representing his country, that they expected more collaboration and generosity coming from EU countries but also raised another controversial aspect of the cooperation: “There is a fundamental, philosophical question: you cannot insist on Africans being readmitted to their countries of origin when you are welcoming Syrians and others. The numbers of Africans migrating towards Europe are not as great as people say²⁵³”.

The critic underlined a policy that emerged to be more a strategy to respond to the first priority for the EU, scared by the emergency, to reduce the numbers of people who look for permanent asylum in the Union. The procedures will be operated with the use of two principal methods: financing countries of origin to implement their role in blocking ulterior flows and enhancing the rigidity of the control at the border to send back people who do not fit in the requisites to be granted international protection.

Now Germany appears to be not prepared to respond to the great numbers of people claiming asylum on its territory, moreover, after the events happened during the New Year Eve in Cologne the position of Chancellor Angela Merkel seems for the first time put at risk. During the celebration in the town of Cologne, 600 criminal complaints were

²⁵⁰ “Malta, summit a La Valletta: ‘Le persone sono più importanti dei confini’”, *La Repubblica*, November 11, 2015, accessed January 9, 2016.

<http://www.repubblica.it/solidarieta/immigrazione/2015/11/11/news/malta-127111226/>.

²⁵¹ Ibid.

²⁵² Matthew Holehouse and Isabelle Fraser, “Migrant crisis: European Council president Tusk warns Schengen on brink of collapse”, *The Telegraph*, November 13, 2015, accessed January 9, 2016, <http://www.telegraph.co.uk/news/worldnews/europe/eu/11991098/Migrant-crisis-Donald-Tusk-warns-that-Schengen-is-on-brink-of-collapse-latest-news.html>.

²⁵³ Ibid.

collected from women who accused of being molested or robbed. The police reported that the suspects were mostly asylum seekers.

The attacks, which prompted violent far-right protests on Saturday, threatens to further erode confidence in Merkel, and could stoke support for the anti-immigrant Alternative for Germany (AfD) party.

A survey collected the opinion of the people in response to this recent event: 75 percent of those interviewed said that they were happy with Merkel's work in April last year, but only 58 per cent are pleased now. Migration remains the primary challenge for the Country for the people interviewed.

The Cologne attacks also heated up the debate on immigration in neighbouring countries such as Austria.

“What happened in Cologne is unbelievable and unacceptable²⁵⁴”, said Austrian Interior Minister Johanna Mikl-Leitner, a member of the conservative People's Party to the newspaper *Osterreich*.

German Parliament is now raising its voice asking the Chancellor to put a limit to the refugees entering the country, but she knows that taking this step backwards will definitely undermine her leadership and the credibility of Europe in general. The only possible solution is fostering European intervention in third countries that are responsible for the majority of the inflows directing to the EU. For this reason, on the 29th of November, the leaders of the European Union met with their Turkish counterpart to plan the “Joint Action Plan”. The EU financial assistance will help Turkey in supporting the 2.2 million Syrian refugees still on its territory – with the aim of keeping them there. Turkey is encouraged to provide them social benefits and the right to work. In addition the Plan is also a promise to the reactivation of the procedures of accession for the country and a roadmap for the lifting of the visa requirement by October 2016²⁵⁵.

Regarding the “irregular migrants”, those who are not entitled to asylum, Turkey and the EU will cooperate to prevent them from entering and return them “swiftly” to their countries of origin. The promised implementation of the bilateral readmission agreement

²⁵⁴Tina Bellon, “Germany offers cash reward for leads on sex attacks in Cologne”, Euronews article taken from Reuters, January 14, 2016, available at <http://www.euronews.com/newswires/3123994-scale-of-cologne-new-year-attacks-grows-as-more-complaints-filed/>, accessed January 14, 2016.

²⁵⁵ Jean De Ruyt, “The EU – Turkey summit of 29 November 2015 : A ‘Re-Energised’ Relationship”, Global Policy Watch, December 1, 2015, accessed January 9, 2016, <http://www.globalpolicywatch.com/2015/12/the-eu-turkey-summit-of-29-november-2015-a-re-energised-relationship/>.

will also allow refugees who entered the EU through Turkey to be sent back there. The mutual battle against criminal smuggling networks will also be reinforced.

In exchange for this cooperation, Turkish government will get what it wanted most urgently: a roadmap for elimination of the visa requirement for Turkish citizens to enter the Schengen area. This promise might become a reality as soon as October 2016.

However it seems alarming how many human rights and funding principles of the European Union are experiencing a further challenge by this Agreement.

It is important to take a step back in the discussion to better understand the position of the countries involved. As I have frequently mentioned, the majority of migrants are not interested in remaining in transit countries such as Serbia, Slovenia, Italy, Greece, nor in Turkey where their lives are more likely to be put at risk for the proximity with Syria and as Turkey has already took strong military position against ISIS. Many migrants are in fact heading towards Northern European countries.

European border control appeared not sufficient to tackle the emergency, for this reason, some representatives of the most welcoming countries met in Brussels to take agreements with Turkey in the prospect of obtaining a more effective control on the people coming to Europe. Countries like Hungary accused the governments involved in the summit to be secretly taking agreement with Turkey to ease the process of its accession in the Union²⁵⁶. Nevertheless, nothing was kept secret, but it was quite the opposite: in the light of the current crisis, the role of Turkey has become everyday more relevant in the management of the influxes of refugees coming from Syria and not only. What distinguishes the country from the others is that Turkey still benefits from a certain stability, or at least it seems more collaborative to operate further efforts. The country has spent a total amount of 8 billion dollars to help refugees, and European Countries are now providing 3 billion euros to improve this help. Moreover, during one of the meeting between Chancellor Merkel and President Erdogan, the German leader promised that more funds will be given to Turkey and that the 3 billion euros are just the first amount to be assigned. Turkey represents the first concrete barrier that Europe can use to prevent massive influxes of economic migrants into its territory together with

²⁵⁶ Leo Cendrowicz and Tony Paterson, "Germany made secret pact with Turkey for the EU to take half a million Syrian refugees, says Hungarian Prime Minister", Independent, December 2, 2015, accessed January 14, 2016, <http://www.independent.co.uk/news/world/europe/germany-made-secret-pact-with-turkey-for-the-eu-to-take-half-a-million-syrian-refugees-says-a6757981.html>.

representing the first country that can provide shelter to the refugees. But these are not the only interests between the EU and Turkey. In fact, Turkey has been a candidate for accession since 1999 and the negotiations for the procedure have been pending since 2004. The Meeting, held in Brussels in November, underlined the importance of the overcoming common challenges involving both EU and Turkey, in addition with the need to re-energize the process of accession. During the meeting it was declared that the already existing relationship should be tight and risks and threats should be surpassed to face common future perspectives. In addition it was planned to organize conferences every two years to discuss on the progresses made by the accession and to tackle the problems connected to security and to the fight against terrorism and other security threats²⁵⁷.

The activation of the Joint Action Plan, which had been agreed until now ad referenda on the 15th of October 2015, steps up the cooperation in supporting Syrians under temporary protection and migration management to address the crisis created by the situation in Syria. Moreover the plan consisted in bringing order to the fluxes: stopping irregular migration and returning people not in need of international protection to their country of origin. In addition, Turkey engaged in the improvement of the socio-economic conditions of Syrian refugees who have obtained international protection in the country. In conclusion both sides decided to collaborate on the implementation of the fight against smuggling activity.

A step further was made in December 2015 during the Conference, held in Brussels, on the negotiations on Chapter 17, on 'Economic and Monetary Policy'²⁵⁸. At the conference participated Jean Asselborn, Minister of Foreign and European Affairs of Luxembourg, on behalf of the Luxembourg Presidency of the Council of the European Union. The European Commission was represented by Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations while the Turkish delegation was led by Deputy Prime Minister Mehmet Şimşek, the Minister of Foreign

²⁵⁷ "Meeting of heads of state or government with Turkey - EU-Turkey statement, 29/11/2015", European Council (press release and statements of the International Meeting with Turkey, Brussels, November 29, 2015) available at <http://www.consilium.europa.eu/en/press/press-releases/2015/11/29-eu-turkey-meeting-statement/>, accessed January 14, 2016.

²⁵⁸ "EU-Turkey Intergovernmental Conference – Jean Asselborn announces the opening of Chapter 17 on economic and monetary policy", Grand Duchy of Luxembourg, December 14, 2015, accessed January 14, 2016. <http://www.eu2015lu.eu/en/actualites/articles-actualite/2015/12/14-cig-ue-turquie/index.html>.

Affairs Mevlüt Çavuşoğlu and the Minister for EU Affairs and Chief Negotiator Volkan Bozkır²⁵⁹.

“Chapter 17 covers specific rules guaranteeing the independence of central banks, prohibiting the direct financing of the public sector by central banks and prohibiting the privileged access of the public sector to financial institutions²⁶⁰”, explained the Minister Asselborn and added: “It does not mean, of course, that we are opening the doors of the Eurozone to Turkey²⁶¹”. In fact the chapter only committed candidate countries to implement the criteria set out by the Treaty in order to be able to adopt the euro in due course, once they had joined the European Union.

It was underlined the fact that Turkey still has to take several step in the achievement of the full respect of liberty of expression for press and media not mentioning other tricky issues that have prevented many European Countries to provide full support to Turkey accession, such as the recognition of the Armenian Genocide together with the full respect and acknowledgment of the Kurd minority.

Concerning the refugee crisis, the situation revealed to be quite controversial. On one side countries like Hungary, Czech Republic, Slovakia and Poland do not want to consider Turkey as their last hope in the resolution of the migration issue²⁶², on the other Donald Tusk admitted that Europe has no other option than making agreement with third countries to effectively respond to the emergency.

Nevertheless, it seemed pretty evident how the subject of the conference had shifted from the refugee crisis to the economic interests decided putting at risk the life of millions of migrants. The economic and political interests that stay behind the cooperation have transformed refugees into a commodity that countries are exchanging for obtaining other, more profitable, resources. Turkey is profiting from the situation in which it had been involved to enhance the stake with Europe and obtain in this way its long waited accession. European Countries are in turn temporary forgetting their principles to obtain security and to create a fortress whose borders extended outside its territories. Turkey has always represented an opportunity and a threat at the same time:

²⁵⁹ “Accession Conference at Ministerial level opens negotiations with Turkey on Chapter 17 - Economic and monetary policy”, European Council, (press release of the Conference with Europe and Turkey, Brussels, December 14, 2015) available at <http://www.eu2015lu.eu/en/actualites/articles-actualite/2015/12/14-cig-ue-turquie/index.html>, accessed January 14, 2016.

²⁶⁰ “EU-Turkey Intergovernmental Conference”.

²⁶¹ Ibid.

²⁶² Adriel Kasonta, “Why Europe should beware of Turkey”, The National Interest, December 13, 2015, accessed January 14, 2016, <http://nationalinterest.org/feature/why-europe-should-beware-turkey-14595>.

its position is strategic for EU, moreover its relationship with North Africa and the Middle East are something from which the Union could benefit in the future; the total population of Turkey surpasses the one of the majority of the Member States and a Turkish citizen is likely to be richer than a citizen belonging to the majority of the EU Member States for this reason, once completed the accession, Turkey can greatly contribute to the resolution of the economic crisis, which has hit the EU since 2008.

The negative aspect of the question is that Europe seems to be forgetting about human rights abuses that are still present and constantly denounced by Amnesty International: many journalists are still imprisoned and the rights of women and gender parity are still problematic issues in the country.

Of course EU is free to choose to cooperate with a third country on strategic issues like immigration. But the crucial point is that the collaboration is likely to be considered illegitimate when it put aside the democratic and fundamental values that the EU has long tried to pretend and project onto its candidates.

As a matter of fact the agreement between European Union and Turkey came only a few days after the arrests of Turkey's two prominent journalists, Can Dündar and Erdem Gül, for charges of spying and "divulging state secrets" causing an uproar in Turkey's democratic circles. Had these arrests happened at any other time, Brussels would have most likely withheld or postponed any type of cooperative arrangement from Turkey²⁶³.

²⁶³ Beken Saatcioglu, "Turkey and the EU: Strategic Rapprochement in the Shadow of the Refugee Crisis", E-International Relations, January 21, 2016, accessed January 26, 2016, <http://www.e-ir.info/2016/01/21/turkey-and-the-eu-strategic-rapprochement-in-the-shadow-of-the-refugee-crisis/>.

Chapter 4

Conclusions and further considerations

4.1. The instability in the MENA region

The refugee crisis is only one of the products of the escalation of the instability that have hit the region of the North Africa together with the Middle East (the MENA region). As long as the crisis was not directly involving the European territory and pushing for immediate political responses, it appeared to have nothing to share with European world. Moreover, if taken individually and extrapolated from its context, it seemed, from the headlines, to be connected to relatively recent events and not as it is in reality: the product of decades of tensions and instability in the region²⁶⁴.

The strategic position of the MENA region together with its characteristic of being an area abundant of oil have not represented source of strength for the country, but rather the contrary. Considering the fact that our new economies are entirely based on the energy resources, it comes natural to understand how deep and eradicated has been the rivalry to achieve the control over the area between Superpowers.

In fact, since the XIX century, Western Countries have demonstrated their interest and have perpetrated their personal objectives in the region with a general awareness gained by the public opinion. The Persian Gulf has been, especially starting for the 1970s, at the centre of the attention of the U.S. that has deliberately supported the militarization of brutal and vulnerable authoritarian regimes with manoeuvres that resulted destructives for the countries involved: from the 1970s on, oil-producing States have faced repeated internal and external threats including internal disorders, invasion, regional or civil wars or at least they have always been menaced by an imminent turmoil. The reasons for the instability are principally the product of internal political

²⁶⁴ Anthony H. Cordesman, "The [New-Old] Crises and Instability in the Middle East and North Africa in 2016", Centre for strategic and international studies, January 4, 2016, accessed January 21, 2016, <http://csis.org/publication/new-old-crises-and-instability-middle-east-and-north-africa-2016>.

problems, but also the militarization promoted by United States accelerated uncertainties and helped further destabilization of oil-producing States²⁶⁵.

One of the longest interventions operated by Western Countries in the Middle East involves Afghanistan. In 2001, as a response for the terroristic attacks played against the United States, the superpower invaded the country. The military intervention was planned to search and destroy the bases of al-Qaida, considered as being hosted and protected by the Taliban government in Afghanistan. However, the invasion was accused to be part of a bigger plan to achieve geo-strategic and geo-energetics interests²⁶⁶. In fact Afghanistan has been contended between Russia and U.S. for its strategic position whose control may determines the relationship with Asia and this is considered of course of great interest from both the Superpowers.

After almost 10 years of war, the situation in Afghanistan is quite problematic. The country lacks of a stable government and is still dependent on US-military forces for security, which makes the States unable to grant basic security certainties for its citizens together with basic infrastructures and job opportunities. In addition there is no real prospects for economic growth aside from the illegal drug trade that interests also Russia and Asian countries²⁶⁷. In conclusion the country is considered one of the most dangerous in the whole South Asia.

In 2003, while U.S. was still operating in Afghanistan, the attention shifted to Iraq where American occupation has represented maybe the most destructing and devastating operation in the long history of military invasion in the Middle East led by foreign powers²⁶⁸.

The relationship between US and Iraq has always been controversial: at first the Superpower supported Iraq in the war against Iran, started in 1980, furnishing arms and power. Nevertheless the war ended without a winner. Secondly, the advance of Saddam Hussein's army towards Kuwait in 1990 led US President, George Bush, to

²⁶⁵ Toby Craig Jones, "America, Oil, and War in the Middle East", *The Journal of American History*, *Oxford Journals* 99 (2012): 208-218, accessed January 30, 2016, <http://jah.oxfordjournals.org/content/99/1/208.full>, last visited 30 January 2016.

²⁶⁶ Salman Rafi Sheikh, "Gli obiettivi eurasiatici degli Stati Uniti e la guerra in Afghanistan", trans. Alessandro Lattanzio, *Aurora*, March 18, 2003, accessed 30 January, 2016, <https://aurorasito.wordpress.com/2013/03/29/gli-obiettivi-eurasiatici-degli-stati-uniti-e-la-guerra-in-afghanistan/>.

²⁶⁷ "Current Situation in the Afghan War", EbscoHost, accessed February 1, 2016, <http://connection.ebscohost.com/world/afghanistan/current-situation-afghan-war>.

²⁶⁸ Jones, "America, Oil, and War".

move his troops to fight against Iraq and to begin the Gulf War. In 2003, Bush Jr. moved from Afghanistan to Iraq and pushed for a violent resolution of the long lasting tensions with President Saddam. With the justification of the so-called preventive war, the American President invaded the country helped by UK together with Italy, Spain and other “volunteers” – as Bush Jr. called them – countries²⁶⁹.

Saddam was accused of being preparing weapons of massive destruction and the U.S. found its justification to settle its counts with the dictator by promoting freedom and democracy for the country.

However the war produced the enhancement of tensions together with an impoverishment of Iraq. Political divisions and high levels of unemployment make Iraq one of the most unstable countries in the Middle East. Civil wars have poisoned the relations between Iraq’s religious communities aggravated also by the tensions in the neighbouring countries like Syria. This situation of general instability has also contributed to the settlement of fundamentalists group such as ISIS that has placed one of its bases in Mosul, one of the biggest cities in Iraq.

Another region I have mentioned in the course of the thesis whose destabilization was produced with the contribution of foreign intervention is Libya. The country was the richest in North Africa and has always played a central role in the relationship between the Western World and the MENA region also because of its great oil resources. During the regime of the General Gaddafi, Western States, for example Italy, maintained diplomatic relationship especially for the interests on oil and for the proximity of the country with European territories. When the Arab Spring exploded in the country in 2011, the relations changed. To suppress the revolts, the General responded with military oppression towards the population. As a response UN condemned the operations as being a crime against humanity and adopted the resolution 1973 that established a no-fly zone to block the attacks perpetrated against the civilians. With Gaddafi’s death the country opened to new perspectives concerning for example the press liberty, however the country remained trapped in its instability. Geographically speaking the country is divided in several areas that are under the control of different groups: the internationally recognized government of Tobruk controls the East of Libya, nevertheless the city of Bengasi, the most important city in the region, is occupied by troops near to the fundamentalist ideology of ISIS. Other areas are occupied by rebels’

²⁶⁹ “La guerra in Iraq, 10 anni fa”, *Il Post*, March 20, 2013, accessed January 31, 2016, <http://www.ilpost.it/2013/03/20/guerra-in-iraq/>.

militias who claim for a tribal division of the country. Moreover the city of Sirte is now ruled by the Islamic States that has already occupied some governmental structures together with hospitals and the television station.

Finally the most recent debated intervention is the Syrian one. In this context the most interested Superpower who has already demonstrated a concrete involvement in the conflict between the President Bashar al-Assad and the rebels, is Russia. The country has a long history of partnership with Syria that represents its major link with the Middle East area. For this reason President Putin has demonstrated its will to collaborate with the President Assad defending its position. For the moment Russia is justifying its military intervention as part of the plan to destroy the bases of ISIS that has already taken control of a great part of the country. On the opposite side there is U.S. that is being pushed for intervention in the area by its partners: Saudi Arabia, Arab Emirates, Jordan and Pakistan are all States that will benefit from the overthrow of Assad. For this reason, even if the U.S. has not economic interests in this area it will have to provide responses to its allies to resolve also the tensions created with the agreement on the nuclear power with Iran, common enemy of the majority of the Sunni States.

4.2. The end of the Schengen Agreement?

Europe is now called to respond to two controversial issues: its incoming military intervention in Syria and Libya and its internal problems.

It has become evident how the plan proposed in May 2015 by the European Commission has failed in creating a homogeneous response to the refugee crisis, as a matter of fact Member States are individually responding to the increasingly pressure played by migrants following national interests, in this way exposing the entire Union to respond to the consequences. What has been strongly criticized at the beginning (the construction of barbed-wire fences along the borders by Hungary) is now being operated by several countries to block new entries. On the other side, what was applauded as a generous manoeuvre (the German decision to host unlimited numbers of Syrian refugees) is now leading the countries at the frontier to a definite crash in the receiving operations.

The cold season is about the end and new flows of refugees will begin once again with the result of more arrivals at Greece shores. Of course the EU is expecting that and it is convinced that Greece will no more be able "to do its job". The country has already

been warned by the Community for lacking its responsibilities to take fingerprints and it was also accused to be failing in the categorization of migrants: economic migrants together with refugees has been fleeing to the Balkan countries without limitation. Now it is menaced to be pushed out of the Schengen Agreement. The scenario is repeating: Greece is once again the scapegoat of the entire crisis; the Achille's heel of the Schengen area²⁷⁰. Nevertheless it seems quite discriminant to accuse the country of being the responsible for the exaggerated pressure of migrants into the EU territories, in fact, politicians maybe have already forgotten when in September of the last year, the episode of the young child found dead on the Greek shores triggered a massive and uncontrolled inflows of migrants arriving from Turkey to Greece heading to Northern Europe: the emotional wave promoted by media transmitting obsessively the image of that child together with the decision of Chancellor Merkel to accept countless refugees resulted in a lowering of the controls. Moreover, Turkey was since a long time, failing in operating the right controls on migrants fleeing its territory with the result of an outrageous pressure on Greece. Despite the critical situation and despite being Greece already heavily weakened by its debt, the country has demonstrated great humanity towards the refugees and not only, the population have voluntarily contributed with self-organized camps in the Isle of Lesbos to give temporary relief to the people arriving from Turkey. However it seems that it will have to pay once again for its "incompetency": the dormant annoyed feeling expressed by Germany against Greece during the economic crisis is waking up with the result of isolating the country from the Union. The decision to suspend the Schengen Agreement for a period of two years for Greece is suspended for the next weeks in which the German Internal Minister Thomas de Maiziere said the country "will be pushed to do its job"²⁷¹.

This violent action seems quite in opposition to the wide spread fear of the fall of Schengen. Many Member States have already suspended the Agreement in an effort to respond to the massive inflows; fences are being built, but Europe seems not interested in punishing countries that are operating discrimination on migrants, such as Slovenia or Hungary, nor it is worried about the risk of compromising its ideal of democracy. In

²⁷⁰ "If Schengen fails", *Financial Times*, November 26, 2015, accessed February 1, 2016, <http://www.ft.com/cms/s/0/457a3484-9443-11e5-bd82-c1fb87bef7af.html#axzz3yoOx6JBy>.

²⁷¹ "Migranti, vertice Ue su Schengen. Germania: 'La Grecia faccia i compiti'. Atene: 'Basta con questo gioco di accuse'", *Il Fatto Quotidiano*, January 25, 2016, accessed January 31, 2016, <http://www.ilfattoquotidiano.it/2016/01/25/migranti-vertice-ue-su-schengen-germania-la-grecia-faccia-i-compiti/2402833/>.

fact, while the relationship with Greece is put in question, progresses are being made in the partnership with Turkey. To clarify once again the situation: on one side Greece, one of the oldest European Member State, is likely to be thrown out of the Schengen area, on the other side Turkey, long contested candidate of the EU, is being helped with funds and with a general disposition. This situation plays the cynical game of the European main leaders, in other words they have found an opportunity to eliminate the bad egg of Europe and to obtain a determinant role in the MENA region by implementing the relationship with a crucial country like Turkey. In fact, Turkish Prime Minister Erdogan has shifted from a political inclination towards the Middle East to an approach to European accession. As a response to the critical situation that have hit countries like Iraq, Egypt and Libya, the Prime Minister has turned its back on the Middle East and projected its efforts to the safer Europe²⁷². The refugee crisis acted as a launching pad for its candidature. Playing the part of the leader who struggles to save European Unity together with its own face, Angela Merkel is the most important sponsor of the EU-Turkey collaboration. In fact, the Chancellor already promised that ulterior funds will be addressed to Turkey efforts for the managing of the refugees camps, but it is now taking also agreements to military intervene with Turkey against terrorism. During a meeting between Germany's Interior Minister Thomas de Maiziere and Turkey's own interior minister Efkân Ala in Berlin last January 22, Germany and Turkey decided to implement their collaboration on intelligence sharing between institutions and information sharing about terroristic cells. However the risk is that the Turkish government will profit from the German help to direct its attacks also towards the Kurdish party PKK, which is considered by the country a more dangerous threat than ISIS²⁷³.

“Turkey holds the upper hand but at the end of the day what is getting lost in all of this — between Turkey holding a good hand and the EU wanting to dump the problem on Turkey — is precisely the flow of people who find themselves in a tragic situation to no fault of their own²⁷⁴” says Amanda Paul, an analyst at the Brussels-based European

²⁷² Lucy Kafanov, “Europe's refugee crisis: What is Germany actually giving Turkey?”, *The Christian Science Monitor*, October 28, 2015, accessed January 31, 2016, <http://www.csmonitor.com/World/Europe/2015/1028/Europe-s-refugee-crisis-What-is-Germany-actually-giving-Turkey>.

²⁷³ “Turkey, Germany implement new joint counter-terrorism mechanism”, *Rudaw*, January 27, 2016, accessed January 31, 2016, <http://rudaw.net/english/middleeast/turkey/27012016>.

²⁷⁴ Kafanov, “Europe's refugee crisis”

Policy Center. “This should be the main focus — not what gifts can we put on Turkey’s table and how we can avoid having more refugees in Europe²⁷⁵”.

Is the preservation of the European Union worth the costs of putting aside democracy? Is it by pushing Greece outside the Eurozone and the Schengen Area the solution of the crisis? Perhaps they are not the solution, however they seems preferable paths to follow than the one of giving up Schengen Agreement, or at least is what the leaders of the EU think. To attenuate the internal division over the debate on the unlimited welcome procedures for Syrian refugees, Germany has already reintroduced the controls at the frontiers and so did Austria, Belgium, Sweden and Denmark. This procedure together with the closure of the borders with fences, are going in the opposite way of what is promoted by the Schengen Agreement: the free circulation of goods and persons within European territories is menaced by a raise of controls and fears of missing potential threats. In fact Schengen can be considered as a double-edged weapon. On one side it is one of the pillars representing the bases of the European Union: the free circulation of goods permitted a substantial growth to the economy of the Member States part of the Area; in addition people are free to move without strict controls and this has contributed to the circulation of professionals, high-skilled migrants, students, in other words to those categories of migration that states are willingly to facilitate in their arrivals and permanence and has also incentivized tourism. On the other it has facilitated also the movement of potential menace for example the terrorists participating to the Paris attacks made on the 13th of November had arrived from Belgium. This was possible for the permeable nature of borders given by Schengen.

This episode alimanted the position taken by the nationalist European parties that immediately started calling for controls at the frontiers and for the total block of the influxes of migrants. However it seems quite cynical and unrealistic to consider that terrorists may arrive at our borders together with the desperate refugees who put at risk their lives to undertake the dangerous routes of the Mediterranean Sea. In addition, the controls at the borders are obviously more likely to stop and block in their journey poor people categorized as economic migrants, rather than terrorists who will probably find other ways and avoid the controls to reach EU. In addition, the terrorists involved in the

²⁷⁵ Kafanov, “Europe's refugee crisis”.

Paris attacks, were migrants who have already obtained the European citizenship and for this reason would not have been influenced by the controls.

The controversial nature of the Schengen Agreement appears evident those days of emergency: the tragic reality is that Europe is accepting the “good” migration supposed to facilitate its economy, not poor people nor the refugee searching for international protection. The threat of terrorist cells penetrating our borders is simply an excuse to block further arrivals of people in need to do not show the entire world that Europe is not adequately responding to the crisis.

Suspending the free circulation will only compromise the economy of the Union together with leading to the detriment of tourism, principal economic resource for some Member States. As President Juncker pointed out in Strasbourg last November, the fall of Schengen will bring to a general re-evaluation of the principal values of the Union. “If the spirit of Schengen leaves us forever and leaves our hearts,” Juncker said, “we’ll lose more than the Schengen agreement. A single currency doesn’t make sense if Schengen fails²⁷⁶”. It will come the moment when the costs of reintroducing the border controls will put in question the existence of the Euro: does it make sense to maintain a common currency when citizens are no more free to travel within European territory?

Concerning migration, it is true that some countries will benefit from this operation, for example France that receives the majority of the influxes from the Italian frontier, but on the opposite side of the border, Italy will suffer from the isolation because it will be forced to manage the huge influxes that arrive from the Mediterranean alone.

Europe’s priority seems to be the preservation of its image and as a consequence new fences are being erected. As a consequence, the picture that is shown to the rest of the world is the one of a European fortress almost united in its closure and in its inability to concretely adopt and pursue its ideals of humanity and democracy, surrounded by more and more refugee camps where people are imprisoned losing every day the strength to fight for a better future in the land they have dreamt.

²⁷⁶ Zeke Turner, “Juncker: No Schengen, no euro”, Politico, November 25, 2015, accessed 30 January, 2016, <http://www.politico.eu/article/juncker-no-schengen-no-euro/>.

Conclusions

The moment when I first decided to carry on with this Thesis it was during a very intense period for the refugee crisis: in September Angela Merkel opened the border of Germany to receive countless Syrian refugees; the first razor-wire walls had been erected; the effects of the European Agenda on Migration were still yet to be seen, while boats carrying migrants were arriving restlessly at our borders.

The debate over the crisis was at centre of the political attention and had been grabbing the headlines until now and will definitely continue in the following months.

The difficulties to find a resolution or a comprehensive approach to the situation have strongly emerged within Member States of the European Union. For this reason it is quite odd to entitle this last part "Conclusion". A conclusion has not seen the light by the time I finished this work, and it is not supposed to come in the next days, nor in the next months probably.

As a consequence the purpose of this work is obviously not the one of proposing a resolution, but principally the one of taking stock of what Member States have done to address to the refugee crisis while putting on the table the problems involved.

Considering the anthropological definitions given to the different categories of migrants it is evident how these are not reflected by the International legislation, nor the European one. The reason can be found in the difficulty of separating neatly the factors that push people to migrate. This problem has been enormous, as the fluxes have been interesting more and more people of different nationalities.

However the International Community can only address to the crisis using the existing laws: on one hand they have to deal with numbers and problems that have not an antecedents in the European history and try to propose a humanitarian action; on the other they must reassure their citizens on the security issue, especially after the terroristic attacks involving European soil. Other two elements that add complexity to the situation are the religious and economic issues. Members States that have not experienced previous surge of immigration are worried for a clash between different cultures and religious practice. In response to the fundamentalist violent practices of the Islamic State, European Union is permeated with dogmatic and emotive approaches towards the presence of Muslims who are considered as a threat for security.

Moreover the economic crisis has left the Union in a frail state, as a consequence many Member States are worried about the financial resources that would have to be spent

for the management of such great numbers of immigrants arriving at their borders and the consequences that will overburden on the population.

In this context and as it is not possible to anticipate an end for the incoming influxes of people, the solutions proposed by the nationalist parties are the most immediate and simple one: closing the borders, erecting barriers and “helping the migrants at home”. The question is “how”? How can the Western world intervene to tackle the situation at its origins when the past has shown that previous interventions resulted to be a fiasco or have even worsened the situation?

In contrast with these violent proposals, a glimpse of hope for humanity can be seen in the help given by the population of the Greek Isles of Lesbos, Kos, Chíos, Samos, Rhodes and Leros who have been in the frontline of the refugee crisis providing rescue operations at sea, offering food, clothes, shelter and comfort to the people arriving at their shores. The population has been candidate to the Noble Peace Prize for its work.

Nevertheless it seems that the European Union is proceeding on an impervious way to tackle its problems, losing part of its democratic soul and fundamental values in a desperate attempt to put an end to the crisis.

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