Focus on International Migration nº **5**

Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad

«Refugees on the move: political, legal and social challenges in times of turmoil»

Alisa Petroff, Georgios Milios, Marta Pérez (eds.)

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REFUGIADOS EN MOVIMIENTO: RETOS POLÍTICOS, LEGALES Y SOCIALES EN TIEMPOS DE INESTABILIDAD

«REFUGEES ON THE MOVE: POLITICAL, LEGAL AND SOCIAL CHALLENGES IN TIMES OF TURMOIL»

Elaborated by:
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Focus on International Migration nº 5

Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad. «Refugees on the move: political, legal and social challenges in times of turmoil»
Alisa Petroff, Georgios Milios, Marta Pérez (eds.) (2018)

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Introducción

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Según datos de ACNUR (2017), a nivel mundial aproximadamente 65,5 millones de personas se han visto forzadas a abandonar sus hogares. Entre ellas, 22,5 millones son refugiados, de los cuales aproximadamente la mitad son menores de edad. Además, hay 10 millones de apátridas a los que les han sido denegados la nacionalidad y el acceso a derechos básicos como la educación, la sanidad, el empleo o la libertad de movimiento. Los conflictos internos y las guerras son las principales razones que explican cómo, en el mundo, cada minuto, 20 personas son forzadas a desplazarse. A lo largo de la historia, hay que remontarse a la Segunda Guerra Mundial para encontrar cifras parecidas.

En el contexto europeo, la llamada «crisis de refugiados» se agravó a partir de la crisis humanitaria con la llegada de personas en busca de protección internacional a la isla de Lampedusa (Italia) en el 2013. Tras los acontecimientos vinculados a las Primaveras Árabes y sus múltiples consecuencias, las personas refugiadas han estado sobre-expuestas en los medios de comunicación, así como en los discursos políticos en Europa, magnificando su presencia y efectos. No obstante, los datos apuntan que solo un 17% del total de personas desplazadas se encuentra en territorio europeo, siendo los países de las regiones en conflicto (especialmente los países fronterizos) los principales receptores de personas refugiadas (ACNUR, 2017).

A pesar de que las cifras de llegadas a Europa no han sido desproporcionadas, teniendo en cuenta, por un lado, la magnitud de la violencia en la región y, por el otro, el tamaño de la población de los países de la UE y sus recursos disponibles, las imágenes que se han proyectado en la prensa y por parte de los partidos anti-inmigración revelan enfoques hostiles y negativos hacia la llegada de las personas refugiadas. Metáforas vinculadas a catástrofes naturales (riadas, avalanchas etc.) que muestran el carácter devastador e irreversible de estas llegadas, solo han sido contrarrestadas por la trágica foto del 2015 del niño sirio Alan Kurdi (conocido de forma errónea como «Aylan») (OIM, 2018), una imagen que conmovió las conciencias de las sociedades europeas.

El debate de la opinión pública y de los medios de comunicación pronto se ha ido trasladando al debate académico, ya que, a nivel global, uno de los impactos más relevantes de esta crisis implica una reconfiguración de las movilidades y nuevas formas de entender las dinámicas transnacionales. A esto se le añaden los retos que suponen las políticas y los marco legales insolidarios y poco hospitalarios a nivel internacional, regional, nacional y local que se están diseñando y fomentando en distintos países europeos.

Con estas reflexiones como punto de partida, en el marco del CER-M (UAB-UB), hemos organizado la conferencia internacional «*Refugees on the move: thinking beyong the Euro-Mediterranean crisis*» celebrada el 21 y 22 de abril 2016 en el CCCB y *Espai Contrabandos*. Esta conferencia tuvo como objetivo crear un espacio de debate y reflexión en torno a las implicaciones teóricas, político-legales y sociales que estos desplazamientos están conllevando. En el evento participaron académicos de ámbito nacional e internacional, así como personas expertas y profesionales que trabajan sobre el terreno. Fruto de estas jornadas, y a partir de las aportaciones de sus participantes, el equipo del CER-M (UAB-UB) presentamos este monográfico bilingüe titulado «*Refugees on the move: political, legal and social challenges in times of turmoil*» / Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad.

Desde una perspectiva interdisciplinar el monográfico analiza:

- el papel de la comunidad internacional, a través del UNRWA, en la gestión de la crisis de refugiados en el Próximo Oriente desde finales de los años ´40 hasta la actualidad (capítulo 1 – en español: La UNRWA y los refugiados de Palestina. Protección y desarrollo humano en el contexto de las crisis de refugiados en el Próximo Oriente, Oscar Monterde Mateo);
- la situación política y las principales causas de los desplazamientos del tercer colectivo con más desplazados del mundo, Siria, tras Sudan del Sur y Afganistán, (capítulo 2 - en inglés: Syria’s Refugee Crisis: History of a Mass Exodus, Naomí Ramírez Díaz);
- la Agenda Europea en Migraciones (2015) y las distintas reformas de las directivas europeas sobre el sistema de Dublín, con especial énfasis en los movimientos secundarios de las personas refugiadas entre países de la UE (capítulo 3 - en inglés: EU responses to refugees’ secondary movements in times of crisis of international protection, Chiara Denaro y Fulvio Vassallo Paleologo);
- el acuerdo UE – Turquía, cómo éste afecta al Sistema Europeo Común de Asilo y las implicaciones de considerar Turquía como país seguro (capítulo 4 – en inglés: The EU-Turkey Joint Statement of March 2016. An ‘ad-hoc’ solution to the Refugee crisis or a new pillar for the European Common Asylum System external dimension?, David Moya y Georgios Milios);
- el vínculo entre asilo y vulnerabilidad desde una perspectiva jurídica; más concretamente, la Ley Europea de Asilo y cómo se ha plasmado la cuestión de la vulnerabilidad en la Directiva de Condiciones de Recepción y en la Decisión de Reubicación (capítulo 5 - en inglés: Vulnerability in the context of EU asylum policies: the challenges of identification and prioritisation, Natalia Caicedo y Andrea Romano);
- el caso de Sicilia y las llegadas a Italia de flujos mixtos (migrantes y refugiados) del Norte de África que, si bien no son recientes, han convertido el fenómeno en una crisis humanitaria durante la primavera del 2015-2016. El capítulo presenta los resultados de la investigación EVI-MED, en los que se muestra la complejidad de la gestión migratoria y de refugiados en Italia (Constructing and Evidence Base of Contemporary Mediterranean Migrations) (capítulo 6 – en inglés: Refugees’ reception in Italy: past and present of a humanitarian crisis, Alessio d’Angelo);
- los factores de riesgo y vulnerabilidad que influyen en la salud mental y en la salud psicosocial; la necesidad de incorporar la competencia cultural en el diseño de programas

destinados a los colectivos vulnerables y los principales retos que eso implica (capítulo 7 – en castellano: Necesidades de Salud Mental y Psicosociales de los Refugiados en Europa, Stella Evangelidou, Adil Qureshi, Francisco Collazos).

Hablar de «crisis de refugiados» supone asumir que las causas son limitadas en el tiempo, fruto de procesos que suceden en un momento determinado y que tienen un principio y un fin. Sin embargo, lo que se está presenciando en la actualidad son desplazamientos forzosos motivados por causas estructurales. En este sentido, cabe destacar que la naturaleza de los conflictos ha cambiado. Las guerras interestatales están desapareciendo, dando lugar a conflictos estructurales cuyas formas de violencia directa hacía la población civil provocan desplazamientos significativos (Grasa, 2007).

La perpetua inestabilidad en el Oriente Medio es un claro ejemplo del carácter estructural de los conflictos modernos. No obstante, cabe destacar que el origen de esta inestabilidad en la región no es reciente, ya que se remonta a finales de los años ´40, cuando 800.000 palestinos tuvieron que desplazarse forzosamente hacia países o zonas limítrofes (Gaza, Jordania, Siria y Líbano).

Es importante destacar la respuesta internacional en este conflicto y compararla con la producida a partir de la actual crisis humanitaria. Así, ante la situación de extrema vulnerabilidad, la comunidad internacional reacciona de forma unánime y en 1948 las Naciones Unidas crean *United Nations Relief for Palestine Refugees* (UNRPR) con el objetivo de coordinar y canalizar las ayudas internacionales. Con la posterior implementación del *United Nations Relief and Works Agency for Palestine Refugee* (UNRWA) se pretende dar el paso hacía un programa de desarrollo regional para la integración socioeconómica de estas personas. Sin embargo, las disputas entre Israel y los países árabes por el control de los recursos y las infraestructuras y el hecho de que solo se tratara de un mandato de asistencia y no de uno político, explican en gran medida el fracaso de esta apuesta, inspirada en el Plan Marshall.

En la actualidad, casi 8 millones de palestinos son desplazados forzosos, de los cuales 5,5 millones están en las áreas de operación de la UNRWA. La existencia de esta agencia, que en su inicio se fraguó como temporal, es una clara muestra del fracaso de la comunidad internacional en la gestión de las personas refugiadas de Palestina. Autores como Nachmias (2009) son muy críticos con el propósito actual de la agencia, destacando que más que ser parte de la solución, constituye parte del problema. Perpetuar casi 70 años la misión (sobre poblaciones que han dejado de ser consideradas refugiadas y que se han integrado en los territorios que las acogieron), implica una dependencia que debería acabar a través de un proceso transitorio que dote de legitimidad y poder a la Autoridad Palestina (órgano creado en 1993) y que culmine con el fin de la misión de la UNRWA.

Si hace décadas Siria representaba un lugar seguro para personas refugiadas palestinas, el estallido de la guerra en este país ha afectado al conjunto de la población. Según datos de las Naciones Unidas, en la actualidad, 5 millones de personas han abandonado el país y 9 millones son desplazados internos, cifras que configuran una de las mayores crisis humanitarias de los últimos 70 años. Para entender las devastadoras consecuencias de una situación que a día de hoy se vive como inviable políticamente, hay que remontarse al año 1971, cuando Hafez al-Assad (el padre del actual presidente Bashar al-Assad) toma el poder y convierte Siria en un país autocrático donde no se tolera ninguna forma de disidencia política. El terrorismo perpetrado por el propio estado sirio para reprimir cualquier forma de protesta contraria al régimen se ha ido consolidando en las últimas décadas. En realidad, este es el contexto de muchos de los países de la zona, dinámica que culmina con lo que se ha ido denominando las Primaveras Árabes, un movimiento que surge en Túnez y posteriormente se extiende a Egipto, Yemen, Bahréin, Libia y Siria. Las principales reivindicaciones de este movimiento tienen que ver con mejoras en las condiciones de vida y, sobre todo, con la exigencia de mayores derechos y libertades (entre ellas, la libertad de expresión).

Concretamente en marzo de 2011, manifestantes sirios que se inspiraban en la Primavera Árabe fueron duramente reprimidos por el régimen. Los primeros movimientos de oposición armada lo conformaron una mezcla de civiles y militares desertores. Lo que empezó siendo protestas pacíficas, se convirtió un año más tarde en una sanguinaria guerra civil (Comité Internacional de la Cruz Roja, 2012). Según Listes (2013), en la actualidad hay alrededor de mil grupos armados operando en Siria. Si bien su objetivo común es derrocar al régimen, no comparten un proyecto político, y compiten muchas veces entre sí. También forman parte de estas guerrillas opositoras distintos grupos yihadistas, algunos afiliados a al-Qaeda, que defienden la superioridad del Sunismo y la vía de la violencia para imponerlo (CIDOB, 2017).

Libia es otro de los países que explican, en gran medida, el impacto de las Primaveras Árabes sobre la crisis humanitaria que afronta Europa. Al igual que en el caso de Siria, el gobierno corrupto y autocrático de Gaddafi en Libia provoca revueltas por parte la población que carece de libertades, sufre desigualdades y cuenta con altas tasas de desempleo. Otro elemento en común entre los dos países lo representan las brutales formas de represión sobre la población civil con el objetivo de apagar las protestas. Sin embargo, aunque los contextos sean similares, la respuesta internacional no lo ha sido y ello se explica por la situación político-internacional y geoestratégica de ambos estados.

Así, a diferencia de Siria, en el caso de Libia la respuesta de la comunidad internacional ha sido consensuada y altamente institucionalizada. Varias han sido las razones que han provocado el consenso en torno a la aplicación del principio de la «responsabilidad de proteger» (Naciones Unidas) hasta llegar al uso de la fuerza armada, para evitar una violación masiva de los derechos de la población en Libia (Marrecho, 2013). En primer lugar, cabe destacar la falta de aliados en el norte de África, ya que ante la represión vivida en Libia, países como Túnez y Marruecos han tomado la senda de las reformas democráticas. A esto se le añade la debilidad política internacional del régimen de Gaddafi. El hecho de convertirse en el patrocinador del terrorismo internacional genera el rechazo de la comunidad internacional ya desde los años 1980. Por último, la facilidad de acceso al espacio aéreo libio es otro elemento que permite entender el acuerdo de la comunidad internacional a la hora de optar por intervenir militarmente en el país.

En el caso de Siria, no se ha dado una respuesta unánime por parte de la comunidad internacional, puesto que la relación del régimen Bashar al-Assad con Occidente es mucho más matizada. Tradicionalmente, los conflictos entre el gobierno sirio y los países occidentales no han sido tan intensos; por lo que tratar de agotar la vía diplomática y de presión económica constituyó una opción viable. De hecho, la UE, EE.UU y la Liga Árabe han adoptado sanciones económicas contra el régimen, si bien la UE fue la más contundente (Koening, 2012). En segundo lugar, a diferencia de Libia, Siria se encuentra en el centro de la zona de convulsiones políticas y religiosas donde musulmanas suníes y chiíes se disputan el poder. De ahí que Siria reciba el apoyo de Irán. Además, cabe destacar también los intereses y la lucha energética: la construcción de gaseoductos que cruzaran el país para librar el gas a Europa enfrentó a dos bandos políticos -Irán, Siria e Irak por un lado (con el apoyo de Moscú) y Turquía y los países del Golfo (con el apoyo de Washington) por otro lado-. En este sentido, la mayoría de los países beligerantes en la guerra Siria son países exportadores de gas con intereses en uno u otro gasoducto (Orenstein y Romer, 2015). Por último, la distancia geográfica entre Siria y la UE o EE.UU hubiera dificultado una posible intervención militar (Marrecho, 2013). En 2015 dos acontecimientos añadieron más complejidad a la situación de guerra, mostrando la falta de consenso de la comunidad internacional ante el conflicto. Si bien tanto Rusia como EE.UU han tomado iniciativa en la lucha contra el Estado Islámico en Siria, Rusia ha intervenido militarmente apoyando el régimen de Bashar al-Assad, mientras que EE.UU ha contribuido a formar y armar a los grupos opositores (Hanelt, 2016).

La situación de extrema violencia en la región, agravada (en ocasiones) por la acción (inadecuada) o la inacción de la comunidad internacional, ha supuesto un éxodo de población sin precedentes, primero hacía países seguros de la zona y, posteriormente, hacia Europa. Pero la llegada a Europa no supone el fin del calvario por el que tienen que pasar estas personas. A pesar de que las evaluaciones para ser elegibles como solicitantes de asilo se realizan en función de las características individuales, la nacionalidad del solicitante determina en gran medida su estatus legal, especialmente en el caso de aquellas personas que llegan a Italia. De esta forma, alcanzar Europa a partir de la entrada a un país considerado como «seguro» convierte automáticamente a muchas personas en migrantes económicos y, por tanto, no elegibles como refugiados. No obstante, tal y como apunta Alessio d'Angelo, las investigaciones destacan que entre las principales motivaciones para salir del país se menciona: «persecución o violencia dirigida» (49%), «preocupación por mi seguridad o por la seguridad de mi familia» (43%) y «guerra» (24%). Por otro lado, las personas que huyen de la guerra y situaciones de violencia también buscan mejorar sus vidas; por lo que la línea entre asilo y migración económica es cada vez más difusa incluso en el terreno, dando lugar a flujos mixtos que se solapan con los tradicionales flujos de entrada a UE. Eso se debe, principalmente, a que las personas viajan por las mismas rutas y recurren a las mismas redes para entrar en la UE de forma irregular (Triandafyllidou y Mantanika, 2017).

En este sentido, tres son las rutas hacia la UE que han cobrado especial importancia a partir de esta crisis humanitaria. En primer lugar está el corredor Este del Mediterráneo, desde Turquía hasta las islas Griegas, a través del Mar Egeo. Este fue el principal punto de entrada a la UE en 2015 y la cifra desciende a partir de marzo de 2016 como consecuencia del acuerdo con Turquía (European Council, 2016). Entre 2014 y 2016, el 40% de las llegadas a Grecia eran de ciudadanos sirios, 21% de afganos y 13% de iraquíes (Policía Griega, 2017). El perfil de las personas que llegaron a Grecia corresponde sobre todo a mujeres y niños cuyo número pasa de representar el 27% en septiembre 2015 a 60% en marzo 2016 (UNHCR, 2016). Por desgracia, cabe destacar también el número de aquellos que no han llegado y que han muerto debido a los repetidos naufragios que se han producido en el Mediterráneo. Así, en cuanto al número de muertes registradas en esta ruta, en 2015 se cifran 806, en 2016, 434 muertes y en 2017, 45 muertes (OIM, 2017).

El corredor central Mediterráneo implica el cruce del mar desde Libia y Egipto (en menor medida desde Túnez o Argelia) hasta Italia. Se convierte en la principal ruta de entrada a partir de marzo 2016. En la primera mitad del 2017 llegan a Italia 83.752 personas; mientras que en la primera mitad del 2016 la cifra desciende a 70.222. El número de muertes registradas también disminuye, aunque en menor medida, pasando de 3.073 durante los primeros 9 meses del 2016, a 2.471 durante el mismo periodo del 2017 (OIM, 2017). A pesar de este ligero descenso, la ruta central Mediterráneo sigue siendo la más peligrosa, con una media de una muerte por cada 50 personas que llegan a Italia (White y Singleton, 2017). Las personas que utilizan esta ruta proceden principalmente de los países de África Subsahariana y del Cuerno de África, especialmente hombres jóvenes y mayoritariamente con estudios primarios. Estas características, a diferencia de las que experimentaban aquellas personas que llegaban a través del corredor Este, han contribuido a la construcción de un discurso político y mediático en Italia distinto al que generaron los flujos percibidos como más vulnerables. Eso ha dado lugar a una mayor arbitrariedad a la hora de filtrar entre solicitantes de asilo y migrantes económicos, permitiendo menor margen para solicitar asilo a aquellos que llegaban a través de esta ruta.

Finalmente, está el corredor Oeste del Mediterráneo, desde el Norte de África hasta España a través del Estrecho de Gibraltar. Los últimos datos disponibles apuntan a que de enero a septiembre 2017 llegan a España un total de 12.122 personas a través de esta ruta (OIM, 2017). Desde agosto de 2017 se ha de-

tectado una posible nueva ruta extremadamente peligrosa a través del Mar Negro (Gillet, 2017).

Ante esta situación sin precedentes, ¿cuál ha sido la reacción de la UE y qué medidas se han implementado? Según Dimitriadi (2015), en la respuesta europea convive, de forma contradictoria, el deseo de «fortificar Europa», reforzando así las fronteras y externalizando su gestión, con la responsabilidad moral y legal de acoger a las personas que cumplen con los requisitos de demandante de asilo. En relación a la externalización de las fronteras, se trata de una política que se viene implementando con anterioridad a la llamada «crisis de refugiados». López-Sala y Godenau (2017) definen estas políticas como procesos *out* y *up* que se traduce en la gestión coordinada entre Estados receptores y estados vecinos (de origen o de tránsito), mediante «acuerdos de cooperación».

A modo de ejemplo, en el año 2010 el gobierno de Silvio Berlusconi firma un acuerdo con el régimen de Gaddafi y Libia se convierte en un actor clave de la UE en su política de externalización de fronteras. Otro ejemplo de externalización de las fronteras lo representa el Partenariado por la Movilidad (Mobility Partnership). En 2013, Marruecos firma con sus vecinos del Sur este partenariado, a través del cual se compromete, entre otras cuestiones, a readmitir migrantes procedentes de terceros países que hayan sido expulsados desde Europa. No obstante, es el polémico acuerdo con Turquía (2016) el que reafirma la política de externalización de las fronteras por parte de la UE. El largo proceso de negociación culmina con el acuerdo a través del cual Turquía se compromete a bloquear la salida de embarcaciones y a aceptar la devolución de los que han conseguido llegar a Grecia después de esa fecha. El acuerdo se basa en el mecanismo del intercambio: por cada refugiado de Siria retornado desde Grecia a Turquía después de marzo 2016, uno es reasentado. A cambio, la UE ofrece a Turquía la futura exención de visados en la zona Schengen para los ciudadanos turcos (bajo el cumplimiento de 72 condiciones), 6.000 millones de euros para sufragar los gastos derivados de la acogida de personas refugiadas - en el marco de un paquete de cooperación al desarrollo más amplio- y la reapertura de conversaciones acerca del posible acceso del país a la UE. Actualmente sólo se han comprometido 3.000 millones (Comisión Europea, 2018). Dada la dudosa viabilidad legal del acuerdo, los gobernantes europeos apostaron por que este acuerdo fuera eficaz en la medida que permitiría disuadir nuevas llegadas y no tanto por su implementación (Collett, 2016).

A pesar de que los líderes europeos han tildado el acuerdo de exitoso e incluso lo han considerado un modelo a seguir, las críticas recibidas han sido múltiples. Además, ha puesto de manifiesto que la «diplomacia de chequera» es la principal estrategia europea para reforzar un enfoque securitario a cambio de contrapartidas económicas (Sanahuja, 2015). Desgraciadamente, tras este acuerdo las personas refugiadas se han convertido en moneda de cambio en las negociaciones entre la UE y Turquía. Por otro lado, cabe destacar que el funcionamiento y la sostenibilidad en el tiempo de este acuerdo son muy cuestionables. La desconfianza entre las partes, la situación política de Turquía tras el golpe de estado frustrado y el hecho de que la UE difícilmente podrá satisfacer el requisito de la supresión de visado para ciudadanos turcos, son elementos que, según Arango (2016), convertirán el acuerdo en inviable a medio plazo. Tras un año de la firma del acuerdo, tres son las lecciones aprendidas (Koenig, Walter-Franke, 2017): 1) los acuerdos integrales no pueden ni deben subordinar la política exterior de la UE a objetivos de control migratorio cortoplacistas; 2) la UE tiene que concienciarse e interiorizar los compromisos de solidaridad y reparto de responsabilidades, a fin de protegerse de los chantajes por parte de países terceros; 3) los miembros de la UE tienen que promover acuerdos con efectos *win-win-win*, que tengan en cuenta de forma más rigurosa los derechos de los migrantes y alternativas legales y seguras.

Esta política de securitización y externalización de las fronteras convive contradictoriamente con una política de responsabilidad moral y legal hacía las personas en busca de protección internacional. Así, el Sistema

Europeo Común de Asilo (Common European Asylum System, CEAS/SECA) es desde 1999 el pilar fundamental de la política Europea de Asilo. Sus principios básicos giran en torno a la idea de que la UE es un área de protección y los estados miembros están en condiciones de garantizar estándares comunes. La implementación del SECA se sustenta en: tres Directivas Europeas (sobre Procedimientos de Asilo, Condiciones de Recepción y Calificaciones) y dos Reglamentos (el Reglamento de Dublín y el EURODAC) (Comisión Europea, 2015).

Dos son las crisis que cuestionan el sistema de Dublín, ambas vinculadas a los movimientos secundarios. La primera se produce en el año 2011, cuando 25.000 tunecinos que llegaron a través del Mediterráneo y fueron identificados en Italia, decidieron ir a Francia. La segunda crisis del sistema de Dublín (2013-2014) se produce cuando refugiados, especialmente procedentes de Siria y el Cuerno de África, logran evitar la identificación por parte de las autoridades italianas para poder transitar hacia el norte, a través de la resistencia pasiva a que se les recojan las huellas dactilares, protestas o negociaciones con las autoridades. Ante esta situación, varios países nórdicos presionaron para que Italia volviera a incorporar la identificación y la recogida de huellas dactilares, incluso si ello exigía el uso de la fuerza. La medida conllevó el aumento de los movimientos secundarios irregulares, gracias a la proliferación de las mafias, y la respuesta favorable por parte de muchos países a reestablecer las fronteras internas.

La Agenda Europea en Migraciones de 2015 incorpora dos elementos esenciales que pretenden corregir los desajustes producidos a partir de la crisis de Dublín y evitar los movimientos secundarios de las personas refugiadas. En primer lugar, la creación de los *hotspots,* que tienen como objetivo asegurar la identificación por parte de los primeros países y la distinción entre refugiados (que son elegibles para recibir asilo) y migrantes económicos (potencialmente retornables). Los primeros *hotspots* en Italia se abrieron en Sicilia (cuatro en total): en Lampedusa, con una capacidad de 500 personas, en Pozzallo, con una capacidad de 300 personas, en Taranto, 400 personas y en Trapani, 400 personas. No se trata de instalaciones nuevas, sino de centros de acogida ya existentes que se han remodelado. Por otro lado, Grecia cuenta con cinco *hotspots:* en Lesvos, con una capacidad máxima de recepción de 1.500 personas; en Chios, donde se reciben a 1.100 personas; en Samos, con una capacidad para acoger 850 personas; en Leros, 1.000 personas y en Kos, 1.000 personas. No obstante, Médicos sin Fronteras denuncia en un reciente artículo (marzo, 2018) que en los campos se viven situaciones de hacinamiento, ya que denuncia que en Lesvos se acumulan más de 5.000 personas y en Samos más de 2.000 personas.

Según un reciente estudio (ECRE 2016), la implementación de *hotspots* en Italia y Grecia genera una serie de retos. En primer lugar, la existencia de filtros previos que a menudo impiden a las personas poder pedir asilo (a través de entrevistas de admisión, formularios como el '*foglio notizie*' en Italia o la aplicación del concepto de "tercer país seguro"). A veces, a este filtro se añade un segundo: el de las nacionalidades prioritarias para pedir asilo. La falta de información adecuada y la insuficiente existencia de traductores y mediadores culturales constituyen otros de los problemas de estos *hotspots*. Además, según el mismo informe, la detención es el principio que se utiliza para asegurar su funcionamiento, incluso en el caso de los menores no acompañados. Tampoco se realiza un seguimiento adecuado de las prácticas que se llevan a cabo en los centros, por lo que hay un desconocimiento sobre posibles vulneraciones de derechos humanos.

Aparte de incorporar la perspectiva de los *hotspots*, el segundo elemento de la Agenda Europea en Migraciones 2015 (a través de la Decisión del 14 de septiembre) consiste en la reubicación de 40.000 demandantes de asilo desde Italia (24.000) y desde Grecia (16.000) hacia países de la UE que de forma voluntaria aceptan estas solicitudes. La posterior Decisión, del 22 de septiembre, amplía el número a 120.000 «personas en evidente necesidad de protección internacional», que deben ser reubi-

cadas de forma obligatoria a través de cuotas por países (exceptuando Eslovaquia, Hungría y Rep. Checa). La propuesta de la Comisión (COM (2015) 451 del 9 Septiembre) supone una distribución entre los estados miembros, utilizando una serie de criterios objetivos (40% el tamaño de la población, 40% el PIB, 10% la media de las solicitudes de asilo en el pasado, 10% tasas de desempleo), a los que se añaden otros más cualitativos que tienen que ver con el potencial del solicitante en clave de integración (dominio de idioma, cualificaciones etc.).

Sin embargo, el sistema de reubicación muestra dos problemas clave (Carrera y Guild, 2015): 1) la protección de las personas refugiadas es percibida como un reparto de cargas fronterizas y no como una obligación colectiva de la UE. La filosofía que hay detrás de la reubicación se basa en la errónea idea de que la responsabilidad y la capacidad para gestionar y resolver las solicitudes de asilo deben ser asumidas exclusivamente por parte del primer estado al que entran estas personas. Además, no se tienen en cuenta las preferencias de las personas solicitantes y no se lleva a cabo una evaluación personal y familiar en esta clave; 2) la falta de confianza en que los estados miembros puedan asegurar unas condiciones apropiadas de recepción en cuanto al cumplimiento de los derechos humanos. Un incentivo para que las personas se queden en el país lo representa el proceso de recepción. Si este se hubiera llevado a cabo de forma adecuada, cosa que no ha sucedido en la mayoría de los países, el sistema de asilo europeo no hubiera quedado en entredicho, tal y como lo está a día de hoy.

Las tensiones, la falta de confianza y las distintas sensibilidades entre los estados miembros se traducen en la falta de cumplimiento del sistema de reubicación. Los datos de la Comisión Europea muestran que dos años más tarde, en septiembre de 2017, solo se había cumplido poco menos del 30% de lo establecido (29.401). Los países que proporcionalmente han cumplido en mayor medida, teniendo en cuenta la asignación del número de reubicados, son: Alemania 30,8% del total de 27.536 personas que le correspondía, Francia, 22.7% del total de 19.714 y España, 13% del total de 9.323. Polonia y Hungría siguen siendo los únicos países que no han reubicado a ninguna persona, mientras que la Rep. Checa no volvió a admitir a nadie desde mediados del 2016. En cambio, Austria empezó a aceptar refugiados a partir del verano del 2017. Según los últimos datos de la Comisión sobre el Apoyo de los Estados miembros en el Mecanismo de Reubicación, un total de 33.721 personas habían sido reubicadas hasta febrero 2018. Šelo (2017) apunta a dos elementos para explicar este fracaso: por un lado, problemas técnicos durante la identificación, registro y procedimientos de selección en Grecia e Italia. En segundo lugar, cabe destacar los obstáculos relacionados con el discurso del miedo e inseguridad que los partidos anti-refugiados han difundido en la opinión pública. Eso ha frenado que muchos países se sintieran comprometidos con la resolución de la crisis.

El mecanismo de reubicación ha puesto énfasis en las «personas en evidente necesidad de protección internacional», dando prioridad especialmente a grupos vulnerables tales como niños o personas que requieren asistencia médica. Las personas refugiadas se exponen a factores estructurales como por ejemplo las guerras, los conflictos armados, las hambrunas etc. que las convierten en grupos vulnerables. A esto se añaden factores de vulnerabilidad que tienen que ver con las características personales (género, etnia, orientación sexual, discapacidad etc.) que de forma interseccional agravan estas situaciones de fragilidad. Incorporar la vulnerabilidad como variable a tener en cuenta es un asunto relativamente nuevo en la legislación europea sobre refugio, lo que supone que hasta muy recientemente estos colectivos habían estado invisibilizados.

A nivel internacional, UNHCR es pionero en establecer protocolos para priorizar a los grupos vulnerables. En el Manual para el Reasentamiento (UNHCR Resettlement Handbook, 2011) se identifican los siguientes perfiles vulnerables: personas con necesidad de protección física o legal; supervivientes de torturas o violencia; personas con necesidades médicas;

mujeres, adolescentes, niños y niñas en riesgo; personas que pueden llevar a cabo reagrupaciones familiares; personas que no tienen otras alternativas sostenibles.

Sin embargo, en el contexto europeo, la Regulación de Dublín no ha tenido en cuenta las especificidades de los grupos vulnerables hasta el 2013, con la Directiva sobre Condiciones de Recepción 2013/33/EU. Más concretamente, el art. 21 de dicha Directiva incluye las siguientes categorías como grupos vulnerables que deben ser tomadas en consideración por los estados miembros: menores, menores no acompañados, personas con discapacidad, personas mayores, mujeres embarazadas, padres solos con hijos a cargo, víctimas de trata, personas con enfermedades graves, personas con trastornos mentales y personas que han sido víctimas de tortura, de violación u otras formas de violencia psicológica, física o sexual. En el marco de la reforma del Sistema Europeo de Asilo, se discute la necesidad de considerar las necesidades específicas de los demandantes de asilo durante el proceso de recepción. Si bien todavía no hay consenso en torno a esta cuestión, se pone énfasis en la importancia de evaluar y documentar bien los casos que podrían identificarse como grupos vulnerables.

No obstante, ante la situación de colapso que experimentan los *hotspots*, el principal reto para conseguir este objetivo sigue siendo la falta de recursos económicos y humanos para atender a los grupos vulnerables. A esto se le añade otro obstáculo: el proceso de identificación como grupo vulnerable suele dilatarse en el tiempo, lo que repercute en una mayor tardanza a la hora de realizar las reubicaciones de estas personas (especialmente en el caso de los menores no acompañados). Finalmente, se produce cierta incompatibilidad entre el criterio cualitativo del potencial para la integración (cualificaciones, competencias, lengua) y la necesidad de reubicar de forma prioritaria a los grupos vulnerables. Si bien la Decisión de Reubicación reconoce la urgencia de resolver la situación de los solicitantes que representen grupos vulnerables, los estados muestran poca disponibilidad al respecto.

Más allá de las consideraciones jurídicas en relación a los grupos vulnerables y su priorización en el sistema de asilo, cabe destacar un conjunto de elementos socio-sanitarios del conjunto de las personas refugiadas y particularmente de las más vulnerables. Entre los principales problemas de salud de las personas refugiadas están: la tuberculosis, VIH, hepatitis A y B, enfermedades parasitarias y sobre todo las enfermedades de salud mental (Humphris y Bradby, 2017).

Concretamente, los retos con respecto a la salud mental de estos colectivos son significativos. Así, entre los trastornos más comunes entre las personas refugiadas se encuentran el estrés post-traumático, depresión, psicosis o suicidio. Por otro lado, los factores de riesgo que influyen en el estado de salud mental de las personas refugiadas están vinculados a factores personales, culturales, sociales, legales y laborales; a los que se añaden las condiciones de viaje. Estos factores de riesgo atraviesan las distintas fases migratorias y en ocasiones se agravan con las situaciones de incertidumbre que estas personas sufren durante los largos procesos de solicitud de asilo o con las duras condiciones de vida a las que se enfrentan en los *hotspots*.

Según Médicos sin Fronteras (2018), en las islas griegas se vive una verdadera crisis de salud mental. Las precarias instalaciones, el hacinamiento y la constante vulneración de derechos agravan la ya muy frágil salud mental de las personas que tienen que luchar cada día para asegurar su supervivencia. Estas situaciones se pueden prolongar incluso con posterioridad a la reubicación, ya que las personas refugiadas se enfrentan a una serie de dificultades a la hora de acceder a los servicios sanitarios en general, y a los de salud mental en particular. Entre estas dificultades cabe destacar: las burocráticas, las lingüísticas, las culturales o simplemente el desconocimiento del sistema sanitario. A éstas se añaden las que tienen que ver con los profesionales que atienden a estas personas. Es por ello que es necesario contar con profesionales que tengan incorporada la competencia intercultural y que, por tanto, sean sensibles a la hora de detectar diferencias

entre el malestar psicológico, la explicación de ese malestar y las expectativas para aliviar los síntomas (Evangelidou et al., 2016). No obstante, esta competencia intercultural debe ser institucional y debe comportar una competencia organizacional y profesional que reconozca la agencia de las personas refugiadas y supere el síndrome del exotismo (se brinda apoyo por el «amor» a culturas percibidas como exóticas) o del salvador (se brinda apoyo desde posiciones de superioridad) (Qureshi, 2018).

A través de los capítulos incluidos en este monográfico, se ha puesto de manifiesto, por un lado, el origen del conflicto en Oriente Medio y sus devastadores consecuencias, entre las cuales desplazamientos humanos sin precedentes. A su vez, se han destacado las sombras y, en menor medida, las luces en la gestión de la crisis humanitaria por parte de Europa. A modo de reflexión final, cabe mencionar que no asistimos a una crisis de refugiados sino que estamos ante una crisis multinivel con efecto dominó, que ha permitido aflorar las debilidades del proyecto Europeo y ha despertado discursos que se pensaban ya superados. En primer lugar, se trata de una crisis humanitaria. A la alta presencia de grupos vulnerables (gran presencia de menores no acompañados, mujeres en situaciones extremas) se añade el elevado número de muertes durante el trayecto. Pero quizá lo que haya producido más estupor en esta crisis humanitaria es que, lejos de encontrar alivio, muchas de las personas que han llegado a Europa han visto como, en ocasiones, su situación de vulnerabilidad se perpetuaba o empeoraba.

A la crisis humanitaria se le añade una crisis de gobernanza, una crisis institucional del propio proyecto europeo, ya que la UE cuenta con suficiente experiencia y recursos para poder acoger de forma digna a las personas que han huido por la guerra. No obstante, las distintas sensibilidades de los países europeos han puesto de manifiesto las fracturas políticas internas y el crecimiento del populismo xenófobo de derechas, lo que desembocado en una gestión desafortunada y muy criticada. Por un lado, Europa blinda sus fronteras externas convirtiendo a los países fronterizos (en vía de desarrollo y que no ofrecen garantías democráticas para el respeto de los derechos humanos) en gestores principales del fenómeno. Por otro lado, la repetida desobediencia de algunos estados miembros (especialmente los países del Este de Europa) con respecto a las cuotas de reubicados, muestra la frágil integración de estos países, cuyos imaginarios culturales e identitarios no están preparados para incorporar a estas personas de forma adecuada. De ese modo, los ideales, valores y compromisos que han sido los pilares fundamentales de la UE se están quebrando, lo que pone en peligro su proyecto político e institucional.

Finalmente, la actual crisis es una crisis de hospitalidad y solidaridad, ya que las políticas llevadas a cabo por los estados cuestionan permanentemente el estado jurídico de las personas vulnerables (Rodríguez, 2017). A finales de 2014, la Operación Mare Nostrum, que rescató 138.000 seres humanos, fue sustituida por la Operación Tritón de Frontex, orientada a controlar las llegadas a Europa y en menor medida a salvar las vidas de las personas que intentaban alcanzar sus costas. Este es un ejemplo más de cómo la UE gasta millones de euros en blindar las fronteras, poniéndose el foco principalmente en cómo impedir la entrada de estas personas. A esto se añade la emergencia de discursos que han actuado como combustible para los partidos populistas xenófobos y euroescépticos que florecen en un clima de renacionalización generalizada (Arango, 2016).

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Introduction

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According to UNHCR (2017), nearly 65.5 million people have been forced to flee their home globally. Among them, 22.5 are refugees, with approximately half of them being minors. Additionally, there are 10 million stateless people; their nationality and the access to basic rights such as education, health care, employment and freedom of movement have been denied. Internal conflicts and wars are the main reasons behind the fact that, every minute, 20 people are forced to flee in the world. Throughout history, we have to go back to World War II to find similar figures.

In the European context, the so-called "Refugee Crisis" worsened with the humanitarian crisis and the arrival of people seeking international protection at the Italian island of Lampedusa in 2013. After the events linked to the Arab Springs and its multiple consequences, refugees have been overexposed in the Media, as well as in the political discourses in Europe, magnifying its presence and effects. Nevertheless, data shows that only 17% of the total number of displaced people arrived to Europe; refugees are mainly being hosted by countries in conflict zones (especially bordering countries) (UNHCR, 2017).

Even though the figures of arrivals to Europe were not disproportionate, taking into consideration the magnitude of the violence in the region and the size of the population in EU countries and their resources, the images projected in the Media and the messages sent by anti-migration political parties revealed hostile and negative approaches towards the arrival of refugees. Metaphors linked to natural disasters (floods, avalanches, etc.) that show the devastating and irreversible character of these arrivals have only been counteracted by the tragic picture of the Syrian kid Alan Kurdi in 2015 (wrongly named "Aylan") (IOM, 2018), a picture that disturbed the consciences of European societies.

The public opinion and media debates have been extended to academic debate as one of the most relevant impacts of this crisis implies a reconfiguration of mobilities and new ways of understanding transnational dynam-

ics. In addition, unsupportive and inhospitable policies and legal frameworks at international, regional, national and local level have been designed and encouraged by different European countries.

With these reflections as a starting point, the CER-M (UAB-UB) organised the international conference "Refugees on the move: thinking beyond the Euro-Mediterranean crisis" on the 21st and 22nd of April 2016 at the CCCB and *Espai Contrabandos*. The conference aimed at creating a space of debate and reflection around the theoretical, political, legal and social implications of these displacements are causing. International and national academics, as well as experts and professionals working in the field participated in the event. As a result of the conference, and based on the contributions of the participants, the CER-M team presents this bilingual monographic entitled "Refugees on the move: political, legal and social challenges in times of turmoil".

From an interdisciplinary perspective, the monographic analyses:

- The role of the international community, through the UNRWA, in the management of the refugee crisis in the Middle East since the end of the '40s until today (chapter 1 – in Spanish: *La UNRWA y los refugiados de Palestina. Protección y desarrollo humano en el contexto de las crisis de refugiados en el Próximo Oriente,* Oscar Monterde Mateo);
- The political situation and the main causes of the displacements of Syria, the country with most displaced people in the world, behind South Sudan and Afghanistan, (chapter 2 – in English: Syria's Refugee Crisis: History of a Mass Exodus, Naomí Ramírez Díaz);
- The European Agenda on Migration (2015) and the various reforms of the European Directives about the Dublin regulation, with a special focus on the secondary movements of refugees between EU countries (chapter 3 – in English: EU responses to refugees' secondary movements in times of crisis of international protection, Chiara Denaro and Fulvio Vassallo Paleologo);
- The EU- Turkey Agreement, how it affects the European Common Asylum System and the implications of considering Turkey as a safe country (chapter 4 – in English: The EU-Turkey Joint Statement of March 2016. An 'ad-hoc' solution to the Refugee crisis or a new pillar for the European Common Asylum System external dimension?, David Moya and Georgios Milios);
- The link between asylum and vulnerability from a legal perspective; more precisely, the European Asylum Law and how the issue of vulnerability has been captured by the Reception Conditions Directive and the Relocation Decision (chapter 5 – In English: Vulnerability in the context of EU asylum policies: the challenges of identification and prioritisation, Natalia Caicedo and Andrea Romano);
- The case of Sicily and the arrivals of mixed flows to Italy (migrants and refugees) from North Africa that, even if they are not recent, have become a humanitarian crisis during the spring in 2015-2016. The chapter presents the results of the research EVI-MED, which shows the complexities in the migration and refugee management in Italy (Constructing and Evidence Base of Contemporary Mediterranean Migrations) (chapter 6 – in English: Refugees' reception in Italy: past and present of a humanitarian crisis, Alessio d'Angelo);
- Risk and vulnerability factors influencing mental health and psychosocial health: the need to incorporate the cultural competence in the design of programmes addressed to vulnerable groups and the main challenges this implies (chapter 7 – in Spanish: *Necesidades de Salud Mental y Psicosociales de los Refugiados en Europa*, Stella Evangelidou, Adil Qureshi and Francisco Collazos).

Talking about "refugee crisis" means accepting that the causes are limited in time, as a result of processes that happen in a concrete moment and have a beginning and end. However, what we are witnessing today are forced displacements motivated by structural causes.

In this sense, it should be noted that the nature of conflicts has changed. Interstate wars are disappearing, leading to structural conflicts whose forms of direct violence towards civilians provoke significant displacements (Grasa, 2007).

The perpetual instability in Middle East is a clear example of the structural character of modern conflicts. Nevertheless, it is worth mentioning that the origin of this instability in the region is not recent, as it dates to the end of the '40s, when 800,000 Palestinians were forcibly displaced to neighbouring countries or areas (Gaza, Jordan, Syria and Lebanon).

It is important to highlight the international response to this conflict and compare it to the current humanitarian crisis response. Thus, faced with the situation of extreme vulnerability, the international community reacts in a unanimous way and in 1948 the United Nations created the United Nations Relief for Palestine Refugees (UNRPR) with the aim to coordinate and channel international aid. Later, with the implementation of the United Nations Relief and Works Agency for Palestine Refugee (UNRWA), it is intended to take a step towards a regional development programme for the socioeconomic integration of these people. However, the disputes between Israel and the Arab countries for the control of the resources and infrastructures, together with the fact that it was only an assistance mandate, not a political one, explain the failure of this project, inspired by the Marshal Plan.

Today, nearly 8 million Palestinians are forcibly displaced, of which 5.5 million are in UNRWA's areas of operation. The existence of this agency, conceived at its beginning as temporary, is a clear example of the international community's failure to manage the refugees in Palestine. Authors such as Nachmias (2009) are very critical of the current purpose of the agency, highlighting that it is part of the problem instead of part of the solution. Perpetuating the mission for almost 70 years (over a population that is no longer considered refugees and have been integrated into the societies that hosted them), implies a dependency that should end through a transitional process that provides legitimacy and power to the Palestinian Authority (body created in 1993) and that finalizes with the end of the UNRWA.

Despite Syria having been a safe place for Palestinian refugees for decades, the outbreak of the war has had an important effect on the overall population of the country. According to the UN, 5 million people have left the country and 9 million are internally displaced, figures that shape one of the biggest humanitarian crises of the last 70 years. To better understand the devastating consequences of a situation that today is perceived as politically unviable, we must go back to 1971, when Hafez al-Assad (the father of the current President Bashar al-Assad) takes power and turns Syria into an autocratic country where no form of political dissidence is tolerated. The terrorism perpetrated by the Syrian state to contain any kind of protest against the regime has been consolidated over the past decade. Indeed, this is the condition for many other countries in the region; such dynamic culminates with the so-called Arab Springs, a movement initiated in Tunisia and subsequently extended to Egypt, Yemen, Bahrein, Libya and Syria. Key vindications of these movements are related to improvements in living conditions and, above all, the demand for greater rights and freedoms (including freedom of speech).

In particular, in March 2011 Syrian protesters, inspired by the Arab Spring, were severely repressed by the regime. The first movements of the armed opposition were made up of a mixture of civilians and deserted soldiers. What started as pacific demonstrations became, one year later, a vicious civil war (ICRC, 2012). According to Listes (2013), there are currently nearly one thousand armed groups operating in Syria. Although their common objective is to overthrow the regime, they do not share a political project, sometimes they even compete with each other. In addition, jihadist groups take part in these opposition guerrillas, some of them affiliated with al-Qaeda, defending the superiority of the Sunni and violence as a way to impose it (CIDOB, 2017).

Libya is another country that helps to explain the impact of the Arab Springs in the humanitarian crisis that Europe is currently facing. Following Syria's case, the autocratic and corrupt government of Gaddafi caused revolts by the part of the population that lacked freedom, suffered inequalities and experienced high unemployment rates. The brutal repression over civilians to stop protests is another common element between the two countries. Nevertheless, despite the similar context, the international answer has been different and this is related to their political-international and geostrategic situation. In this sense, as opposed Syria, the international community response in Libya has been agreed and highly institutionalised. The agreement on the application of the "responsibility to protect" principle (UN), with the use of armed forces in order to avoid a massive violation of human rights in Libya, has been reached for different reasons (Marrecho, 2013).

In the first place, a lack of allies in North Africa, given the repression lived in Libya; other countries such as Tunisia and Morocco had taken the path of democratic reforms. In addition to this, the international political weaknesses of the Gaddafi regime as a sponsor of international terrorism generated the rejection of the international community since the 1980s. Lastly, Libya's airspace accessibility is another element that allows us to better understand the international community agreement to invade the county. In Syria's case, there has not been a unanimous response from the international community, because the relationship between the Bashar al-Assad regime and the Western world is a lot more nuanced. Traditionally, conflicts between the Syrian government and Western countries have not been as intense; this is why trying to exhaust the diplomatic and economic pressure was a viable option. In fact, the USA and the Arab League have adopted economic sanctions against the regime, although, the EU was the most conclusive (Koening, 2012).

Secondly, unlike Libya, Syria is at the very core of the political and religious convulsions, where Sunni and Shia Muslims dispute power. In addition, it is important to highlight the energy conflict and interests: the construction of oil pipes that cross the country to provide gas to Europe impacted two political blocs – Iran, Syria and Iraq on one side (with the support of Moscow) and Turkey and the Gulf countries (with the support of Washington) on the other side. In this sense, the majority of warring countries in Syria are exporters of gas with interests in any oil pipeline (Orenstein y Romer, 2015).

Finally, the geographic distance between Syria and the EU or the USA would have hindered a potential military intervention (Marrecho, 2013). In 2015, two following events added more complexity to the war situation, showing the lack of consensus of the international community. Even though both Russia and the USA have taken initiative in the fight against the Islamic State in Syria, Russia has intervened militarily supporting the Bashar al-Assad regime, while the USA has contributed to training and supplying the opposition groups with arms (Hanelt, 2016).

The situation of extreme violence in the region, worsened (occasionally) by the inadequate action or inaction of the international community, has caused an exodus without precedent; first, migration was to safer countries in the region and then later to Europe. Nevertheless, arriving in Europe does not end the agony of these people. Despite the fact that the assessment for eligibility of an asylum seeker case is based on individual characteristics, the nationality determines to a great extent his or her legal status, especially in the case of those arriving to Italy. From this perspective, getting to Europe through a "safe" country turns a lot of people into economic migrants and, therefore, not eligible as refugees. Nevertheless, as pointed out by Alessio d'Angelo, research highlights that among the main motivations to leave their country are: "persecution or direct violence" (49%), "worried about my or my family safety" (43%) and "war" (24%). On the other hand, people fleeing from war and situations of violence also seek to improve their lives; therefore, the

line between asylum and economic migration is even more diffused in the field, with mixed flows overlapping with traditional flows of entry to the EU. This is mainly due to the fact that people move using the same routes and resort to the same networks to get into the EU irregularly (Triandafyllidou y Mantanika, 2017). In this sense, there are three routes to the EU that have gained importance since the humanitarian crisis. In the first place, there is the Eastern Mediterranean corridor, from Turkey to the Greek islands, through the Aegean Sea. This was the main point of entry to the EU in 2015 and the figures started to decrease from March 2016 as a consequence of the EU-Turkey Agreement (European Council, 2016).

Between 2014 and 2016, 40% of arrivals to Greece were Syrian citizens, 21% Afghan and 13% Iraqi. Regarding the profile of people who arrived to Greece, it mainly corresponds to women and children, representing an increase from 27% in September 2015 to 60% in March 2016 (UNHCR, 2016). Unfortunately, it is worth noting the number of those who have not arrived and who have died due to the constant shipwrecks that have taken place in the Mediterranean. As for the registered deaths in this route, IOM values them at 806 (2015), 434 (2016) and 45 (2017). The Mediterranean Central corridor implies crossing the sea from Libya and Egypt (to a lesser extent from Tunisia or Algeria) to Italy. It has become the main route of entry since March 2016. In the first half of 2017, 83,752 people arrived to Italy; while in the first half of 2016 it decreased to 70,222. The number of registered deaths decreased as well, although to a lesser extent, going from 3,073 during the first nine months in 2016, to 2,471 during the same period in 2017 (IOM, 2017). Despite this slight decrease, the Mediterranean central route is still the most dangerous, with an average of one death for every 50 people arriving to Italy (White y Singleton, 2017). People using this route come mainly from Sub-Saharan countries and the Horn of Africa, especially young men and mainly those with primary education. These characteristics, as opposed to those of people arriving through the East corridor, have contributed to the construction of a political and media discourse in Italy different from the discourse generated by the flows perceived as more vulnerable. This has led to greater arbitrariness when "screening" between asylum seekers and economic migrants, allowing less margin to seek asylum for those arriving by this route.

Lastly, there is the Western Mediterranean corridor, from North Africa to Spain, through the Strait of Gibraltar. The last available data points out that, from January to September 2017, 12,122 people arrived to Spain through this route (IOM, 2017). Since August 2017 an extremely dangerous new route has been detected through the Black Sea (Gillet, 2017).

In response to this unprecedented situation, what has been the reaction of the EU and what measures have been implemented? According to Dimitriadi (2015), the European response exists in contradiction; there is a desire to "fortify Europe", strengthening the borders and externalising its management, and there is a moral and legal responsibility to welcome asylum seekers. In relation to the policy of externalising borders, its implementation has started before the so-called refugee "crisis". López-Sala and Godenau (2017) define this policy as an "*out and up process*", which translates into the coordinated management between host countries and neighbour countries (from origin or transit), through "cooperation agreements".

As an example, in 2010 the Government of Silvio Berlusconi signed an agreement with the Gaddafi regime and Libya became a relevant actor for the EU in its policy of externalization of borders. The Mobility Partnership represents another example of this policy. In 2013, Morocco signed this partnership with its EU Southern neighbours, through which it made a commitment, among other things, to reinstate migrants coming from third countries who have been previously expelled from Europe. However, it is the controversial EU-Turkey Agreement (2016) that has reinforced the European externalisation policy. The long process of negotiation ended with the agreement

by which Turkey promised to block the exit of boats and accept the return of asylum seekers who have arrived to Greece after the signature date (20th March). The Agreement is based on an exchange mechanism: for each Syrian refugee returned from Greece to Turkey after March 2016, one is resettled. In addition, the EU offered Turkey future visa exemption in the Schengen area for Turkish citizens (under the compliance of 72 conditions), 6,000 million euros to cover the expenses derived from the reception of refugees – under the framework of a broader programme of cooperation for development - and the reopening of talks about the potential accession to the EU. Currently, only 3,000 million euros has been transferred (European Commission, 2018). Taking into consideration the uncertain legal viability of the Agreement, European leaders have backed the agreement, expecting it to be effective not because of its implementation, but because new arrivals would be discouraged (Collett, 2016).

Despite European leaders branding the Agreement as a success or even as a good practice, it has received numerous critics. In addition, it has been brought to light that "chequebook diplomacy" is the main European strategy to reinforce a security approach in exchange for economic counterparts (Sanahuja, 2015). Unfortunately, after this Agreement refugees have become a bargaining chip in the EU and Turkey negotiations. On the other hand, the operation and sustainability of this Agreement are in question because of the following arguments: the distrust between the parties, the political situation in Turkey after the frustrated *coup d'état* and the fact that the EU would hardly be able to satisfy the requirement to eliminate the visa for Turkish citizens. These elements, according to Arango (2016), would make the Agreement unfeasible in the medium-term. Three lessons have been learned since signing the Agreement one year ago (Koenig, Walter-Franke, 2017): 1) comprehensive agreements should not and cannot subordinate the EU foreign policy to short-term objectives linked exclusively to migration control; 2) the EU should be aware and acknowledge the commitments of solidarity and sharing of responsibilities, in order to protect itself from blackmail by third countries; 3) EU members should encourage agreements with a win-win-win effect, which take into account the migrant rights as well as the legal and safe alternatives in a rigorous manner. This policy of securitisation and externalisation of borders coexists, contradictorily, with a policy of moral and legal responsibility towards people seeking international protection. From this perspective, the Common European Asylum System, (CEAS) is, since 1999, the fundamental pillar of the European Asylum policy. Its basic principles revolve around the idea that the EU is a protection area and the member states are able to ensure common standards. The implementation of the CEAS is based on three European Directives (Asylum procedures, reception conditions and qualifications) and two Regulations (the Dublin Regulation and EURODAC) (European Commission, 2015).

There are two crises that question the Dublin System, both linked to secondary movements. The first one took place in 2011, when 25,000 Tunisians arrived through the Mediterranean Sea and were identified in Italy but decided to move to France. The second one (2013-2014) occurred when refugees, especially arriving from Syria and from the Horn of Africa, managed to avoid the identification process by the Italian authorities in order to travel North, through passive resistance, protests or negotiations with the authorities not to have their fingerprints taken. Facing this situation, some Nordic countries pressed Italy so that they re-incorporated the identification and collection fingerprints, even if this included the use of force. This measure led to an increase in illegal secondary movements, thanks to the proliferation of smugglers, and the favourable response of many countries to re-establish internal borders.

The European Agenda on Migration 2015 includes two key elements that intend to: 1) correct the imbalances occurred from the Dublin crisis; and 2) avoid secondary movements of refugees. Firstly, the creation of the

hotspots, which aim at guaranteeing the identification by the first countries of arrival and the distinction between refugees (who are eligible to be granted asylum) and economic migrants (potentially returnees). The first Italian hotspots were opened in Sicily (four in total): Lampedusa, with a capacity of 500 people; Pozzallo, with a capacity of 300 people; Taranto, 400 people; and Trapani, 400 people. These are not new facilities, but existing reception centres that have been remodelled. Equally, Greece counts five hotspots: Lesbos, with a maximum reception capacity of 1,500 people; Chios, where 1,100 people are received; Samos, with a capacity for 850 people; Leros, 1,000 people; and Kos, 1,000 people. Nevertheless, Doctors Without Borders reports in a recent article (March 2018) of the overcrowding situation in the camps. For instance, in Lesbos more than 5,000 people are have gathered and 2,000 in Samos. According to a recent study (ECRE 2016), the implementation of hotspots in Italy and Greece pose some challenges. In the first place, the existence of previous filters that often prevent people to seek asylum (through admission interviews, forms such as the '*foglio notizie*' in Italy or the application of the concept of "safe third country"). Sometimes, a second filter is added: the priority nationalities to seek asylum. Other challenges experienced at the hotspots are the lack of accurate information and the insufficient existence of interpreters and cultural mediators. Besides, according to the same report, detention is the principle used to guarantee its functioning, even in the case of non-accompanied minors. There is no proper monitoring of the practices taking place at the centres; thus, there is a lack of awareness of potential human rights violations.

Apart from the hotspot perspective, the second element of the European Agenda on Migration 2015 (through the Decision of 14th September) consists in the relocation of 40,000 asylum seekers from Italy (24,000) and Greece (16,000) to other EU countries that voluntarily, accept these applications. A later Decision, from 22nd September, increases the number to 120,000 people "in evident need of international protection", who must be mandatorily relocated through established quotas by countries (with the exception of Slovakia, Hungary and the Czech Republic). The Commission's proposal (COM(2015) 451 9th September) implies a distribution between member states, using objective criteria (40% population size, 40% GDP, 10% the average of asylum applications in the past, 10% unemployment rates), together with other qualitative criteria related to the potential of the asylum seeker to integrate (command of the language, qualifications, etc.). However, the relocation system shows two key problems (Carrera y Guild, 2015): 1) the protection of refugees is perceived as a share of border burden and not as a EU collective responsibility. The philosophy behind the relocation is based in the erroneous idea that the responsibility and capacity to manage and resolve asylum applications must be assumed exclusively by the first country these people enter. Additionally, the preferences of asylum seekers are not taken into consideration and there is no personal and family evaluation in this sense; 2) the lack of confidence in the member states being able to guarantee proper reception conditions regarding the fulfilment of human rights. An incentive for the people staying in the country is the reception process. If this would have been implemented properly, which has not happened in the majority of countries, the European asylum system would not be in question, as it is today.

Tensions, mistrust and different sensitivities translated into non-compliance amongst member states concerning the relocation system. Data from the European Commission shows that two years after, in September 2017, slightly less than 30% of the agreement (29,401) was fulfilled. Countries that have met their obligations to a greater extent, taking into account the allocation of relocated people are: Germany 30.8% out of a total of 27,536 people; France 22.7% of the total 19,714; and Spain 13% of the total 9,323. Poland and Hungary have not relocated anyone, whereas the Czech Republic has not admitted anyone since mid-2016. By contrast, Austria started to accept

refugees in the summer of 2017. According to the latest data from the Commission on the Support of the Member States in the Relocation Mechanism, a total of 33,721 people were relocated until February 2018. Šelo (2017) points out two elements to explain this failure: the technical obstacles (identification, registration and selection procedures in Greece and Italy) and the barriers related to the discourses of fear and insecurity that anti-refugee parties have disseminated among the public opinion. This has undermined many countries commitment to solving the crisis.

The relocation mechanism places an emphasis on "people in clear need of international protection", prioritising vulnerable groups such as children or people in need of medical assistance. Refugees have been exposed to wars, armed conflicts or hunger (structural factors), which make them, indeed, eligible to be considered a vulnerable group. Other vulnerability factors related to personal characteristics are: gender, ethnicity, sexual identity, disability, etc. that in an intersectional way could aggravate these fragility conditions. The consideration of the vulnerability condition is relatively new in European asylum legislation, meaning that until recently vulnerable groups were invisible.

At the international level, UNHCR is pioneering protocols to prioritise vulnerable groups. The Resettlement Handbook (UNHCR, 2011) identifies the following vulnerable profiles: people in need of physical or legal protection; survivors of torture or violence; people with medical needs, women, adolescents, children at risk; family reunification cases; people who lack foreseeable sustainable alternative solutions.

However, in the European context, it was in 2013 when the Dublin Regulation took into consideration the specificities of vulnerable groups with the Directive on Reception Conditions 2013/33/EU. More precisely, a vulnerable person, as defined in its article 21, includes minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. The need to take into consideration the particular needs of asylum seekers during the reception process is being discussed under the reform of the Common European Asylum System. Despite a lack of consensus on this issue, emphasis is placed on the importance to assess and properly document the cases that could be identified as vulnerable. Nonetheless, facing the collapse of the hotspots, the lack of economic and human resources to deal with vulnerable groups continues to be the main barrier in achieving this goal. An additional obstacle slowing down relocation is the identification process of vulnerable populations, especially in the case of unaccompanied minors. Finally, there is a certain incompatibility between the qualitative criteria of potential integration (competences, language, and qualifications) and the priority to relocate vulnerable groups. While the Relocation Decision recognises the urgent need to resolve the situation of vulnerable asylum seekers, member states show little availability and concern in this respect.

Beyond the legal considerations in relation to vulnerable groups and their prioritisation when claiming asylum, it is worth highlighting some health and social conditions amongst refugees and particularly of those most vulnerable. Problems identified include: tuberculosis, HIV/AIDS, hepatitis A and B, parasitic diseases and especially mental health diseases (Humphris y Bradby, 2017). In particular, mental health challenges are significant. Post-traumatic stress, depression, psychosis and suicide attempts are the main mental disorders suffered by the refugees. Otherwise, risk factors influencing refugees' mental health are linked to personal, cultural, social, legal and labour factors, including the conditions of the journey. These risk factors go through the different migration phases and, occasionally, the risk factors get worse with the situations of uncertainty suffered during the asylum application or under the harsh living conditions faced in the hotspots.

According to Doctors Without Borders (2018), a real mental health crisis is taking place in camps on the Greek islands. The overcrowding and precarious facilities and the persistent violation of rights worsen the already fragile mental health of the refugees. These conditions could be extended even after relocation takes place, as refugees are exposed to a series of difficulties when accessing health care services in general, and mental health care in particular. These difficulties are: bureaucracy, language and cultural barriers or simply the lack of knowledge of the system, among others. Other obstacles are those related with the professionals dealing with this group. This is why there is a need to count on experts with intercultural competencies; thus, being sensitive when detecting differences between psychological discomfort, the reasons of it and the expectations to alleviate the symptoms (Evangelidou et al., 2016). Nevertheless, this intercultural competence has to be institutional and must entail an organisational and professional competence, recognising the agency of the refugees and overcoming the exoticism syndrome (support is provided because of the love to cultures perceived as exotic) or the saviour syndrome (support is provided from a position of superiority) (Qureshi, 2018).

Through the chapters included in this monograph, the origin of the conflict in the Middle East and its devastating consequences among them unprecedented human displacements, have been revealed. At the same time, it highlights the shadows and, to a lesser extent, the lights in the European management of the humanitarian crisis. As a final reflection, it is worth mentioning that we are not witnessing a refugee crisis but we are facing a multilevel crisis with a domino effect, which has allowed the weaknesses of the European project to surface and has sparked discourses that were thought to have been overcome.

In the first place, it is a humanitarian crisis with a high presence of vulnerable groups (unaccompanied minors, women in extreme conditions) and a high number of deaths during the journey. Nevertheless, what has produced the most stupor in this humanitarian crisis is that, far from finding relief, many of the people who have arrived to Europe have seen their vulnerability perpetuated or worsened.

This humanitarian crisis included a governance crisis, an institutional crisis of the European project since the EU has sufficient expertise and resources to be able to welcome with dignity people who have fled from war. However, the different sensitivities of European countries have revealed the internal political fractures and the growth of right-wing xenophobic populism, which led to an unfortunate and highly criticised management of the situation. On the one hand, Europe shields its external borders, converting bordering countries (developing countries that do not offer democratic guarantees for the respect of human rights) into the main managers of the phenomenon. On the other hand, the repeated disobedience of some member states (especially Eastern European countries) with respect to relocation quotas, shows the fragile integration of these countries, whose cultural and identity imaginaries are not prepared to incorporate these people properly. In this way, the ideals, values and commitments that have been the fundamental pillars of the EU are being broken, which endangers its political and institutional project.

Finally, the current crisis is a crisis of hospitality and solidarity, since the policies carried out by the states constantly question the legal status of vulnerable people (Rodríguez, 2017). At the end of 2014, Operation Mare Nostrum, which rescued 138,000 human beings and was replaced by the Frontex Operation Triton, aimed at controlling arrivals to Europe and, to a lesser extent, saving the lives of people trying to reach their coasts. This is one more example of how the EU spends millions of euros in shielding the borders, focusing mainly on how to prevent the entry of these people. Additionally, speeches that fuel xenophobic and Eurosceptic populist parties have flourished in a climate of generalised renationalisation (Arango, 2016).

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1. La UNRWA y los refugiados de Palestina. Protección y desarrollo humano en el contexto de las crisis de refugiados en el Próximo Oriente

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1.1 El origen de los refugiados de Palestina

Entre noviembre de 1947 y julio de 1949 más de 800 000 personas que vivían en la Palestina del mandato británico fueron obligadas a desplazarse hacia otros países y regiones convirtiéndose en refugiados. Entre 200 000 y 250 000 se concentraron en Gaza en los alrededores de Khan Younis, Deir Al-Balah, Jabalya y Rafah. Más de 350 000 buscaron refugio en Cisjordania en los alrededores de Nablus, Ramallah, Jenín y Hebrón, entre otras ciudades y pueblos, en el total eran 467 000 en la zona de lo que sería a partir de ese momento Jordania. Siria albergó 83 000 refugiados palestinos y el Líbano 107 000. La mayoría de los refugiados carecían de medios de subsistencia. La escasez de alimentos, las precarias condiciones de refugio, y otros elementos básicos para la subsistencia pusieron en riesgo la salud de miles de refugiados. La crisis humanitaria que conllevó el desplazamiento de centenares de miles de personas y la desposesión de sus bienes y sus recursos de subsistencia impactó de forma contundente y marcó para siempre la composición social de los territorios de acogida.

La resolución 194(III) de la Asamblea General de las Naciones Unidas del 11 de diciembre de 1948, reconoció el derecho al retorno de los refugiados de Palestina. Sin embargo la cuestión de los refugiados se perpetuó. La voluntad de retornar de los refugiados y recuperar sus tierras y sus bienes de los que habían sido desposeídos, el desinterés político de reasentarlos por parte de los países de acogida y la negativa israelí a reconocer el derecho al retorno y su responsabilidad en la expulsión de los palestinos impidió establecer soluciones políticas, y la comunidad internacional se limitó tan solo a desarrollar respuestas humanitarias que a largo plazo tuvieron un fuerte impacto político para toda la región.

1.2 Organizar la ayuda humanitaria a los refugiados de Palestina

El primer organismo que las Naciones Unidas implantó para organizar la ayuda humanitaria a los refugiados de Palestina fue la *United Nations Relief for Palestine Refugees* (UNRPR), una agencia que empezó a administrar los fondos especiales y a coordinar las tareas de asistencia a los refugiados de las distintas organizaciones internacionales y de otros organismos de las Naciones Unidas, que venían operando en la región desde el inicio de la guerra.

Las organizaciones internacionales desarrollaron acciones de asistencia humanitaria, estableciendo programas de distribución de raciones y bienes de primera necesidad, mantas, ropa etc. y programas de salud, educación y bienestar social. La implementación de un programa de coordinación de la asistencia humanitaria, separó el mandato político de la organización humanitaria (Al Husseini, 2003). La resolución 302(IV) creó el Organismo de Obras Publicas y Socorro de las Naciones Unidas en Oriente Medio, (UNRWA en sus siglas en inglés) y llevó esta separación a su máximo exponente. El principal objetivo que había detrás de la creación de la UNRWA, era convertir el programa de socorro directo a los refugiados en un programa de desarrollo regional de largo alcance centrado en proyectos de obras públicas, con el objetivo de integrar económicamente a los refugiados en los países de acogida. La UNRWA heredó las operaciones de las principales organizaciones internacionales que habían implantado lo que serían los prototipos de sus programas de operaciones de asistencia a los refugiados de Palestina. Adoptó así un mandato de asistencia, que implícitamente a largo plazo creaba las condiciones para el reasentamiento de los refugiados, sin contar para ello con un mandato político para buscar una solución que garantizase la protección y la seguridad jurídica de los refugiados palestinos.

1.3 Del desarrollo económico regional a la rehabilitación económica local

La presencia de la W de Works en las siglas de la UNRWA, indica que el desarrollo regional era uno de sus principales objetivos en el momento de su creación. Works, significaba inversiones económicas para proyectos de desarrollo a nivel regional. Estos proyectos respondían al concepto de desarrollo que promovían los Estados Unidos tras la segunda guerra mundial y que como ha destacado Olav Stokke en *UN and development, from aid to cooperation*, buscaban mantener, reforzar y fortalecer la dependencia económica en un sistema poscolonial (Stokke, 2009).

El modelo desarrollado en Europa con el plan Marshall, sirvió de referencia para la implementación de programas de desarrollo en los países del Próximo Oriente. Durante los primeros años, entre 1950 y 1957 la UNRWA intentó ser el vehículo para proyectos de desarrollo económico regional, diseñados para expandir la agricultura, fomentar la cooperación internacional y así absorber a los palestinos en una creciente y prospera economía regional. Los dos programas de mayor envergadura en este período fueron los proyectos de desarrollo agrícola en la península del Sinaí y el proyecto de desarrollo unificado de los recursos hídricos en el Valle del Jordán. Los objetivos de dichos programas buscaban promover el desarrollo

agrícola en Cisjordania, Gaza y el Sinaí y responder a las demandas de productos agrícolas por parte de otros países de la región como Arabia Saudita. Estos proyectos no repercutieron directamente a las condiciones humanitarias de los refugiados ni ofrecieron salidas a corto plazo a su situación de vulnerabilidad. Las dificultades para implementarlas se debieron al contexto de disputa entre Israel y los países árabes por el control de los recursos y las infraestructuras hídricas, a la escasa inversión y financiamiento de los proyectos, y a la lentitud de los procesos de negociación con los regímenes árabes recién constituidos.

El fracaso de los proyectos a gran escala condujo a la UNRWA a instaurar proyectos de rehabilitación a escala local. Un año antes del abandono de los proyectos regionales de desarrollo económico, en 1955 la UNRWA empezó a concentrar sus recursos en la construcción de refugios y campamentos, es decir sustituir las tiendas por construcciones solidas estables. El objetivo de la Agencia hasta el momento había sido intentar integrar la población fuera de los campamentos para poder desarrollar proyectos de autosuficiencia y mejorar servicios y generar oportunidades locales. La situación de emergencia y la falta de financiación concentraron las inversiones económicas en los programas de socorro, respondiendo así a la crisis humanitaria de los refugiados y a sus deficiencias ante una situación que se prolongaba. Fue de algún modo también una estrategia en términos de seguridad para responder a lo que algunos historiadores han llamado a la guerra de fronteras entre 1949 y 1956 (Morris, 1993). La mejora de las condiciones podría calmar una situación dónde las incursiones de los palestinos venían motivadas para recuperar bienes y hacer frente a la situación de miseria en la que se encontraban y que Israel usaba como pretexto para llevar a cabo una estrategia de asedio contra la franja de Gaza y la población palestina.

Los proyectos de construcción de los campamentos demostraban que la cuestión de la crisis de refugiados de Palestina se convertiría en una crisis de larga duración. Entre 1955 y 1964 la UNRWA, asistió a más de 470 000 refugiados necesitados de refugio, la mayoría en Gaza y al este y al oeste del Jordán. Durante este período se construyeron 12 000 viviendas en Jordania (incluida Cisjordania) y más de 40 000 refugios en Gaza. En el Líbano y Siria las ayudas fueron mayoritariamente a través ayudas económicas y materiales para la autoconstrucción (Gravelsæter, 2014). El reemplazo de tiendas por construcciones de cemento finalizó en Gaza en 1959, en 1961 según el Comisionado General de la UNRWA ya no quedaban tiendas en los campamentos de refugiados.

1.4 Educación, sanidad y servicios sociales como herramientas de desarrollo

Los años sesenta marcaron un cambio en la orientación de las políticas de acción humanitaria y desarrollo a nivel mundial. El crecimiento económico llegaba a su edad de oro en los llamados países desarrollados. Para seguir fortaleciendo dicho crecimiento era necesario dotar de instituciones y capacidades al sector público de los países pobres (Stebbing, 1985). Los años sesenta fueron declarados por las Naciones Unidas la década del desarrollo. La UNRWA, en este contexto fue abandonando los proyectos de desarrollo económico regional y focalizó sus esfuerzos en los programas de socorro y servicios sociales, de salud y especialmente de educación.

El programa de educación pasó a ser el pilar fundamental de la Agencia. La educación y los servicios públicos pasaron a ser un factor

fundamental en las nuevas estrategias para el desarrollo económico regional, que se centraban en la capacitación técnica para responder a las demandas de empleo en otros países de la región. La UNRWA desarrolló un sistema escolar construido según un modelo occidental, secular y liberal, instituido para producir sujetos-ciudadanos bien socializados compatibles con un futuro estado moderno (Bocco, 2009, p. 50). Se construyeron y habilitaron centros de educación primaria en todas las áreas de operaciones, y también de secundaria en el caso del Líbano, además de múltiples programas de formación. El programa de salud nació con el objetivo de dar cobertura sanitaria a los refugiados e instaurar medidas preventivas contra epidemias y enfermedades, y a largo plazo desarrolló acciones centradas en salud pública, principalmente en referencia a la infancia y la maternidad, así como en la salubridad de los campamentos. Para ello mediante la cooperación con la Organización Mundial de la Salud se establecieron centros de asistencia primaria así como programas de formación de personal local. La UNRWA, se transforma así en una estructura casi estatal sin mecanismos de coerción ni de participación. La Agencia cubre las necesidades y actúa como principal empleadora entre los refugiados y por lo tanto de un conjunto extenso de población de sus áreas de operaciones, pero la seguridad y la gobernanza residen en manos de los estados de acogida (Rempel, 2010).

El desarrollo de todos estos programas consolidó la agencia como una auténtica administración de servicios, la UNRWA pasó a administrar y a ser un empleador importante en la región, especialmente en Gaza y Cisjordania. El número de escuelas, centros sanitarios, y de asistencia social que gestionó la Agencia la convirtieron en un proveedor de bienestar, con competencias casi estatales por lo que a menudo ha sido denominada como el *Estado Azul*. Así algunos autores la han definido como un instrumento postcolonial de asistencia, protección y desarrollo humano en Oriente Próximo (Bocco, 2009).

El impacto de los programas de la UNRWA tuvo diferencias importantes según las áreas de operaciones. Mientras en Jordania y Siria se integraron a las necesidades de los países de acogida y se desarrollaron como servicios para la población refugiada, en el Líbano y los Territorios Ocupados el contexto de conflicto armado tuvo mayores consecuencias. La educación, la salud, y los servicios sociales ofrecían una estructura de servicios públicos que garantizaba una estabilidad, dibujaba un futuro y ofrecía posibilidades de rehabilitación e integración económica a los refugiados de Palestina en la región. Sin embargo, la nueva ola de 300 000 refugiados tras la Guerra de 1967, o las matanzas de 1982 en los campos de refugiados de Sabra y Chatila durante la guerra civil en el Líbano, ponían en evidencia los límites de la agencia como un instrumento de acción humanitaria, pero sin mecanismos de protección. Además, en los países de acogida las narrativas de la amenaza a la soberanía se imponían a la protección de los refugiados en el contexto de conflicto armado. El movimiento nacional palestino dirigido por la OLP reforzó el temor entre las sociedades árabes de acogida de que su prolongada presencia podía seguir siendo una amenaza potencial para la estabilidad regional (Sayigh, 1999).

El mantenimiento de dichos programas necesita de los compromisos de los estados donantes, que han estado siempre muy por debajo de las necesidades de la Agencia. Las crisis financieras de la UNRWA se producen por la falta de inversiones, el incumplimiento constante de los estados donantes con sus compromisos, las constantes situaciones de emergencias en un contexto de alta conflictividad y por la falta de interés en la Agencia como un instrumento de seguridad regional.

La UNRWA funcionó así como un instrumento para responder a las situaciones de emergencia y para canalizar la acción humanitaria en las situaciones de conflicto y post-conflicto, como un instrumento de *peace servicing* (Bocco, 2009), que ofrecía a través de sus programas y estrategias de desarrollo social y comunitario, bienestar y alternativas vitales a los refugiados y mantenía el *status quo* sobre sus derechos y aspiraciones.

1.5 La UNRWA en el contexto del proceso de paz

Los años ochenta, significaron un cambio importante en las políticas de desarrollo. Si los sesenta el desarrollo se basó en la expansión de servicios públicos, los ochenta fueron una década perdida: las inversiones macroeconómicas y financieras dejaron la concepción a favor del desarrollo social en una posición subordinada. La UNRWA, entró en una crisis financiera sin precedentes, en ocasiones interrumpió y recortó algunos programas y aprovechó para suspender las raciones básicas generalizadas. Poco a poco, en ese contexto se impulsaron proyectos de autosuficiencia económica mediante créditos y el desarrollo de ayuda financiera.

La primera intifada conllevó al mismo tiempo otro cambio importante. La dura represión en los Territorios Ocupados, puso a la Agencia ante el reto de desarrollar estrategias de protección como un elemento indispensable para la seguridad de los refugiados palestinos. Las Refugee Afairs Office de la UNRWA pusieron en práctica un modelo de observación, mediación y formación ante la violación de los Derechos Humanos de los refugiados de Palestina. Además la invasión de Kuwait y la guerra del golfo, forzó al desplazamiento de miles de refugiados palestinos, que se habían instalado allí por razones de trabajo y volvieron a las áreas de operaciones de la UNRWA en busca de la asistencia de la Agencia. Así los programas de formación para encontrar oportunidades de empleo en otros países de la región fuera de los campos de refugiados encontraron sus límites en los conflictos regionales que afectan directamente a los refugiados palestinos que viven en situación de apátridas en muchos de los países de acogida.

Durante los años noventa, los programas tradicionales sirvieron de catalizadores de los objetivos de desarrollo humano marcados por las Naciones Unidas. Y por lo tanto se impulsaron en el contexto del proceso de paz, las estrategias de educación, salud y servicios sociales. Durante el proceso de paz, la UNRWA no fue sólo un instrumento de *peace servicing* sino que se inscribió dentro de las estrategias de *statebuilding*, es decir mediante la transferencia de sus programas, contribuir a la organización de una estructura de *welfare* para el nuevo estado palestino. Como señala Riccardo Bocco, el Programa de Implementación de la Paz (PIP) de 1993 a 2000, tenía por objetivo crear una infraestructura socioeconómica permanente en Gaza y Cisjordania, principalmente a través de esquemas basados en la mejora de la infraestructura de los campamentos y la creación de empleo, y dibujaba así su eliminación gradual (Badil Resource Center, 2015, p. 21).

Los refugiados y los países de acogida se opusieron a una posible desaparición de la UNRWA sin un acuerdo sobre el derecho al retorno de los refugiados. Los países de acogida se negaban por distintos motivos a enfrentarse a la asimilación y nacionalización definitiva de los refugiados. Para los refugiados de Palestina el derecho al retorno seguía siendo la reivindicación política de la mayoría y la UNRWA significaba un símbolo de ésta. Sin embargo, la comunidad internacional centró el proceso de paz y la construcción del Estado palestino en una concepción de la seguridad basada en la securitización del Estado de Israel frente la violencia política y el terrorismo por parte de los grupos armados palestinos contrarios al proceso de paz, mientras Israel mantenía la ocupación, el castigo colectivo y la violación de los derechos humanos en los Territorios Ocupados. Así se invirtieron más esfuerzos en el desarrollo de estrategias de seguridad que no de bienestar dentro de la construcción de la Autoridad Nacional Palestina. Los cuerpos de seguridad crecieron de forma exponencial y acabaron siendo su estructura fundamental. Los fondos de los donantes viraron así hasta los proyectos de securitización dejando infra financiados el desarrollo de estructuras de bienestar, como podía ser la UNRWA (Sayigh, 1999).

1.6 La UNRWA y la protección de los derechos humanos

El fracaso del proceso de paz puso fin a los intentos de la UNRWA de integrar sus servicios en la nueva Autoridad Nacional Palestina y a asimilar los refugiados en los países de acogida. El derecho al retorno mostró ser uno de los principales escollos del proceso de paz. Los refugiados de Palestina no renunciarían a ello, y era necesario por lo tanto un reconocimiento, y a falta de hacerse efectivo, unos términos claros de compensación y reasentamiento.

La UNRWA empezó a dibujar nuevos objetivos, el retorno a la confrontación en los Territorios Ocupados reactivó los programas de emergencias y el debate sobre el mandato de protección. Sin llegar a poder desarrollar los compromisos y las acciones de protección jurídica de la UNHCR, la UNRWA adoptó un enfoque basado en la protección de los derechos humanos que fue un nexo, un enlace, entre la aplicación de los criterios de seguridad humana y los objetivos de desarrollo humano del milenio trazados por las Naciones Unidas. Los programas tradicionales se reestructuraron en objetivos vinculados al desarrollo humano propuestos por las Naciones Unidas. En este contexto surgen de nuevo los programas de mejora de las infraestructuras y los campos, un retorno a la categoría de los *works*, que pone la UNRWA ante el reto de estrategias de desarrollo urbano en la región.

La creación de la UNRWA había consolidado la separación del mandato político del mandato humanitario respecto los refugiados y condenando a la Agencia a una situación de temporalidad permanente. Es decir, mientras la acción humanitaria se autodefinía como un modo excepcional de intervención pasó a ser el orden cotidiano para los palestinos (Feldman, 2012). La existencia de la UNRWA sigue siendo la muestra del fracaso de la comunidad internacional en proporcionar justicia a los refugiados de Palestina. A pesar de la acción de la UNRWA, los refugiados, especialmente aquellos que viven en los campos, continúan sufriendo las peores condiciones de vida. La cuestión de los refugiados de Palestina y su impacto regional continúa siendo una problemática abierta fundamental para entender la relación entre los conflictos armados y la situación de los refugiados en el Próximo Oriente.

1.7 Los refugiados palestinos en el Próximo Oriente

La organización Badil, el centro de recursos por la residencia palestina y los derechos de los refugiados, contabiliza hoy que alrededor de 7.98 millones de palestinos, el 66% del total, son desplazados forzosos. En las áreas de operaciones de la UNRWA – Gaza, Cisjordania, Líbano, Siria y Jordania, la Agencia de Naciones Unidas registra 5,5 millones. Son cuatro quintas partes del total de refugiados palestinos en Oriente Medio y dos tercios del total de refugiados.

Los estados árabes donde residen la mayoría de los refugiados, no son signatarios de la convención de refugiados de 1951. La protección bajo instrumentos árabes regionales o medidas locales es inconsistente y no equiparable con los estándares internacionales. Mientras la falta de protección da lugar a severas formas de discriminación y a al incremento de la vulnerabilidad, la ineficaz protección, la inactividad de la OLP, y los conflictos armados en los países árabes de acogida conducen a la población de

nuevo a un desplazamiento forzoso. En los países signatarios de la convención de los refugiados de 1951, la mayoría de palestinos son privados de protección efectiva y sujetos a formas de discriminación frente a otros refugiados (Badil Resource Center, 2015, p. 19).

1.8 La UNRWA y los conflictos armados en Oriente Medio

La guerra civil en el Líbano demostró la vulnerabilidad de los refugiados palestinos en la región. Los campamentos de refugiados fueron atacados durante la guerra en la que la población tuvo que huir o fue masacrada. La compleja situación política y social del país, marcada por la tensión y la conflictividad entre distintas fuerzas confesionales desembocó a un trato discriminatorio y de exclusión contra los refugiados de Palestina. Hoy viven en condición de apátridas, bajo un sistema de discriminación, dónde tienen restringido el acceso a empleos públicos y a ejercer múltiples categorías profesionales privadas, tienen restricciones severas al acceso a la sanidad y a la educación libanesa, y ven limitada su libertad de adquirir propiedades y de viajar y moverse libremente (BADIL Resource Center, 2015, p. 20). Los conflictos regionales han impactado de forma severa en la situación y en el reconocimiento de los refugiados palestinos en la región. Uno de los casos más importantes es el de Kuwait, que había recibido distintas olas de refugiados desde 1948 y en 1975 eran un 17% de la población. En 1991, más de 400 000 palestinos fueron expulsados de Kuwait como consecuencia del apoyo de la OLP a Irak. Solo quedaron 32 000 palestinos. Muchos volvieron a los campos de refugiados de Jordania y Siria, dónde podían acogerse a los servicios ofrecidos por la UNRWA, otros se desplazaron a otros países de la región (Roy, 2007). En este contexto la UNRWA tuvo que adaptar sus programas, desarrollar programas de emergencias para atender a los refugiados palestinos en la región. Sin la capacidad de poder desarrollar mecanismos de protección efectivos.

Los nuevos conflictos en Oriente Medio, la invasión de Irak en 2003 y especialmente la guerra de Siria desde 2011, pero también el cierre, el asedio y la destrucción de los Territorios Ocupados desde el fracaso del proceso de paz, han dibujado un nuevo escenario de desplazamientos forzosos que afectan también a los refugiados palestinos en la región. Ante esta situación la UNRWA se ha enfrentado a dos situaciones importantes: la violación masiva de los derechos humanos en los Territorios Ocupados y la guerra de Siria que ha atomizado uno de sus campos de operaciones.

Mientras hasta el momento la UNRWA se enfrentaba en los Territorios Ocupados a una situación de subdesarrollo deliberado por parte de Israel, en los términos que apunta Sara Roy, se enfrentará ahora a una situación de sumisión a la miseria, especialmente en Gaza (Roy, 2007). Así la Agencia se encuentra hoy desbordada ante la destrucción de los Territorios Ocupados, especialmente en Gaza por el bloqueo y la destrucción. Hoy, más del 60% de los dos millones de personas que viven en la franja de Gaza son refugiados, y el 42% viven en los 8 campamentos de la franja. Los problemas de sobrepoblación de los campamentos son notables. Con el bloqueo y los posteriores ataques y masacres que Israel ha ejercido sobre la franja la vida es hoy casi insostenible. El impacto sobre los refugiados que ya vivían históricamente en situaciones de precariedad y pobreza extrema es todavía mayor a día de hoy. En 2015, cerca de 100 000 personas seguían en condición de desplazados internos en la franja, el desempleo, la caída del poder adquisitivo, las

dificultades al acceso a alimentos básicos, los continuos cortes de electricidad, y la necesidad de reconstrucción de miles de viviendas son algunos de los retos que la UNRWA debe afrontar hoy en Gaza. Desde 2005 cuando Gaza se convirtió en un territorio asediado y encarcelado por Israel (y Egipto) la UNRWA ha tenido que enfrentarse a las limitaciones de acceso impuestos por el bloqueo israelí y el aislamiento internacional y a la responsabilidad de seguir operando en una zona controlada por Hamás, un actor político no reconocido por la mayoría de los estados donantes.

La guerra de Siria abrió otra situación de emergencia en la que la UNRWA se vio afectada. La guerra civil, ha comportado una crisis humanitaria al conjunto de la población siria, ha provocado nuevos desplazamientos forzosos también de los refugiados palestinos en Siria, y episodios de asedio contra campos de refugiados enteros dónde la población refugiada palestina moría por falta de alimentos y suministros básicos. La situación de los refugiados palestinos en Siria y Gaza muestran ampliamente los límites no sólo de los programas de desarrollo, sino también de la función de asistencia humanitaria de la UNRWA en un escenario dónde el derecho internacional humanitario así como su capacidad de aplicación se ha visto ampliamente degradado. Los refugiados de Palestina que llegaron a Siria en 1948 provenían principalmente de las ciudades de Galilea. En Siria la ley permitió a los refugiados establecerse en el país. En 1956 se equipararon sus derechos a los ciudadanos sirios, con la principal excepción de la posibilidad de ocupar cargos oficiales y la imposición de ciertas restricciones sobre la propiedad. Como otros grupos minoritarios de Siria, los refugiados palestinos fueron controlados por organismos oficiales a fin de detectar posibles disidencias políticas. Los refugiados de Palestina disfrutaron de cierta estabilidad económica. Unos 90 000 refugiados llegaron en 1948 a Siria. En la actualidad, la UNRWA registra 567 390 antes del inicio de la guerra, de los cuales un 30% vivían distribuidos en los 9 campos de refugiados administrados por la UNRWA.

El estallido de la guerra ha impactado de forma especial en los refugiados palestinos en Siria. Miles de refugiados se han visto obligados a huir a otros países y la mayoría de los refugiados dependen hoy de la ayuda internacional y de los programas de emergencia establecidos por la UNRWA. El 80% vive en las cercanías de Damasco, donde el acceso para la ayuda humanitaria ha quedado restringido. Más de 120 000 han abandonado el país, unos 31 000 hacia el Líbano y más de 16 000 hacia Jordania. En este contexto el mayor reto de la UNRWA pasó a ser el envío de asistencia y servicios vitales para los refugiados palestinos, la mayoría de ellos han abandonado los campos y se encuentran en situación de emergencia humanitaria. La misma agencia informa cómo durante 2016, unos 450 000 refugiados palestinos seguían dentro de Siria, y más del 95% necesitaban y dependían de la asistencia humanitaria para sobrevivir. Más de 280.000 eran desplazados internos, unos 140 000 refugiados en instalaciones de la UNRWA y unos 43 000 estaban atrapados en sitios inaccesibles, de difícil acceso y bajo asedio como en Yarmouk, donde miles de familias no tenían acceso a suministros de alimentos básicos durante meses, dichos asedios se han repetido en Khan Eshieh, Kahn Denoun, y también en D'ara (UNRWA, 2017). Las dificultades de acceso y la dependencia de acción de la UNRWA a los acuerdos con el régimen sirio muestran los límites de acción de la agencia en el contexto del conflicto armado en Siria.

1.9 Límites y retos: conflictos armados y refugiados de larga duración

Setenta años después los refugiados palestinos siguen viendo negado su derecho al retorno. La cuestión de los refugiados palestinos ha marcado la historia de toda la región. Durante años han sufrido directamente la inestabilidad política y social y hoy sufren las consecuencias de los nuevos conflictos armados en la región. Los desplazamientos forzosos son una constante en dichos nuevos conflictos, donde los conflictos se enquistan, y la población civil se ve obligada a abandonar sus hogares en busca de refugio seguro.

A un problema regional dónde los refugiados palestinos son más de cinco millones, hoy se le añaden 5 millones de refugiados de Siria, y centenares de miles de iraquíes. Los países limítrofes acogen hoy miles de refugiados. La UNRWA se ve hoy obligada a responder a nuevas situaciones de emergencia que se extienden casi a la totalidad de sus áreas de operaciones. Su mandato de asistencia obliga a la Agencia a establecer acciones de socorro y servicios básicos en nuevos contextos de conflictividad armada. La acción de la UNRWA se ve así condicionada por una situación dónde la violación de los derechos humanos y la violación del derecho internacional humanitario son una constante entre los actores de los nuevos conflictos armados.

La experiencia en los Territorios Ocupados ha servido a la Agencia para desarrollar fórmulas de protección de los derechos humanos en sus acciones de socorro y desarrollo entre las comunidades de refugiados. Sin embargo, la crisis financiera por la falta de recursos, compromiso y donaciones de los estados han limitado su capacidad de actuación. A los límites de la dependencia económica de los estados donantes se le añade la dependencia de los estados de acogida. Los límites para proteger y asistir en el contexto de la ocupación son enormes. A menudo la UNRWA ha visto atacadas sus dependencias y ha podido actuar tan solo como observador internacional y dar testimonio de las graves violaciones de Israel en los Territorios Ocupados. En Siria, la dependencia de acción bajo autorización del régimen de Bashar Al Asad, ha dejado a la Agencia sin acceso a los campos de refugiados bajo asedio viendo cómo los refugiados palestinos quedaban sin suministros básicos de subsistencia. La acción de la agencia en un contexto de conflictos enquistados, dónde la condición de refugiado pasa a ser un fenómeno de larga duración es otro de los elementos importantes que limitan o condicionan la acción humanitaria y de protección de los desplazados forzosos en los conflictos armados.

Los retos de la UNRWA en este contexto se han centrado en ofrecer mecanismos de protección y desarrollo humano a una comunidad de refugiados de larga duración en países y territorios de acogida determinados. A lo largo de los años se ha desarrollado como un instrumento de la comunidad internacional de asistencia y desarrollo en la región, y por lo tanto muy condicionada al contexto político, a la voluntad de los países donantes y de los países de acogida, y a las estrategias de protección y desarrollo a escala global. La acción de la UNRWA se caracteriza por múltiples facetas, desde sus programas de emergencia a programas de desarrollo económico, pasando por estrategias de protección y de desarrollo humano. Uno de los principales retos de la agencia ha sido el desarrollo de estrategias de asistencia y empleo entre las comunidades de refugiados. Cada vez más la participación y la implicación de las comunidades de refugiados en el desarrollo de las estrategias de asistencia y servicios ha sido fundamental para generar respuestas a las principales necesidades. Su principal reto es continuar ofreciendo protección y desarrollo humano en distintos contextos de conflictividad, violación de los derechos humanos y nuevos desplazamientos forzosos de los refugiados de Palestina.

El reconocimiento y la protección de los derechos humanos de los refugiados es el principal reto de los distintos actores y de la

comunidad internacional ante las crisis de refugiados y desplazados internos en una región profundamente fragmentada por los nuevos conflictos armados. La experiencia de la UNRWA nos muestra como los desplazamientos forzosos y el no reconocimiento de sus derechos puede derivar en situaciones donde la dependencia humanitaria se convierte en la cotidianidad de amplios sectores de población en los territorios de acogida. Nos muestra también como los desplazamientos forzosos de una gran masa de población, así como la acción humanitaria en los territorios de acogida conllevan un impacto político que puede condicionar los derechos de los refugiados como también la composición económica y social de los territorios de acogida. Los límites y los retos de los organismos de las Naciones Unidas nos ponen de relieve por último la importancia de dotar a las relaciones internacionales de una dimensión ética, es decir establecer marcos de actuación y hacer efectivos mecanismos de protección de las personas y las comunidades, poniendo al centro los derechos humanos, con el objetivo de transformar los conflictos que desangran hoy la región.

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2. Syria's Refugee Crisis: History of a Mass Exodus

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2.1 Introduction

In 2011, Syrians amounted to a total population of roughly 22 million people. In early 2017, more than 5 million people had left the country and over 9 million were internally displaced. Moreover, 13.5 million people, that is, more than half the original population, needed humanitarian assistance inside the country. To make matters worse, almost half a million people have been killed in the ongoing conflict. All this has turned Syria into the scenario of the World's worst humanitarian crisis in the last 70 years, according to the UN.

The spill-over to neighbouring countries is also worth mentioning. Turkey, Lebanon, Jordan, Irak and Egypt host around 5 million Syrian refugees, whose life conditions are miserable, in many cases because those countries themselves already had internally displaced people (as it is the case in Irak), had previously welcomed large numbers of Palestinian refugees (Lebanon and Jordan) or simply cannot provide a secure environment for them and even use them for political interests (Turkey).

Despite the above, from the beginning of the Syrian crisis and until December 2016, only 224,694 places for resettlement had been offered worldwide, which is roughly a 5% of the total refugee population currently living in the five countries mentioned above, according to Amnesty International.

The lack of future perspectives, especially regarding children and their education, has pushed many families, individuals, parents and even lone children to risk their lives yet again, and find a way to improve their lives in wealthier countries by crossing to Europe by land or, more dangerously, by sea.

This chapter will examine the roots of the ongoing conflict in Syria and the reasons behind the mass exodus in a country which has also witnessed countless cases of forced

internal displacement. By stating certain often forgotten facts, this chapter argues that most Syrians left to escape from terrorism, but contrary to the public opinion, it was the terrorism perpetrated by the Syrian State to suppress all forms of protest that made them flee from neighbourhoods reduced to rubble in Homs, Aleppo, etc. At the time of writing, peripheral neighbourhoods in Damascus are being bombed as well (Moath, 2017).

2.2 The origins of a repression foretold

In order to understand the current situation of both mass displacement and mass destruction, it is important to return not to 2011, but – if not earlier – 1971. It was that year that the former president, Hafez al-Assad, Bashar al-Assad's father, became the president of the country, and its most powerful man. His power was not merely derived from the fact that he held the highest political position, but also because he was able to build a complex network of security and intelligence services that secured his survival in a country which had previously witnessed three decades of political turmoil and military interferences in politics (Seale, 1965; Khalifa, 2017). Perhaps unsurprisingly, Assad was a member of the Army as well, a fact which helped him establish the necessary ties to reach the highest spheres of power: before becoming the president, he was named Minister of Defence. After his death in 2000, Bashar al-Assad, who had never shown any interest in the military career due to the fact that his late elder brother, Basil, was the heir apparent until his death in a car crash in 1994, escalated at lightning speed in order to became the Commander in Chief of the Syrian Armed Forces. From that position, he would be able to control not only the Army but also the security services, dominated by people with close ties to the President and balanced in order to make sure that all its branches reported to him personally and spied on each other to earn the regime's favour and gratitude. Despite this elaborate pattern of domination established by Hafez al-Assad himself (Hinnebusch, 1990), the late president's three-decade tenure was challenged at different moments both by dissatisfied social sectors who felt humiliated by the policies of what came to be known as "l'état de la barbarie" (Seurat, 1986) and paradoxically, by his own brother Rifaat al-Assad.

In the late 1970's, Leftist and Islamist sectors began a series of protests and demonstrations against the regime's policies of sectarian discrimination – it was a public secret that those who shared kinship, confession or loyalty with the Head of the State had better opportunities at all levels –, its economic policies and the lack of political participation and plurality (Hinnebusch, 1990; Batatu, 1999; Perthes, 1995). In the mid-1970's a violent off-shot of the Syrian Muslim Brotherhood (SMB), began a series of selective assassinations in retaliation for what they perceived as unfair privileges enjoyed by Alawites. Rejected by the SMB themselves – who eventually joined the struggle since the regime targeted all forms of religious expression, as explained in many of Syria's prison novels (Khalifa, 2017) –, the escalation of violence and the implication of other actors, prompted the regime's final solution: in 1981, Rifaat al-Assad and his brigades of the Defence Companies carried out a massacre in the dessert prison of Tadmor, where most Islamist or suspected Islamist prisoners were killed. To cut the roots of discordance, in 1982, the city of Hama was reduced to ashes under the attack of those same forces. The number of casualties remains unknown, but the lesson learnt was difficult to forget: any form of dissent would

receive a violent answer. From then on, Syria would be known as *mamlakat al-samt* (Al-Turk, 2000), the kingdom of silence.

Perhaps paradoxically, but framed within the same desire for domination, in 1983, Rifaat al-Assad himself took advantage of his brother's illness, which had him for a few days on the verge of death, and tried to build a different power nucleus for himself (Seale, 1989). When Hafez al-Assad miraculously recovered, his brother's powers were decimated and, eventually, he was invited to leave the country. This was the second lesson: any internal dissent would be silenced.

2.3 2011: The turning point

Although in the early months of Bashar al-Assad's tenure a slight opening in the regime's grip on freedoms of speech and assembly paved the way for what came to be known as the Damascus Spring (George, 2003) – an attempt by intellectuals and traditional political opponents to the regime to inaugurate the debate on the need to open the political sphere and grant basic rights and freedoms that remained on hold –, the difficulties inherent to any form of dissent in the country made it virtually impossible to expect any real change in Syria.

However, at some point, things began to change. Following on the steps of other countries, large sectors of the Syrian society expressed their rejection of a life under constant humiliation in what came to be known as *Thawrat al-karama* (The Revolution of Dignity). Being aware that they had no control over their lives, and that they were constantly surveilled by the secret services, in addition to the fact that they could not express any opinion for fear that they might end up in prison, or simply "disappear", groups of inexperienced activists began to organise. However, it was a spontaneous episode in the Hariqa souk in Damascus on February 17, 2011, that encouraged people to act.

When a person was mistreated by a law enforcement agent in the street, a group of people gathered around them and repeated the following slogans: "Syrian people will not be humiliated" and "Death before humiliation". Minutes later, under the surveillance of dozens of mobile phones and cameras, the then Minister of Interior, Said Sammur, told the protesters off: "Come on guys, this is not right: this is a demonstration".

This statement of the obvious is particularly important because, since the very early stages of the uprising – which officially started on March 15, 2011 –, the regime's discursive strategy has been the following: there is no real opposition in Syria, but a bunch of violent infiltrates and terrorists seeking to plant the seeds of *fitna* (powerful word meaning 'social strife') in the country. Demonstrations were not acknowledged as genuine social movements and protesters were shot at by security agents who had been sent to the streets to "fight terrorists".

2.4 A more complex scenario

The vicious cycle of demonstration-repression-death-funeral-repression-demonstration prompted the need to protect people's lives. Those soldiers who refused to shoot at protesters started defecting from the Army and formed the nucleus of what came to be known as the Free Syrian Army (FSA). Later on, as the repression intensified and heavy weaponry came into the scene – the episode of the fall of Baba Amro provides a good example of this (Espinosa and Garcia, 2016) –; more men joined the armed insurrection in order to fight a guerrilla war of attrition against the regime.

As time went by, however, different Salafi groups started popping up in different regions within the country. In the beginning, their presence was more of an anecdote than the general rule, and in most cases, it was the leaders who held that ideology and not the rank-and-file fighters (Lund, 2012). In fact, in many cases, some groups adopted 'religiously-inspired' names as a mere trick to get funding and weapons from the only countries or people that, at the time, were eager to provide means of defence to the FSA and other brigades. However, this went in detriment of the initial revolutionary values.

Several countries and political groups decided to focus on the provision of weapons to those groups openly displaying loyalty to their ideology. This however, is not something exclusive to the opposition to Bashar al-Asad, whether it is military, or political (Syrian National Council or the subsequent National Coalition for the Syrian Revolutionary and Opposition Forces, which were created to allegedly represent the revolution in international forums and try to bring support to the people's struggle). For his part, the regime has received substantial support from different countries and groups from the very beginning. In fact, Iran was the first country to intervene in Syria by providing Assad with help: the internet monitoring system used in 2009 in that country to counter the so called Green Movement[1] was given to Assad to survey user's activity in the internet, knowing that the Local Coordination Committees[2] organising demonstrations and activities agreed on their moves in the internet and social networks.

Soon enough, it was obvious that the regime counted on the support of Iran, Russia, China, Iraq and the Lebanese Hezbollah, all of whom provided their diplomatic, political, economic and military support. On the other side, European countries at different levels, the US, Gulf countries and any self-declared "Friend of Syria"[3] did not support the revolution even if they openly criticised Assad's repression. Instead, they hindered the advance of revolutionary forces and activists by claiming that the lack of a cohesive and fully representative political body in the opposition's side was the only obstacle to their provision of real help (O'Bagy, 2012). This in itself was a declaration of intent: Assad was the only alternative to himself until further notice.

With regards to European countries, their divergent policies with regards to foreign affairs have hindered the possibility of a joint response with regards to repression in Syria (Pierini, 2016). In fact, the only real agreement European countries have reached, especially those which form part of the EU, is the infamous 2016 agreement with Turkey by means of which the EU would return to the Anatolian country, considered a safe place for Syrians (although various situations have proved otherwise (Kingsley, 2016), all illegal immigrants coming from its coasts. Prior to that, besides freezing some assets of prominent regime figures, little else had been done in retaliation for the repression in Syria (Castle, 2011).

1 Political movement that arose after the 2009 Iranian presidential election, in which protesters demanded the removal of Mahmoud Ahmadinejad from office, since they believed the process had been fraudulent.

2 The Local Coordination Committees started working in March 2011 from local groups that organised the protests in the country and published information and new son the demonstrations.

3 International diplomatic collective of countries and bodies created in response to a Russian and Chinese veto on a Security Council resolution condemning the Syrian regime's violence against civilians.

Gulf countries and individual Gulf donors, for their part, disguised their hatred for Iran and its expansionist plan, as a form of support to the revolution against the Assad regime. In other words, they were mainly interested in fighting a proxy war within Syria's borders. Consequently, they focused their efforts on breeding the ground for sectarian division and promoting a bigoted version of Sunni Islam by supporting groups with a marked Salafi creed. Interestingly enough, the leaders of the strongest Salafi brigades, such as Jaysh al-Islam or Ahrar al-Sham to list a few, had been released from Assad's prisons in the early months of the demonstrations (Junaidy, 2013). By releasing less tolerant elements and imprisoning peaceful activists, Assad clearly wished to turn his words into a self-fulfilled prophecy.

In the case of the US, the disasters in both Libya and Irak, the fear that weapons might "reach the wrong hands"[4], Obama's trauma with Bush' legacy, and the nuclear deal negotiations with Iran, were enough to apply an arms embargo on Syria (Friedman, 2014), and even blur the red lines (Engel, 2016). Only in 2014 did the training of some specific units begin in southern Syria and later on in northern areas. However, in the case of the latter, much closer to Daesh-controlled areas, the orders were crystal clear: their target was Daesh, not the Assad regime. This was the straw that broke the camel's back: for most brigades, the main enemy, responsible for most of the destruction and the deaths happening in Syria, was Bashar al-Assad. Only some Kurdish brigades believed otherwise, and the 2015 liberation of Kobani from Daesh was therefore US-backed.

4 However, he also underpinned Syrian's capacities by stating the following: "This idea that we could provide some light arms or even more sophisticated arms to what was essentially an opposition made up of former doctors, farmers, pharmacists and so forth, and that they were going to be able to battle not only a well-armed state but also a well-armed state backed by Russia, backed by Iran, a battle-hardened Hezbollah, that was never in the cards" (Friedman 2014).

2.5 Daesh and Al-Nusra: Syria as the Hotspot of International Jihadism

Daesh is the Arabic acronym for *Al-Dawla al-Islamiya fi-l-Iraqi wa-l-Sham* (The Islamic State in Iraq and the Levant/Syria), the original name with which this originally Al-Qaeda's branch in Iraq, came into being in Syria. There are no better sources to understand its appearance and fast evolution into a para-State in North Eastern Syria than the deep and complete study by Hassan Hassan and Michael Weiss (2015), and Javier Espinosa and Mónica Garcia's witness account in their two recent books (2016, 2017).

Daesh, or the idea of Daesh – also known as "Daesh brand" –, has *de facto* attracted many Muslims who hold a radical vision of religion and who despise Assad's rule (who they label as an unbeliever) and feel that the injustice that has fallen upon Syrians needs to be repaired somehow. In this specific sense, they could be understood as an opposition movement. Moreover, following the sequence of events, the organisation's advances, and the spectacular capture and recapture of Palmyra in 2016, it would not be incongruent to think that it is the strongest rebel faction in Syria and the most dangerous.

However, a quick revision of the suffering of Syrians within the territory it controls, and the fact that in early 2014 a large armed faction known as Jaysh al-Mujahidin (Army of the Mujahidin) led a counteroffensive and was able to expel Daesh from rebel-held Idleb and important areas of Aleppo, suggests otherwise (Ramírez, 2016). Daesh and its sisters, such as Jund al-Aqsa, have attacked numerous rebel positions – including those of Salafi brigades

like Ahrar al-Sham –, have imposed a government of terror in the areas it controls and, as explained below, have taken advantage of the rebel gains for their own benefit.

Raqqa was the first capital city seized from government control by the rebels, and yet, it was – in retrospective – one of the biggest mistakes, because administering it and keeping it under the revolutionaries' control was a difficult task. The political and administrative vacuum left in the city – whose management was not as simple as that of smaller cities or neighbourhoods already outside the regime's control – was soon filled by members of this group whose expertise in controlling large areas of Iraq was unparalleled. Their strategy was simple: presenting themselves as pious people who would not fall into the lure of looting people's houses or services (as it had been the case with many FSA brigades or self-declared members of the FSA), they managed to win the hearts of large segments of society. The repressive strategy arrived later.

Against the background of Daesh' advances following Jabhat al-Nusra's own techniques, the official Al-Qaeda branch in Syria, which had become quite powerful back in 2013-2014, felt threatened: the split was inevitable (Baker, 2014), yet nothing suggested that Jabhat al-Nusra would be any better for the revolution, despite initial gains and even joint operations with other brigades. In fact, when large numbers of activists took advantage of the fragile "cessation of hostilities" after six months of a violent joint Russian and Syrian air campaign on the regions out of regime control in March 2016, to commemorate the fifth anniversary of the revolution, it was Nusra fighters, who attacked the demonstrators. It was also Al-Nusra fighters who in January 2015 had stormed the offices of civil organisations and the radio station in Kafranbel. One year later, Raed Fares, a prominent activist from Kafranbel, and reporter Hadi al-Abdallah were abducted for a few hours by Nusra fighters. Six months later, a blast almost claimed the life of Abdallah and killed his reporting partner Khaled al-Issa. Activists blamed Al-Nusra for it while an imam in the city close to the group refused to office his memorial (Enab Baladi, 2016).

Although in mid-2016, it claimed to have severed ties with Al-Qaeda and renamed itself as Jabhat Fath al-Sham, not even Islamist groups, like the SMB for instance (Syrian Muslim Brotherhood 2016), trusted their intentions if they did not translate into palpable realities. Months later, in yet another move towards acceptance and distancing from Daesh, it gradually merged with other factions into what came to be known as Hay'at Tahrir al-Sham. Trusting this move remains difficult to say the least.

2.6 Siege, mass destruction, forced exile and displacement

Daesh' territorial gains in Syria and Iraq in 2014, after the establishment of the self-declared Caliphate of the Islamic State, prompted an international response, due to Assad's large neglection of the group outside the rhetorical sphere. The International Coalition against Daesh began its strikes in Syria in 2014. Soon, concerns were voiced that Assad might try to justify his attacks on the opposition under the pretext that he was targeting terrorist positions. These predictions were not unfounded: every agreement on a ceasefire between the regime and the opposition has systematically excluded Al-Nusra's positions, which means that any area in northern Syria outside the regime's grip is considered a legitimate target, even though there is no single area completely dominated by them.

Aleppo would become the epitome of this situation in late 2016: sieged by the Syrian army, the neighbourhoods in rebel hands were targeted with heavy shelling and barrel bombs. Many factors contributed to the deterioration of the situation in Aleppo, including a very interesting report by some fighters who belt betrayed by specific factions and could no longer trust anyone (Abu Shams, 2017). In the end, just like before in some areas of Homs, leaflets falling from the Syrian planes surveilling the area, reminded the people inside rebel-held areas that they had two choices: fleeing their houses in a controlled "evacuation", or facing death (Saad and Cumming-Bruce, 2016). And that is the most obscene paradox regarding Syria: the situation is often reduced to a mere humanitarian catastrophe.

No doubt that the situation in Syria corresponds to a humanitarian emergency (the large amounts of people fleeing the country bears witness of that), but, as opposed to situations of famine, draught or tornados, it is not the result of a natural catastrophe. On the contrary, it is the outcome of the implementation of the regime thugs' declared policy: "Assad or we burn the county". That was the slogan written on the walls of those neighbourhoods forcibly evacuated and raided in different parts of the country. Discordant elements had two (or maybe three) options: face death, leave the country in a forced exodus, or accept an unknown destiny if they returned to the "homeland". Knowing the fate of all the men who had left Homs earlier, most of whom had disappeared after laying down their arms, no one (except for a few civilians) dared leave the green buses taking them to Idleb, even if they knew that the city's fate might eventually be similar to that of Aleppo. To make matters worse, the armies responsible for the mass destruction and most of the deaths (Syrian Network For Human Rights, 2017) – Russian army[5], Syrian army and Iranian militias –were the ones supervising the transit from Aleppo to Idleb (in fact, Iran's feeling that Russia was receiving too much attention had delayed the process (Pasha-Robinson, 2016)).

Under this flagrant usurpation of national sovereignty, what solution awaited Syria? How could the thesis of the international conspiracy and the foreign backing of the different opposition groups still be an excuse for the ongoing repression? How could the massive influx of refugees, who have lost their homes under the heavy shelling, into other countries be stopped and the country rebuilt?

5 According to the Syrian Network For Human Rights, the death toll resulting from Russian strikes amounted to a total of 2.704 civilians between September 30 2015, and August 17, 2016 (Syrian Network For Human Rights, 2016).

2.7 A Political Solution?

On June 30, 2012, the final communiqué of the international Action Group for Syria[6], which held a meeting in Geneva (later known as Geneva I), clearly condemned the continued "killing, destruction and human rights abuses" and voiced the member States' concerns regarding "the failure to protect civilians". In addition, it expressed the group's wish to launch a Syrian-led political process that would eventually lead to a transition by means of which Syrians would be able to determine their own future. In addition to that, the Syrian authorities were required to release arbitrarily detained activists, especially those who had been detained because of their involvement in peaceful political activities.

With regards to the future, the document made it clear that any political settlement had to offer the perspective of a common future for

6 An UN-backed initiative to support political change in Syria.

all the citizens in the country, implemented in a climate of safety and at a credible pace. Such perspective included a "genuinely democratic and pluralistic" State which would open the door to new political actors, and an independent judiciary to hold those in the government accountable for their actions. In order to turn this into a reality, the statement demanded the establishment of a transitional governing body that should include members of the Government and the opposition. At no point was the Syrian regime's responsibility for the violation of Human Rights mentioned. Instead, the declaration asked all parties to bring the confrontation to a halt at a time when the above-mentioned episode in Baba Amro had already born witness of which party was responsible for the incipient policy of mass destruction.

Two days later, in early July 2012, representatives of the Syrian political opposition held a conference in Cairo under the auspices of the Arab League. The final document, in a clear declaration of principle with regards to Geneva I, explained that the very first phase for any solution to the conflict would be "a stage of struggle and determination until Bashar al-Assad and the symbols of power are toppled", since "justice for the sacrifices and the sufferings of the Syrian people for freedom and dignity can only be achieved after the removal of the main symbols of power". This very specific aspect would become the main obstacle for the achievement of any progress.

For instance, Walid al-Muallim, the everlasting Syrian Minister of Foreign Affairs, stated in the conference in Montreaux in January-February 2014, also known as Geneva II, that "no-one in the world has the right to confer or withdraw the legitimacy of a president, a constitution or a law, except for the Syrians themselves". Once again, the regime was denying the fact that large sectors of the population had taken to the streets against the regime and underpinned their relevance as foreign-backed terrorists. Under such circumstances, it seemed difficult to reach any form of agreement, and actually, despite the different initiatives both at the regional and international levels (including Geneva III and IV), no issue remains more controversial than the future of Bashar al-Asad.

Unsurprisingly, the Geneva III talks, in early 2016, proved once again that there was no interest from the regime's side to make any significant progress, unless Bashar al-Assad's continuity was guaranteed. For their part, the opposition condemned the fact that bombs were falling at a time when negotiations should have been taking place (and a cessation of hostilities implemented according to the Security Council resolution 2254, adopted in December 8, 2015, which would not apply to Daesh or any group designated as a terrorist organisation).

Regardless of the political position's stance, it is important to retrieve here what Syrian civil society organisations had to say. On January 26 2016, more than 300 civil society organisations within Syria and over 1,000 prominent civil workers signed a declaration which started with a powerful statement[7]: had it not been for the March 2011 revolution, "Syrian civil society would not have any presence". According to them, the revolution had "broken the chains of a despotic regime that has systematically suppressed all demands for freedom and the resurgence of civil society since 2011". Therefore "the principal conflict in Syria today remains the conflict with the regime in Damascus and its repressive policies".

Insisting on the fact that this was not merely a humanitarian catastrophe, they asked for humanitarian aid to be introduced in every sieged area with or without Damascus consent – for starvation was being used as a war weapon[8]. Last but not least, any progress required the rejection of all forms of terrorism, "acknowledging that the main cause of terrorism in the country is the regime of Bashar al-Assad", which should transfer all its powers to a government of consensus in order to prevent those responsible for the repression of the Syrian people to play any future role in the country.

7 The Spanish translation can be found here: [Date consulted: March 17, 2017].

8 It is true that the opposition factions sieged a couple of cities in Northern Syria, such as Al-Fu'a and Kafraya, but in those areas, as opposed to the areas sieged by governmental forces, the regime threw food bags from the air to mitigate the effects of the siege.

No one, according to them, had the right to impose their views or ideas by force.

Nevertheless, the main issue of concern remains that there is no mechanism to control the different parties' commitment to ceasefires, especially in the case of the regime, who defies any violation of its (alleged) sovereignty. Actually, after the chemical attack in Al-Ghouta, for which no side has been officially held accountable, but whose responsibility can only fall upon the party which most analysts seem to agree on (Brown, 2013; Higgins, 2014; Gladstone and Chivers, 2013), Assad learnt the lesson: since crossing the red line had brought no ill to his rule, using conventional weapons should be a piece of cake.

The farce of celebrating presidential elections – for the first time since the Assad clan arrived to power, it was not a referendum, although the picture of one of the other two candidates, Mahed Hajjar, with Bashar al-Assad's portrait on the back was very eloquent –where people voted even via WhatsApp, proved yet again that Bashar al-Asad, as he has stated in various interviews (Barnard, 2016), had no intention of leaving because he still had popular support: the support of actual and real supporters, whose presence cannot be denied, and the compulsory support of people in regime controlled areas. However, it was difficult to quantify that support since already in the previous parliamentary elections (2014), those who, in the regime's words, had left Syria illegally would not be allowed to vote (Ensor, 2014). This meant that all those who had left the country to flee from the war were no longer considered citizens. Add to that the fact that no one in rebel-held areas and, of course, Daesh-held areas, could vote. For the Syrian regime, only those under his control were worthy of the category of citizens.

Going back to the political process, the recent meeting held in Astana is worth mentioning. In it, Russia (after a tacit rapprochement with Turkey, allegedly supportive of the opposition, and despite the fact that its army was clearly part of the repression of civilian areas outside the regime control) provided a draft constitution for Syria by means of which Bashar al-Assad's crimes were whitewashed: the current president could run for presidential elections once the Constitution had been adopted, and since it was a foundational document, he could even repeat for an additional seven-year tenure. Just like the chemical massacre had given Assad free rein to keep killing civilians provided he refrained from using anything but conventional weapons (which has not prevented him from using chemical substances afterwards, as concluded by the investigation led by the Organisation for the Prohibition of Chemical Weapons and the UN), the Russian constitution aimed at providing him with a *carte blanche* to remain in power.

This never-ending proceedings and failed initiatives has gone in favour of the most radical and violent elements in the opposition against Bashar al-Asad, a fact which does not turn them into real opponents, but in opportunistic counter-revolutionary forces, among which we can list some Salafi brigades who are also playing their role as warlords and betraying the very essence of the revolution. According to activist Loubna Mrie: "My problem with the opposition delegation to Geneva can be summarized by the following: Currently I am being represented, against my will, by Muhammad Alloush, whose Jaysh al-Islam proudly put civilians in cages as human shields and have a long history of kidnapping and harassing activists. While All-out is in Geneva pretending to speak for Syria's revolutionaries, his thugs are attacking the very revolutionaries he should be speaking for. [...] This is just one more mistake committed by our political opposition. We need to reclaim our revolution and not allow the All-out group to intimidate the political delegation the way it has oppressed the people of Damascus" (Facebook, March 8, 2017).

2.8 Conclusion

Bearing in mind the long and complex explanation above, what are people fleeing from? Why where there refugees in neighbouring countries before Daesh even existed and why did they decide to flee to new destinies after the situation had become unbearable?

From the comfortable perspective of a spectator after six years of daily repression in Syria, it is my contention that no political solution is viable in the country under the current conditions. Years ago, a no-fly-zone should have been imposed in order not to allow the Syrian air force commit the atrocities that paved the way for radicalisation and the appearance of terrorist groups in the country, prompting a new international intervention in order to fight them, and sending the following message: despite the fact that Assad has killed a large number of Syrian citizens, many of which were civilians, and has destroyed most of the country's infrastructures, he is not a problem.

This is the context that explains the massive transit of refugees within and outside Syria. Those who left before Daesh' appearance simply needed to find new alternatives; those who are leaving now do not necessarily come from areas dominated by Daesh, but can graphically describe how their houses were destroyed, either because they lived in the "wrong areas" or because they had clearly showed their despise for Bashar al-Asad and his regime, who is responsible for the vast majority of deaths in the country and, as we have seen, has worked towards the radicalisation of the opposition. To this aim, he has had the support not only of its allies, but also of its alleged international detractors, who, from the beginning saw him as the only alternative to himself.

As activist Razan Ghazzawi brilliantly stated: "The term 'permanent address' should cease to exist in applications. Refugees don't have 'permanent' but 'temporary' addresses and spaces. I shouldn't want to struggle emotionally and mentally every time I want to fill in an application. 'Permanent address' is gone forever until Assad gets the hell out" (March 7, 2017).

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3. EU responses to refugees' secondary movements in times of crisis of international protection

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3.1 Introduction

Over the past decade the mixed migration flows through the Mediterranean space have undergone several transformations, both in terms of numbers and composition. Despite the progressive strengthening of EU external borders, which has been realized through policies of border control delocalization, externalization of asylum, and other legal instruments such as bilateral and cooperation agreements, the number of people who continue to reach Europe is still very high. Even if migration flows are mainly related to war, persecutions and environmental catastrophes, there is still a lack of legal ways to reach safe countries, and refugees are forced to entrust smugglers and to risk their lives at sea and land borders.

It is possible to individuate three main migration corridors in the Mediterranean space, namely the eastern, central and western ones, which are articulated along diverse migration routes. The central Mediterranean corridor involves sea crossings from Libya and Egypt to Italy; seaborne routes from Turkey to Greek islands, through the Aegean Sea, characterize the eastern migration corridor; finally, the western Mediterranean corridor is mainly articulated through seaborne and land routes from Morocco to Spain, both through the Strait of Gibraltar and the Spanish enclaves of Ceuta and Melilla.

Most of these are lethal migration routes and the number of deaths at sea and land borders of Europe is continuously growing. The progressive militarization of the Mediterranean space took shape through the progressive involvement of European navies in SAR operations: it started with Mare Nostrum, proceeded through Triton and evolved into a real war

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against smugglers with EUNAVFOR MED. In parallel with this process we observed the EU Navies' progressive retreat from Libyan coasts, and an increase of the risk involved with sea crossings, which had already been generated by the evolution of smugglers' strategies. This is the scenario in which many NGOs and private actors (currently 15) decided to intervene in the Search and Rescue operations (SAR), in order to contribute to the reduction of the mortality rate in the Mediterranean space. Their intervention has been strongly criticized and calumniated by Frontex and certain European politicians, who firstly accused them of being a pull factor for migrants, and then of having colluded with Libyan smugglers.

According to the UNHCR (2017), between January and December 2016, 362,376 people arrived by sea, including 173,450 in Greece, 181,436 in Italy and 7,490 in Spain. Even if this constitutes a 64% decrease compared to the same period in 2015 (1,015,078), the quantitative aspect of incoming flows is often at the core of the political debate on migration, and the concept of *crisis* generally recalls a supposed increase. Several scholars have hypothesized the existence of political strategies aimed at "manufacturing the emergency" and the crisis (Campesi, 2011). The counting processes cover a key role in these strategies, and are often quite blurred and scarcely transparent. A good example of these processes is provided by Sigona in his article *Seeing double? How the EU miscount the migrants arriving at its borders*, where the author analyses Frontex Agency's admission of double counting migrants entering the EU. In order to clarify this admission Sigona quotes an interesting statement, appeared in a Frontex's press release:

> Frontex provides monthly data on the number of people detected at the external borders of the European Union. Irregular border crossings may be attempted by the same person several times in different locations at the external border. This means that a large number of the people who were counted when they arrived in Greece were again counted when entering the EU for the second time through Hungary or Croatia (Sigona, 2016).

Despite the quantitative emphasis, according to Crawley (2016) "the migration crisis is [still] not a reflection of numbers – which pale into insignificance relative to the number of refugees in other countries outside Europe or to those moving in and out of Europe on tourist, student and work visas – but rather a crisis of political solidarity." (2016, p. 15). Furthermore, following Spijkerboer's (2016) reflection concerning the predictability of recent flows and trends,[9] Crawley hypothesizes a relevant lack of political will to manage the crisis. Finally, in light of the progressive enforcement of external borders (EU–Turkey agreements) and the reconfiguration of internal Schengen borders through a "process of cascading border closures within Europe" (2016:18) aimed at preventing refugees and migrants from reaching southern Europe and from moving on to central-northern countries, it is possible to understand how "the crisis is less about how to respond appropriately to the irregular arrival of migrants and refugees and more about the "wider geopolitics of the EU and the region" (Crawley, 2016, p. 20).

McMahon and Sigona (2016) go further in their analysis, stating that "repeated failures at coherently and cohesively dealing with the unfolding situation have triggered a multifaceted crisis: a refugee crisis, a crisis of border controls, a humanitarian crisis and even a geopolitical crisis within the EU itself."

The Dublin system has been deeply affected by the above-mentioned crisis, and a focus on it highlights a persistent crisis of values, where basic principles of human rights and solidarity are continuously called into question and disregarded in order to preserve the presumed political, economic and social stability

9 In Spijkerboer's vision the "presumed" unmanageability of the crisis is due to the gap between reality and dominant narratives and the interpretation of the migration phenomenon, such as the assumption about the linearity of migration, the conventional "push-pull factors approach", and the dualistic opposition of "economic migrants vs. refugees".

of the EU. Over the past years the Dublin Regulation, namely a legal tool aimed at determining mechanisms and criteria to determine the Member State responsible for examining each asylum application lodged by a third country national (Regulation 604/2013/UE), has been deeply challenged by both refugees and the authorities of first arrival countries. If on the one hand refugees on all the Mediterranean migration corridors have struggled to choose the country in which they are able to live, on the other hand the authorities of certain border countries have decided to "let them go", in response to their systematic overburdening.

Between 2011 and 2015 it is possible to individuate important moments of friction between EU countries, due to the development of relevant secondary movements of migrants from the first arrival countries, such as Italy and Greece, to the north. In 2011, the disembarkation in Italy of more than 25,000 Tunisian nationals generated the closure of Ventimiglia. Then in 2013 and 2014 Italy ceased to collect the fingerprints of Syrian and Eritrean refugees. Finally, in 2015, despite the 95% identification rate, migrants continued to leave Italy and Greece in large numbers, causing the collapse of the Dublin system and the progressive re-introduction of EU internal border controls.

At the moment of its adoption (2003), there was no intention among the main goals of the Dublin Regulation to redistribute asylum seekers, while the will to safeguard "internal countries" of the EU, to detriment of border countries, was more evident. In more recent times, the Dublin system has been presented as one of the key elements in the set of proposals in the Asylum Procedures Directive (recast) and in the modification of asylum seekers' redistribution criteria, which were adopted by the EU in 2016.

It is in light of these evolutions that it seems necessary to frame the recast EU directives and regulation within the wider framework of measures concerning detention and return, and to highlight the emergent connection between the Dublin Regulation and the external border regime, which was previously not so evident (European Commission, 2016). This connection takes shape through the proposals of systematic use of Safe Country of Origin (SCO) and Safe Third Country (STC) criteria, as decisive elements in the access to international protection. The definition of common lists of SCOs and STCs seems to be quite a dangerous procedure, especially in the frame of the EU's continuously evolving regime of cooperation agreements with scarcely safe countries, such as Turkey, Egypt and Sudan.

Starting with a historical overview of certain key moments of crisis, which concerned the Dublin system in Italy and Greece, and by retracing the most relevant modifications to the Regulation, the chapter analyses the 2015 EU Agenda and the more recent proposals of recast EU directives, in which the redistribution of asylum seekers and the Dublin system have gained fundamental importance. In this frame the issue of refugees' "secondary movements" through Europe emerges as a key instance, and as a phenomenon that should be eradicated at all costs and punished with several tools.

By focusing on the EU Agenda of 2015 and on the Commission's recast proposal of spring 2016, it is possible to put forward a reflection on the current international protection crisis and on the emptying process of the right to asylum. Finally, if we assume that the adoption of the so-called Dublin III Regulation (604/2013) was a response to the inadequateness of the Dublin II Regulation to tackle the migratory consequences of the Arab revolutions and the increased number of asylum claims, and if we state that even the present recast proposals would like to go in the same direction, it seems licit to pose a further question: will the Dublin IV Regulation be able to deal with large numbers of asylum claims?

3.2 An overview of the multiple crises of the Dublin system: 2011 – 2014

Since 2011, and even before that, the Dublin System has represented a fundamental tool for the management of incoming mixed migration flows to Europe. In order to contribute to a better understanding of its main critical aspects it is necessary to frame the reflection within the wider ensemble of European policies on asylum and to contextualize it by using a historical point of view in order to individuate some significant moments of crisis.

One of the cornerstones of the EU's policies on asylum is the so-called Common European Asylum System (CEAS), which since 1999 has been implemented through the predisposition and application of certain legal tools that have been recently revised: three European Directives, concerning Asylum Procedures, Reception Conditions and Qualification, and two Regulations, namely the Dublin Regulation and the EURODAC. (European Commission, 2015)

The conceptual premise upon which the CEAS has been built is the idea of the EU as "an area of protection", where the Member States should be able to guarantee adherence to common standards (fixed by the directives). As several scholars have already pointed out, the reality is quite different and the realization of a true and homogeneous CEAS appears to be a long way off. (Baldaccini et. al., 2007; Klepp, 2010; Langford, 2013). The EU is characterized by consistent political, social and economic disparities between countries, which have been exacerbated by the persistent economic crisis and by the progressive inclusion of some eastern ex-Soviet countries (such as Bulgaria, Hungary, Romania, Poland, etc.): the deep connection between welfare systems and reception systems for refugees has been analyzed by many scholars (Bloch and Schuster, 2002; Duvell and Jordan, 2002). In this frame the CEAS can be read as a case of "legal fiction", namely "a ruling or status in law based on hypothetical or inexistent facts" (Duhaime's Law Dictionary), because it is based on the hypothetical and unreal assumption of equality between EU Member States, which are all supposed to be "safe countries", thus, perfectly able to adhere to the standards fixed by the EU directives. On the contrary, the content of the right to asylum in EU countries appears to be shifting, in terms of access to the territory, to the asylum procedure, to status and to the reception facilities (AIDA, 2016).

Some reliable indicators of the unsafeness of certain EU countries are traceable in the ECtHR jurisdiction (the M.S.S case against Belgium and Greece, the Hirsi case against Italy, the Sharifi case against Greece and Italy, the Tarakhel case against Switzerland and Italy) and in some of the judgments by European administrative tribunals, which in several cases decided to suspend the application of the Dublin Regulation due to the inadequateness of certain EU countries' reception systems for refugees or as a consequence of violations.

Moreover, starting in 2013, asylum seekers' increasing consciousness of this "legal fiction" has strongly challenged the application of the Dublin Regulation in some southern European countries such as Italy and Greece. The agentive practices put in place by Syrians, Eritreans, Afghans and Iraqis, aimed at overcoming the Dublin Regulation's restrictions and at choosing their countries of asylum, are borne out in the official statistics concerning migration, which show huge discrepancies between the number of arrivals and the number of asylum claims, both in Italy and in Greece (table 1).

The first crisis of the Dublin system dates back to 2011, when, after the overthrowal of Ben Ali, more than 25, 000 Tunisian citizens reached Italy via the Mediterranean Sea. For most of them the imagined final destination was France, thus after being identified in Italy and being recognized as worthy of hu-

manitarian protection (Testo Unico 286/98, art. 20) they decided to move toward the north. At that time, Ventimiglia became a critical passage, where France attempted to re-introduce the internal border control, in order to impede Tunisians' secondary movement.

Table 1. Arrivals and first asylum applications. Italy & Greece (2011–2016).

Year	2011	2012	2013	2014	2015	2016
Arrivals in Italy	62,692	13,267	42,925	170,100	153,842	181,436
First-time asylum applicants in Italy	40,320	17,170	25,720	63,655	83,245	121,185
Arrivals in Greece	NA	NA	NA	50,834	856,723	173,450
First-time asylum applicants in Greece	9,310	9,575	7,860	7,585	11,370	49,875

Source: Author's re-elaborations on data by EUROSTAT (2017) and UNHCR (2017).

In the same year the EU decided to suspend the application of the Dublin II Regulation in Greece, after a relevant judgment by the ECHR (M.S.S. VS Greece), and due to the Greek asylum system's insufficiency. Despite this, the adoption of the Dublin III Regulation in 2013 (along with the re-cast EURODAC) did not reflect the European Authorities' awareness of this inadequacy, which had emerged in the previous biennium and which had been translated into the political decision to stop Dublin transfers to Greece.

A second moment of crisis for the Dublin system occurred in Italy between 2013 and 2014, and mainly concerned refugees from Syria and the Horn of Africa who managed to avoid identification by Italian authorities. If on the one hand the end of the collection of fingerprints was a sort of answer by the most exposed countries to the increase of incoming seaborne migration flows, on the other hand it was expression of refugees' agency. Syrian refugees in particular started to undertake acts of passive resistance against fingerprint collection, and we observed the proliferation of sit-ins, demonstrations and other political acts aimed at negotiating the transit to the north. They were common practices in the three migration corridors, and they took shape in the frame of new relationship with activists and other subjects involved in different roles in the management of migration flows.

This *de facto* overcoming of the restrictions imposed by the Dublin Regulation caused several complaints by northern and central EU countries, who in September 2014 pushed Italy to reintroduce systematic identification and fingerprint collection for Syrian and Eritrean citizens at all costs, namely, even by the use of force. In a secret circular from the Ministry of Interior forced identifications were de facto legitimized, but one year later the police union UGL sent a letter to the Chief of the Police, asking for clarification concerning these practices, which did not have any legal basis.

"In light of the 'legislative gap', of the absence of operational guidelines unmistakably based on precise legal provisions, and of an opaque 'do-it-yourself' approach characterized by practices that, in our view, are markedly misaligned with current laws and expose personnel to negative consequences including at a judicial level, with the aim of avoiding a protracted excessive exposure of police officers to probable criminal, civil and administrative liability, we consider that a clarification by your police department is urgently required ..." (UGL, 2016, translation by Amnesty International, 2016, p. 17).

At that time, the need to introduce a mechanism of mandatory asylum seekers' redistribution was evident, but it did not occur: there was no attempt to introduce relocation and the burden sharing failed. The lack of in-

terventions was also justified in the frame of common incorrect perception concerning the Syrian crisis, which was supposed to be solved in a few months with Assad's removal.

It was after the re-introduction of identification and fingerprint collection for almost all new arrivals (98%) that the Dublin system exploded.

The situation in Greece was, in part, very similar because even during the migration crisis almost all the new arrivals were identified through photo signaling and fingerprint collection. Thus, even if most refugees who were identified on the islands did not formalize any asylum claim before leaving the country, their presence flagged up in the EURODAC when an asylum claim was presented elsewhere.

Notwithstanding the renowned insufficiency of the Greek asylum and reception system, there was no legal way to reach northern and central EU countries, and even when the border crossing with Macedonia was opened, the subsequent steps and the further crossings along the so-called Balkan route were not authorized: this was an incentive for the proliferation of irregular secondary movement, in which people were obliged to entrust smugglers in order to realize their migration project, often driven by the desire to reunify their families[10].

The increase of secondary movements from Greece to the north continued in 2015 until the securitarian response of several EU countries decided to re-introduce internal border controls, inflicting a severe blow to refugees' agency.[11]

10 Among the most innovative aspects of the recent migration crisis was the family-based nature of migration paths, especially due to the new presence of Syrian refugees and to the changing nature of migration from Afghanistan.

11 Between them there were Sweden, Denmark, France, Austria, Hungary, and many others.

3.3 The EU Agenda and the main responses to the Dublin crisis: hotspot approach and relocation

The problem of non-compliance regarding the prescriptions imposed by the Schengen Border code, both by the authorities of southern Member States and by refugees, in the attempt to overcome the restrictions to mobility imposed by the Dublin regulation, had already emerged by the end of 2014 in the central Mediterranean corridor. In 2015 the re-opening of the Turkish seaborne routes to Greece confirmed the same trend.

After the shipwreck that occurred on the 18th of April 2015, the European authorities published a new political Agenda. Two essential elements in the European Agenda were the so-called "hotspot approach" and the "relocation strategy".

Among the main goals of the "hotspot approach" was the promotion of mandatory identification by first arrival countries, to be realized at all costs, even through the use of force, and the distinction between "refugees" and "economic migrants". On the other hand, the "relocation strategy" was a measure to combat secondary movements, which consisted in the establishment of new legal ways to leave first arrival countries to reach central and northern European ones. It was accessible only to those migrants who reached Italy and Greece and belonged to a new category: "people in evident need of international protection". In order to facilitate the realization of those prescriptions, the EU Agenda introduced new categories of shelters, namely "hotspots" and "hubs". The nature of both types of shelter was rather blurred, caught between reception and detention, especially hotspots, which were lacking of a clear legal basis and which often became spaces of illegitimate detention and human rights viola-

tions. A report published by Amnesty International, titled "Hotspot Italy: how EU's flagship approach leads to violations of refugee and migrant rights", and strongly criticized by Italian authorities, managed to shed light on the issue of violence, which was perpetrated against refugees who refused to give fingerprints. Some of the refugees interviewed by Amnesty International reported being subjected to torture, which was used to coerce them into giving their fingerprints. These reports included allegations of beatings, which caused severe pain, the infliction of electric shocks by means of electrical batons, sexual humiliation and infliction of pain to the genitals (Amnesty International, 2016, p.17).

> The police were asking us to give the fingerprints. I refused, like all the others, including some women. Ten police came and took me, first, and hit me with a stick on both the back and right wrist. In the room there were 10 police, all uniformed. Some took my hands back, some hold my face. They kept hitting me, perhaps for 15 minutes. Then they used a stick with electricity, they put it on my chest and gave me electricity. I fell down, I could see but not move. At that point, they put my hands on the machine. After me, I saw other migrants being beaten with a stick. Then another man told me he also had electricity discharged on his chest. Then they just left me on the street, they said I could go wherever I wanted. I stayed there for three days, almost unable to move (Amnesty International, 2016, p.15).

Another function of these new kind of shelters was to facilitate procedures of relocation, which were initially supposed to concern 160,000 asylum seekers: the only potential candidates were those who were "in clear need of protection", namely Syrians, Eritreans, Iraqis (European Council Decisions 2015/1523 and 2015/1601). These nationalities were individuated on the basis of the of international protection recognition rate, which had to be 75% or more.

The strategy indicated in the EU Agenda quickly demonstrated its limitations. According to a report by the European Commission, up until the 11th of July 2016 only 2 213 people from Greece and 843 people from Italy (total 3,056 people) had been relocated (Mori, 2016). Moreover, we observed the progressive closure to refugees of most EU Member States' doors: a few months after the launch of the relocation process the only available countries were those with a weaker asylum system than Italy and Greece (e.g. Romania).

Even from a conceptual perspective, some of the praxes, which derive from the prescriptions entailed by the EU Agenda were in partial with the very nature of the right to asylum as a perfect individual right. First of all, the nationality-based discrimination between "refugees and economic migrants" was in open contradiction of the basic individuality of the right to seek asylum. Moreover, the establishment of the new category of asylum seekers in "evident need of protection", resulted in discrimination between asylum seekers from category A (Eritreans, Syrians, etc.) and category B (those whose recognition status was lower than 75%), meaning one category is more worthy that the other of protection and freedom to choose the country where to live.

According to several witnesses, the distinction between economic migrants and potential asylum seekers was realized by Frontex and the EASO, through the asking of three basic questions, the order of which was not casual: a) would you like to work in Italy?; b) do you have family members in other EU countries; c) would you like to present an asylum claim? In the vast majority of cases the answer to the first question was positive and therefore often sufficient for the identification of the respondent as an economic migrant, which would result in a deferred expulsion (an order to leave the country). Migrants who received this order were generally obliged to leave the hotspot and were left to fend for themselves, without any place to stay.

I arrived in Italy the 20th or 25th of August 2015. I don't know exactly where. Maybe

Sicily. Then I was identified by the Police. They asked me some questions, such as if I wanted to work here. I responded yes, of course. I told them I wanted to claim asylum. But they gave me a sheet, and they told me to leave the centre. Then I found myself suddenly outside, in a little city. But I was not alone. We decided to walk to a train station and then we started our journey to the north. I arrived here in Baobab at the end of August. At the beginning of September I met a lawyer. I discovered that the sheet I received was an order to leave the country. I decided to appeal against it and to claim asylum. Now I am waiting to get a place in a reception centre in Rome. [Interview with A., 25 years old from Mali, Baobab, Rome][12].

In the southern Italy (mainly Sicily and Puglia) deferred pushbacks became a very common practice during the summer of 2015, and according to lawyers from the Associazione Studi Giuridici sull'Immigrazione (ASGI) and some NGOs, "between October 2015 and January 2016, Questure issued hundreds of deferred rejection orders." Moreover "the orders had not been preceded by individual interviews and no copy was given to the persons concerned." (AIDA, 2016, p. 19)[13].

Finally, the EU hotspot approach has been identified by AIDA (2016) as a causal factor in the increasing tendency to resort to the detention of asylum seekers (ECRE, 2017), both in hotspots and in expulsion centres, to which they were sometimes immediately moved following their disembarkation and "where they faced lack of defense against detention and many difficulties to formalize their asylum request" (AIDA, 2016, p. 19).

12 Baobab is a former reception centre for asylum seekers in Rome. Following its closure in 2013 it became a transit space for refugees from the Horn of Africa, who were travelling from the south of Italy towards the north.

13 They refer to the reports by Amnesty International (2016) and Oxfam (2016).

3.4 Recasting Dublin Regulation and EU directives on asylum: a punitive approach

The recent proposal to recast the Dublin Regulation constitutes an essential element of the wider reform of the Common European Asylum System, aimed at making procedure and qualifications uniform and at limiting refugees' secondary movements in the Schengen Area. This proposal will have to be adopted on the same juridical basis of the EU Regulation 604/2013 (Dublin III), namely article 78, par.2, let. e) of the Treaty on the Functioning of the European Union (TFUE, or "Lisbon Treaty) in accordance with the ordinary legislative procedure (Mori, 2016)[14]. The EU Commission has published it in April 2016, but until now it has not been possible to observe substantial advancements.

The proposal to recast includes many novelties, which seem to be aimed at further compressing the juridical regime of asylum (Mastromartino, 2011) even through a return to its original temporariness/provisional nature[15].

Among the main proposed modifications is the mandatory adoption of highly contested definitions, such as the concept of First Asylum Country (FAC), Safe Third Country and Safe Country of Origin. During a preliminary phase

14 Article 78 of the Lisbon Treaty concerns the development of a common policy on asylum and among the various elements which should be in agreement in the creation of a Common European Asylum System it quotes the "criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection" (lett.e).

15 Mastromartino individuates some casual factors in what he defines as the compression of the juridical regime of asylum. Among them there are bilateral agreements and the politics of externalization of the right to asylum.

(pre-Dublin, thus pre-application of criteria to determine the competent Member State), the first Member State in which the asylum claim is presented should declare it inadmissible if the asylum seeker comes from a (supposed) First Asylum Country or a Safe Third Country, while the claim should be examined with an accelerated procedure if his/her nationality belongs to a Safe Country of Origin or if there is any reason to consider him/her a danger to national security or public order (art.3)[16].

The criteria behind these definitions cannot be unambiguously interpreted, and there is no valid global list for any of these categories of country. Each country determines, explicitly or implicitly, a list, which is often connected to its political relationships, agreements and interests. For example, according to the UNHCR (1991: paragraph 3) "the term 'safe country' has been applied to countries which can be considered either as being non-refugee-producing or as being countries in which people fleeing persecution can enjoy asylum" but this definition does not apply to Turkey, which following the agreements with the EU (March 18) has started to be read as a Third Safe Country.

Düvell's reflections concerning the concept of a "transit country" (2008) are in some ways applicable to the concept of a "safe country" in its variations. It is a politicized and blurred concept concerning the fact that research is often policy driven (CIT). Moreover, the concept of a safe country is deeply related to processes of internalization or externalization of EU migration policies.

These new prescriptions could have dramatic consequences in the frame of the bilateral agreements with countries as Egypt Sudan and Turkey which in the EU's vision are being progressively considered safe, despite the existence of well-documented human rights violations (Human Rights Watch, 2017). According to new praxis established by the re-casted directives, migrants coming from those countries may no longer have the chance to access an impartial procedure for the recognition of international protection (Vassallo, 2017).

Moreover, in the proposed revision of the Dublin III Regulation it seems that a punitive approach against migrants who attempted to undertake a secondary movement prevails, namely an unauthorized passage from an EU first access country to another one. Article 4 of the re-casted directive establishes, for the first time, specific obligations and sanctions for the asylum seeker (Mori, 2016). Among them the analysis of a claim with an accelerated procedure is particularly relevant (art. 4, n. 1 and art. 5, n.1). Besides the various procedural obstacles that will make the recognition of refugee status less probable, the new normative envisages the loss of the right of access to reception facilities, and to even basic health assistance, except for emergency cases. This entails a serious violation of the principle of equality in the effective exercise of fundamental rights, such as the health. As Mori (2016) underlines, "this prescription seems to be in contrast not only with the fundamental principles of the European Convention of Human Rights and of the Charter of Fundamental Rights but also with the Reception Directive (COM (2016) 465), according to which the measure of reception can be refused, reduced or revoked by a State only in determinate circumstances", which does not include secondary movements.

16 Between the European Commission's proposals there is the establishment of a common list of Safe Countries of Origin (no. 452-453/2015).

3.5 Conclusive reflections: towards a crisis of international protection

Starting with an overview on the multiple crises that the Dublin system has experienced since 2011, the article has analysed some of the main political and legislative novelties that the European authorities have introduced: the European Agenda and the proposal to re-cast the key directives of the Common European Asylum System.

The secondary movements of refugees, aimed at overcoming the restrictions imposed by the Dublin Regulation, is a phenomenon which called into question not only the Regulation itself, but also the whole Schengen system and the basic principle of free movement in the area. In this frame, the arrival of significant number of people in search of international protection has shown that there is very limited solidarity between European countries, whose economic interests have evidently prevailed over their responsibilities to burden sharing in terms of human rights. The chain reaction of re-introductions of internal border controls has in some cases been exacerbated by the construction of real walls and fences, following the same model of the European external borders.

Looking at the main modifications which the re-casted Dublin directive would like to introduce, it is possible to state that refugees and, in particular, those who were willing to undertake or guilty of undertaking secondary movements have been individuated as main cause of the Schengen crisis, and were punished as such. They risk losing the basic right to accommodation and to health care, except for emergency services, and they risk being obliged to overcome various procedural obstacles on their way to the recognition of their status. Moreover, the application of the "safe country" concept, in its various forms, which is discriminatory in terms of the kind of procedure to which the asylum seekers have access, makes the dangerous bond between EU asylum policies and border controls more visible. The European strategy of bilateral agreements and other soft law instruments of cooperation with third countries[17] now represents a twofold instrument for closure, both in terms of the limitation of access to a European country, and of access to a fair asylum procedure and to status.

In conclusion, while the external border policies make the right to asylum even less accessible, the punishment of secondary movements that emerges through the re-casted EU directives confirms its emptying process, which refugees "on the move" through Europe were attempting to obstruct, in order to fill the right to asylum with the best possible content.

17 An example of soft law tool is the EU-Turkey Statement.

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4. The EU-Turkey Joint Statement of March 2016. An 'ad-hoc' solution to the Refugee crisis or a new pillar for the European Common Asylum System external dimension?

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4.1 The ECAS' loopholes and the tensions within the EU when facing the 'refugee crisis' of 2014.

Between 2014 and 2016, the Syrian war and other political regional conflicts created a perfect storm for the EU by adding some 2'5 million additional refugees to the average number of refugees arriving yearly to the EU. Although not completely unexpected (Frontex, 2013), the so-called 'refugee crisis' soon became a formidable political crisis for the whole European Union. The paradox being that, at the same time, the EU was the only political actor with the capacity to mobilize the resources and the political will to offer a suitable and durable solution to hundreds of thousands of refugees. However, when analysing why the EU did not spoke (and acted) in a clear and coordinated manner, we should not forget the complex scenario in which such decisions were taken.

First, the crisis showed the deep structural limitations of the EU migration and asylum policies, as well as relevant loopholes in the EU legislation in force. Some of them were critical failures that conditioned the way the refugee crisis was confronted. Although the EU has relevant legislative powers (arts. 72 and 73 TFUE), which were essential to create the European Common Asylum System's (ECAS), the truth is that Member States have been reluctant to allocate stronger powers in the EU institutions when it comes to the management of migrant and refugee flows; the legislation needs to be transposed and complemented by Member States through national legislation, so that implementation is the Member States' realm. By the time of the crisis, the *European institutions found themselves vested with very limited executive powers*: on one hand, the European Asylum Support Office struggled to lay down standards on the interpretation of Dublin III, but mostly

acted in support of the Member States' national asylum systems; on the other hand, Frontex was still an Agency that was shifting from just producing intelligence on migratory flows and border crossing, to coordinate border control operations for which it still relied heavily on Member State's approval and support, both in terms of material (boats, planes, surveillance systems, etc..) and human means (officials, border guards). Additionally, the five or six key EU Directives and Regulations that composed the ECAS were grounded on the *logic of the Dublin* mechanism. Such a mechanism is based on the shared rule that all asylum applications are to be processed by the Member State where the foreigner made his/her initial entry, with very limited exceptions. Scholars and NGOs had harshly criticized the CEAS for several reasons, but the system could work as long as the figures were manageable and did not concentrate in a single Member State or a reduced group of border countries, which is what just happened in 2015.

Regarding its negotiation powers with third countries, let's remind here that the Union needs the approval from the Council to start any negotiation, and that usually takes some years before the talks can be concluded. And wondering about its spending powers, the EU has been lagging behind as compared to other countries in that it has very limited emergency funds, and not for sure in the quantity that was needed to face a crisis of such dimensions, the existing funds were too fragmented among different Directorates and subject to complex oversight procedures (Hooper, 2018). So, despite all its powers and its solid position as the natural entity to provide supranational solutions and relief, in practice the EU had very limited enforcing, funding and coordination powers to properly react to the crisis.

To make things worse, two key EU institutions in the legislative and executive area -notably the European Parliament and the European Commission- had just been elected in 2014, with Mr. Jean Claude Junker as the head of the Commission[1]. Although this new Commission wanted to put migration at the core of its action and immediately deployed a new *European Agenda on Migration*[2]. But in light of the Syrian conflicts' worsening and the surge of refugees reaching the Southeast of the European Union (first affecting Greece, Italy and to a lesser extent, Hungary, to later on spread to other European countries), a complete re-definition of the Commission's priorities in the field was conducted. Despite its quick reaction, the Commission was not at its best to correctly pull all strings and face such a great challenge.

Secondly, and even more relevantly, the crisis unveiled serious political divergences among Member States both on how to address such a challenge, and also on the degree of commitment to Fundamental Rights and EU values of certain Member States. The pressure at a handful of European entry points, mainly in Greece, Bulgaria and Hungary seriously questioned the efficacy of the Dublin mechanism, because it was undeniable that people fleeing from Syria, Eritrea and Iraq and their profiles (entire families, women traveling with children, old people) deserved some type of international protection. Thus, the system collapsed because it was obvious that those countries could not reasonably process and duly study hundreds of thousands of asylum applications because Greece, but also other Eastern European countries, had poorly funded asylum systems and staff (let's remind here that the European Court of Human Rights found Greece in STEDH *MSS v. Belgium and Greece* to show structural fails in its asylees protection system). In addition, the refusal to activate the Temporary Protection Directive, designed especially for cases of massive and unforeseen flows, but certain mandatory provisions and the stronger role acknowledged to the Commission did not please some States and the Coun-

1 The President of the European Commission had taken particular credit designing a new governmental structure of thematic Vice-presidencies, and had charged a former Greek defence minister as the new Commissioner for Migration issues hand in hand with the new head of the External Service, Ms. Mogherini, a key role player in this area.

2 The Agenda was not particularly ambitious though, it stuck to the previous roadmap in this area (recast of the Researchers Directive and the Blue Card Directive, etc.

cil never voted to activate it. As the refugees seemed to become stranded in Greece *sine die*, the refugee routes subsequently moved to the Balkans for the refugees to gain access to the European central States, via Croatia and other neighbouring States. And here border Member States faced a relevant dilemma: they could not - and it was not in their interest, by the way - to allow people in if Germany, Sweden, the United Kingdom, etc., did not take responsibility for them, especially if refugees did not want to remain on the periphery of the Union; on the other hand, banning the entry of refugees to the Union and letting them stuck in the Balkans in the middle of an approaching winter was not a solution compatible with the degree of dignity, moral decency or respect for human rights to be expected from EU Member States. In such a crossroad, the decision by the German Chancellor, Mr. A. Merkel, to temporarily suspend the application of the Dublin rule and the declaration that Germany would admit all refugees arriving from Syria, helped to unblock the situation and also sent a message to the UE of high moral stance. This allowed hundreds of thousands of refugees to enter Germany, and offered a solution to the border countries, however, it put into question the sustainability of the whole system. In fact, some member States regarded with certain hostility the unilateral German action because it dismantled Dublin without bringing to the table solutions or working towards a shared consensus on the issue. Thus, while Germany's decision saved European dignity, by doing so unilaterally and without a European agreement to support it, such decision discouraged a stronger commitment of some member states. This became again problematic when, some months later, the policy of letting refugees enter the Union to settle in Germany showed growing signs of exhaustion, particularly after the arrival of almost one million refugees in Germany in a few months.

However, the German solution bought some extra time to discuss alternative measures at EU level to rationally organize the entry and reception of refugees. Here, a set of different measures were explored and/or undertaken. In the short term, through the adoption by the Council of a refugee relocation system (Council Decision agreed in June 2015 for some 40,000 refugees, and increased in September to some extra 120,000). Not without notable tensions among Member States, the temporary relocation mechanism transferred asylum applicants from overloaded countries - notably Greece, but also Italy and Hungary - to the remaining Member States; as a result of the formula applied a sort of quota system was laid down. Despite its limited ambition, the relocation system faced practical and political challenges. On one hand, it required quick processing capacities at the points of entry, thus leading to the creation of *hot spots* for the identification and processing of their asylum applications; on the other hand, it found serious opposition by certain countries, mainly Hungary, but also Chezc Republic and Poland, that in full institutional disloyalty tried to torpedo the agreement, despite the ridiculous quota of refugees it assigned to them. All those challenges, and the few incentives the majority of Member States had to fulfil the compromise brought a very low rate of success (less than 15% of the initial 160,000 refugees were relocated to other Member States).

In the medium term and long term, the Commission got some time to trigger in 2015 the complex and time-consuming legislative procedure necessary to reform the Dublin system, still far from having achieved any success nowadays, despite the very limited ambition of the reform. To be honest, the alternatives to reform Dublin showed quite complex and surely more ambitious proposals would have required a stronger political will on the side of the Commission and the Council, so at the end the most feasible option was to restore the Dublin mechanism with some significant changes – more flexibility regarding the family and other links that could be used to select the country responsible for the asylum application, coupled with harder measures aimed at banning secondary movements- along with a permanent system of internal distribution (permanent relocation

system) that is still the cause of heated debate (European Council, December 2017).

In this context, at the end of 2015 and in the face of the prospect of new refugee flows in 2016, the EU looked to its North African neighbours (Valetta summit) and Turkey (October 2015, Joint Action Plan) to involve them in a change - or openness - of its strategy in the management of flows of immigrants and refugees. In particular, the decision to involve Turkey more closely in reducing the flow of potential asylum-seekers to the Union was enthusiastically welcomed by that country, settling in November 2015 an *Action Plan 2015*, rapidly materialized in two Summits that took place in March 2016 that ended with a joint *EU-Turkey Statement*, that will be analysed in full detail in Section 2 of this chapter. In this new strategy, it was key the full entry into force of the *European Union and Turkey Readmission Agreement 2014*, shortly followed by a similar Agreement between Greece and Turkey, because it opened a new path for external cooperation with third countries in the field of refugees (something only explored in the immigration area), something that has been considered by some as an strategy to outsource EU's obligations. Officially, the cooperation was presented as a way to reduce deaths at sea (more than 10,700 at its peak in 2015). Let's analyse in detail its content.

4.2 The Statement's content: analysis of six key issues

The EU-Turkey Statement contains nine key points, which will be examined separately in the present section. These nine points of the agreement can be divided into two categories. From one side, the statement contains obligations, which concern the Turkish authorities as regards the return of migrants from Greece to Turkey but also resettlement of Syrian refugees to the EU. From the other side, the statement incorporates certain commitments from the EU towards Turkey and/or Turkish citizens. The Statement reads as follows (European Council, 2016):

> '1) All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure, which is necessary to end the human suffering and restore public order. Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey. Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements, including the presence of Turkish officials on Greek islands and Greek officials in Turkey as from 20 March 2016, to ensure liaison and thereby facilitate the smooth functioning of these arrangements. The costs of the return operations of irregular migrants will be covered by the EU'.

The first point undoubtedly constitutes the most controversial one of the entire agreement and the one that has provoked a rather extended public and academic debate (Peers, 2016; Peers and Roman, 2016; Thym, 206). Except for the issue whether Turkey constitutes a 'safe country' for refugees, which is analysed in detail below, the following comments should be made concerning the first point of the agreement. The first comment concerns collective expulsions and the contradiction, which appears to be in the first two sentences of the agreement. Indeed, the agreement provides that *all* migrants will be returned to Turkey and, at the same time, it mentions that this should be in accordance with EU and international law rules. It appears difficult to imagine how the Greek authorities will comply with their obligation to return *all* irregular migrants respecting the prohibition of collective expulsions, which is guaranteed both at EU and international level[3]. The same is true as regards their obligation to process *individually* any application for asylum, which is also provided for by the agreement. In any event, the agreement provides that migrants who do not apply for asylum or whose asylum application is rejected on the merits or as inadmissible will be returned to Turkey. The agreement seems to imply that people returned to Turkey will be divided into migrants who will not apply for asylum in Greece because they do not have the right to do so, or for whatever reason, and asylum seekers whose application will be rejected on the merits or as inadmissible. The crucial issue of inadmissibility of the asylum applications and, consequently, whether Turkey can be regarded as a 'safe country' for refugees is as mentioned above examined extensively below in a separate section. As regards migrants who do not apply for asylum, the question which remains to be answered is whether these migrants will be given the actual opportunity to apply for asylum or they will merely be returned in accordance with the first sentence of the agreement. The temporary and extraordinary character of the said measure is mentioned in the agreement without further clarification. Alternatively, the text could be construed differently if taking as a key aspect the date of March 2016, so that before that date no expulsion to Turkey would be made on immigrants and asylum seekers alike but since that date migrants would be returned to Turkey on the basis of the advanced application of the EU-Turkey Return Agreement 2014, and potential asylum seekers too on the basis of Turkey being considered as a safe country of transit, once Turkey will make some legal adjustments to fully comply with the condition of safe country of transit.

> '2) For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. A mechanism will be established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNHCR, to ensure that this principle will be implemented as from the same day the returns start. Priority will be given to migrants who have not previously entered or tried to enter the EU irregularly. On the EU side, resettlement under this mechanism will take place, in the first instance, by honouring the commitments taken by Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on 20 July 2015, of which 18.000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000 persons. The Members of the European Council welcome the Commission's intention to propose an amendment to the relocation decision of 22 September 2015 to allow for any resettlement commitment undertaken in the framework of this arrangement to be offset from non-allocated places under the decision. Should

3 The said prohibition is contained both in the European Convention on Human Rights and in the Charter of Fundamental Rights of the EU. See Art. 4 of Protocol 4 of the ECHR and Art. 19 (1) of the ECFR respectively.

these arrangements not meet the objective of ending the irregular migration and the number of returns come close to the numbers provided for above, this mechanism will be reviewed. Should the number of returns exceed the numbers provided for above, this mechanism will be discontinued'.

The first point of the Statement is combined with the second one that introduces a one-for-one rule according to which, for every Syrian which is returned from Greece to Turkey another one will be resettled from Turkey to the EU. The agreement provides that UN Vulnerability Criteria will be taken into consideration in the resettlement procedure as well as that priority will be given to migrants who have not previously entered or attempted to enter the EU irregularly. The second point seems to explicitly concern Syrians although in the priority clause the word 'migrants' has been chosen. In any event, it becomes apparent that the resettlement procedure will co-exist with the relocation scheme that was decided on 22 September 2015[4]. In that respect, the said agreement suggests that any compliance with resettlement obligations should be compensated with non-allocated places under the Council decision. It should be underlined that unlike it is the case with the first point of the agreement, the second one contains a maximum number of resettlements which amounts to a total of 72.000 persons (18.000 places for resettlement that remained at the time the agreement was signed from the resettlement commitment taken by Member States in 2015 and 54.000 additional resettlements). As it will be shown below, resettlement targets have fallen far from the goals lied down in the agreement[5].

'3) Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU, and will cooperate with neighbouring states as well as the EU to this effect'.

Pursuant to the third point of the agreement, Turkey is committed to prevent new routes from Turkey to the EU.

'4) Once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced, a Voluntary Humanitarian Admission Scheme will be activated. EU Member States will contribute on a voluntary basis to this scheme'.

'5) The fulfilment of the visa liberalisation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met. To this end Turkey will take the necessary steps to fulfil the remaining requirements to allow the Commission to make, following the required assessment of compliance with the benchmarks, an appropriate proposal by the end of April on the basis of which the European Parliament and the Council can make a final decision'.

'6) The EU, in close cooperation with Turkey, will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey and ensure funding of further projects for persons under temporary protection identified with swift input from Turkey before the end of March. A first list of concrete projects for refugees, notably in the field of health, education, infrastructure, food and other living costs that can be swiftly financed from the Facility, will be jointly identified within a week. Once these resources are about to be used to the full, and provided the above commitments are met, the EU will mobilise additional funding for the Facility of an additional 3 billion euro up to the end of 2018'.

4 See Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

5 The same is true for the relocation commitments. See, Report from the Commission to the European Parliament, the European Council and the Council, COM(2017) 74 final.

The deployment and allocation of the money is made through the *EU Facility for Refugees in Turkey*, a funding scheme for enlargement and neighbourhood countries. In this sense, provides for a joint coordination mechanism to cover in a comprehensive and coordinated manner "the needs of refugees and host communities in Turkey". As a result, it not only supports refugees, the Facility takes a broader approach to include humanitarian assistance, education, migration management, health, municipal infrastructure, and socio-economic support.

In 2016 and 2017, the Facility managed to compromise and contract the amount of €3 billion included in the Statement for some 72 projects, but the distribution took more time than initially calculated, with only two-thirds (€1.93 billion) having been disbursed as of beginning of April 2018.[6]

'7) The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union'.

'8) The EU and Turkey reconfirmed their commitment to re-energise the accession process as set out in their joint statement of 29 November 2015. They welcomed the opening of Chapter 17 on 14 December 2015 and decided, as a next step, to open Chapter 33 during the Netherlands presidency. They welcomed that the Commission will put forward a proposal to this effect in April. Preparatory work for the opening of other Chapters will continue at an accelerated pace without prejudice to Member States' positions in accordance with the existing rules'.

First, point 4 makes reference to the Voluntary Humanitarian Admission Scheme which was agreed on 15 December 2015 regarding Syrian refugees in Turkey. According to the agreement, this scheme will be activated once the irregular crossings are coming to an end or are *substantially* and *sustainably* reduced. It is not required that irregular crossings end entirely. Second, point 5 refers to the visa liberalisation for Turkish citizens in the Schengen zone by the end of June 2016, issue which seems to have been a priority for the Turkish government. The agreement provided that Turkey should fulfil all remaining requirements and that the Commission should make a proposal in that respect by the end of April. It should be underlined that the EU was only committed to make a proposal for liberalisation. This proposal should still be approved by the Parliament and the Council according to EU decision making procedures. It should be noted that until today, visa liberalisation for Turkish citizens has not yet taken place. Third, the EU has been committed to mobilise funding of 3 billion euros which were already agreed under the Facility for Refugees in Turkey and an additional 3 billion up to the end of 2018. Funding will be addressed to cover refugee needs in the field of health, education, infrastructure, food and other living costs. Fourth, a commitment was made to upgrade the existing Customs Union. Fifth, as regards the Turkey accession to the EU, the two sides agreed to open Chapter 33 during the Netherlands presidency[7].

'9) The EU and its Member States will work with Turkey in any joint endeavour to improve humanitarian conditions inside Syria, in particular in certain areas near the Turkish border which would allow for the local population and refugees to live in areas which will be more safe'.

The last point of the agreement is a rather controversial one which calls for actions from both sides to try to find a solution inside Syria, with the possibility of creating a 'safe zone' for Syrians in areas near the Turkish

6 The Commission states that on April 2018 the operational envelope of the EU Facility for Refugees in Turkey had been fully committed and contracted (except for ongoing administrative expenditure, ECHO technical assistance, and monitoring, evaluation and audit expenditure that may be committed and contracted during the life of the Facility). See updated information at https://ec.europa.eu/neighbourhood-enlargement/news_corner/migration_en

7 The total number of Chapters that need to be agreed for the accession to take place is 35. In the agreement both sides agree to open one of the 35 and start preparatory work for opening more Chapters in the future. It is noted that all the above was agreed without prejudice to Member States' positions according to existing rules.

border. Whether such a possibility actual exists will depend on how the situation in Syria evolves. In any event, it should be highlighted that this last point should be read in light of the *non refoulement* principle which is not only mentioned in the agreement but it constitutes an obligation that both Turkey and the EU Member States have undertaken by signing the Geneva Convention.

So, who wins with the deal? Of course, Turkey improved its positioning at the beginning of a pre-accession phase, which nevertheless still seems very far away; and the Union, for its part, was able to introduce a mechanism that in combination with the relocation system, were intended to reduce the pressure Greece was suffering in order not to fully collapse. The formula is worrying in that it admits for the first time the return of refugees from European soil to Turkey without ensuring individual resolutions and procedures with all the guarantees.

4.3 Some problems regarding the legal nature and implementation of the EU-Turkey Statement.

The *EU-Turkey Statement* was highly questionable in its respect for international and European Asylum Law (Peers, 2016). Some authors argued that despite its form and the arguments provided denying it is an international treaty, there are also solid reasons in line with the European Parliament to question whether it was not, regardless of its form, a legal international text that created mutual obligations and deployed binding effects for the EU and Turkey, subject to the provisions of International Law (den Heijer and Spijkerboer, 2016). Other authors argued it was a political decision but not a legal one, because the obligations were assumed unilaterally and thus the text was not binding; this would be the official interpretation by the European Council and the Commission.

An intermediate approach supported the idea it was a non-binding political decision that included political compromises, however the implementation of the compromises it included would not be conducted without resorting to the Law, or as one author put it *"however, the individual elements of it – new new Greek, Turkish and EU laws (or their implementation), and the further implementation of the EU/Turkey readmission agreement – will have to be approved at the relevant level, or implemented in individual cases if they are already in force*" (Peers, 2016). Moving beyond its controversial nature, the Statement was strongly opposed for its flaws, its shortsighted approach to fundamental rights and European values, as well as for the externalization to Turkey of refugee protection duties that the EU should have born itself (Labayle and de Bruycker, 2016; Chetail, 2016; Collet, 2016).

Fortunately, the ECJ soon had the chance to make things clear. On its *Order ECJ NM v European Council* 28 February 2017 (First Chamber, Extended Composition), T.257/16, the General Court had to deal with an appeal asking for the annulment of the EU-Turkey agreement that the Statement embodied, whereas the Council pleaded for the inadmissibility of the appeal, with Belgium, Greece and the Commission seeking leave to intervene in support of the Council. The Commission in agreement supported the European Council in its argument that there was no agreement or treaty in the sense of Article 218 TFEU or Art. 2(1) Vienna Convention 1969. The Council contended that nothing in the wording of the Statement indicated a legally binding agreement but a political arrangement and that it was a meeting of the Heads of State or Govern-

ment with Turkey together with the Presidents of the European Council and the Commission what was held in Brussels, and not an European Council meeting with a third country, that the COREPER preparatory works on the issue only concerned the European Council but not that meeting of Heads of State or Government. The applicant contested that the word "agree", "decided" or "reconfirmed" indicated an agreement of binding nature and that no mention was made in the text to "Member States" but instead to the "EU" (see Press Release Num. 144/16).

The Court admitted that, in order to ascertain whether it was a meeting of Heads of State and Government or the European Council, it was necessary to analyse the content and all the circumstances in which it was adopted, having regard it was conducted by the representatives of Member States physically gathered in the premises of the European institutions. Whereas in previous meetings the representatives participated in their capacity of Heads of State or Government at the March 2016 meeting the Press Releases differed from the previous statements describing the meeting as being held by "Members of the European Council" and that the "EU and the Republic of Turkey agreed" under the heading indication "Foreign affairs and international relations" as typically related to the work of the European Council. Against that the same Press Release in PDF format indicated "International Summit", thus leading to differing versions and no conclusion being able to be attired from that. All in all, the ECJ follows the reasoning from the Council, backed by the Commission, and acknowledged that the evidence presented showed the statement was adopted by the States and Turkey, and not the Council:

> "65. Those documents (...) thus establish that, notwithstanding the regrettably ambiguous terms of the EU-Turkey statement, as published by means of Press Release No 144/16, it was in their capacity as Heads of State or Government of the Member States that the representatives of those Member States met with the Turkish Prime Minister on 18 March 2016 in the premises shared by the European Council and the Council, namely, the Justus Lipsius building.

As a result, the Court dismissed the action brought before it on the ground of the Court's lack of jurisdiction. Clearly, declaring the statement out of the European Union range of actions, the Court had no jurisdiction to ascertain its compatibility with EU Law. But the reasoning of the European Court of Justice decision raises several doubts and questions.

The first doubt is whether the Court really believed what it was stating. Bound by the statements from the Council and the Commission that described the meeting as a submit between Member States and Turkey, it was very difficult for the Court to rule the opposite. It is notwithstanding, quite difficult to believe that a meeting that formally and substantially had all the features of a Council's meeting with the high representatives of a third country was not an act of the Council. Formally, the meeting was held at the Council's premises that was presented publicly as a Council meeting, printed with the Council's logo, and was attended by the president of the Commission and the president of the Council. Substantially, during the meeting the parties attending the meeting agreed on a list of issues that could only be agreed if they were acting on behalf of the European Union in their capacity as the Council and not of the different Member States, for example compromising EU funds to support Turkey or taking decisions that affected EU norms, above all the advanced entry into force of the *EU-Turkey Readmission Agreement 2014*.

The second question is the surprisingly hyper-formal approach the Court adopted to describe the statement as an act external to the EU institutional umbrella, despite the attendance of the Presidents of the Commission and the European Council to the meeting. However, a more substantial analysis of the content of the statement would have clearly shown that the obligations coming from that deal went far beyond the competences of the Member States

acting only on their own. Take for example, the compromise to economically support Turkey with EU money, or the opening of new negotiation chapters regarding Turkey's accession to the EU, etcetera. Only an exceedingly formal approach to those kind of compromises would describe them as mere unilateral compromises and the act of transferring them to the EU decision-making process as a free and political decision, instead of an European Council agreement with a third country that had the authority to be implemented by EU officials afterwards.

The third question is related to the domestic implication of the Court's decision. Although the Court does not provide any hint to half-guess its opinion on the legal nature of the Statement, if follows from its reasoning that the meeting between Heads of State or Government with the Turkish Prime Minister was subject to the domestic laws of each country. That being so, if we consider it a mere political and unilateral statement with no binding consequences, no objection can be attired, but if we consider it some kind of international agreement, then the question is whether Member States followed the constitutional and legal procedures to adopt such international compromise. In Spain, international agreements with an impact on fundamental rights would have to be approved by Parliament by majority, under art. 94.1 Spanish Constitution, or at least be formally communicated to it under art. 94.1 Spanish Constitution, if such agreement is considered not to have a relevant impact on fundamental rights. However, this has not been the procedure followed either.

Regarding the implementation of the agreement, several problems rose too.

Since the entry into force of the agreement, the European Commission has adopted seven reports on the progress made in the implementation of the EU-Turkey agreement[8].

According to the last report published on 2 March 2017 and covering the period from the entry into force of the agreement until the end of February 2017, the current situation as regards implementation of the agreement may be described as follows. The total number of persons that has been returned from Greece to Turkey on the basis of the agreement is 1,487. Among these migrants, the majority are Syrians[9], whereas other nationalities include, Pakistanis, Algerians and Iraqis. The reports make clear that even though returns take place, the number of new arrivals to the Greek islands is much higher. According to the last Commission's report, the number of new arrivals from Turkey to Greece only in the period 8 December 2016 to 26 February 2017 was 3,449, whereas 151 have been returned in the framework of the agreement in the same period. It should be noticed that the number of new arrivals in the last three-month period corresponds to a daily arrival of 43 persons to the Greek islands, number which significantly lower than in the month preceded the agreement, when arrivals exceeded 1.700 per day.

As regards the relevant data on resettlements, the fifth report provides that the total number of Syrians resettled from Turkey to EU Member States was 3,565, whereas in the period covered by this report this number amounts to 954. As regards the countries that have so far received resettled Syrians in the framework of the agreement, these include Belgium, Estonia, Finland, France, Germany, Italy, Latvia, Luxemburg and the Netherlands. Ultimately, it should be highlighted that the Commission notes that since the agreement, 70 fatalities and missing persons have been recorded in the Aegean Sea[10], number which is lower than the 1,100 persons who died over the same period in 2015-2016.

8 See COM(2016) 231 final, COM(2016) 439 final, COM(2016) 634 final, COM(2016) 792 final, COM(2017) 204 final.

9 For instance, among the 151 migrants covered by the fifth Commission's report, 64 were Syrians

10 The report uses the data provided by the International Organisation for Migration covering the period 1 April 2016 until 23 February 2017.

4.4 The implications of the Common European Asylum System to the agreement: Turkey as a safe third country for refugees?

Since the agreement was signed, the debate turned around the issue of whether Turkey constitutes a 'safe third country' or a 'first country of asylum' for asylum seekers mainly coming from Syria. Indeed, this is a crucial issue as from a legal point view a country may return an asylum seeker to a 'safe third country' or to the 'first country of asylum' without being held responsible for bringing any asylum law rules. In any event, as mentioned above the agreement provides that the asylum seekers that will be returned to Turkey will be those who do not apply for asylum or whose application has been found 'unfounded' or 'inadmissible' in accordance with the Asylum Procedures Directive[11]. An application is considered 'unfounded' when it is rejected on the merits and 'inadmissible' when some of the reasons mentioned in Art. 33 of the Asylum Procedure Directive occur. The most relevant for the agreement at hand is case b) and c) of the said article which provides that Member States may consider an asylum application inadmissible in case a non-EU country is considered a 'first country of asylum' or a 'safe third country' for the applicant. The present section examines whether Turkey may be considered as either a 'first country of asylum' or a 'safe third country' for refugees. Furthermore, the issue of whether it constitutes a 'European safe third country' is also discussed.

For answering the question whether Turkey can be considered as a 'first country of asylum' or a 'safe third country', special focus should be given to the definition of these concepts contained in the Asylum Procedures Directive. According to EU rules[12] a 'safe third country' is a country where 'life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion'; there is no risk of serious harm as defined in the Qualification Directive; the non-refoulement rule is applied in accordance with the Geneva Convention; 'the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected'; and 'the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention'.

Given that the criteria should according to the literal and more correct interpretation of this provision be met in an accumulative way, this article will focus on the last of the applicable principles which concerns the applicability of the Geneva Convention in Turkey. In that respect, it should first be noted that Turkey retains a geographical limitation to the ratification of the Geneva Convention. This means that Turkey gives Geneva refugee protection only for 'events occurring in Europe' and not to refugees coming from Syria or other Asian countries[13]. However, it should be underlined that Turkey is bound by the principle of *non-refoulement* as the said provision is one of the provisions of the Geneva Convention that cannot opt out[14].

The said EU rule which provides that there should exist the possibility to receive protection in accordance with the Geneva Con-

11 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

12 See Art. 38 (1) of the Asylum Procedures Directive

13 Turkey maintained the geographical limitation acceding to the New York Protocol of 1967, which generally withdrew the geographical and temporary restrictions of the 1951 Convention. See declarations and reservations of the 1967 New York Protocol: 'The instrument of accession stipulates that the Government of Turkey maintains the provisions of the declaration made under section B of article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe, and also the reservation clause made upon ratification of the Convention to the effect that no provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey'.

14 See Art. 42 (1) which reads as follows: 'At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive'.

vention can be given two different interpretations. According to the literal and more correct interpretation, a country should apply the Geneva Convention as such to an asylum seeker in order to be considered as a safe third country. Given that this is not the case in Turkey, at least as regards Syrian or other asylum seekers coming from Asia, it cannot be considered as 'safe' according to EU rules on asylum law. On the contrary, the same provision can be given a different interpretation according to which a country does not necessarily need to apply the Geneva Convention but protection of equivalent standards. This view has been adopted by the EU institutions, in particular by the European Commission at the time the agreement was signed[15]. Even if the latter interpretation is correct, it is rather questionable whether Turkey applies equivalent standards to asylum seekers. The exact protection that is granted to refugees in Turkey is discussed below in the framework of the question whether Turkey can be considered as a 'first country of asylum'.

Next, Art. 33 of the Asylum Procedures Directive further provides that an asylum application may be inadmissible if a non-EU country is considered a 'first country of asylum' pursuant to Art. 35 of the same Directive. According to the said article, a country may be considered as a 'first country of asylum' if the asylum seeker has been recognised in that country as a refugee and 'he or she can still avail himself/herself of that protection' or 'he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*'. It is important to underline that the same provision provides that Member States may take into account the principles regarding 'safe third country' which were explained above, applying the concept of 'first country of asylum' to the particular circumstances of an applicant.

Let us examine the two different options provided for by Art. 35 of the Asylum Procedures Directive. The first option does not apply to Turkey due to the geographical restriction to the Geneva Convention. The second option might become applicable in the case of Turkey depending on the interpretation that should be given to the term 'sufficient protection'. In any event, it is worth briefly explaining the protection that non-European asylum seekers may receive in Turkey. To start with, it should be mentioned that Turkey disposes of a national asylum system and grants some protection to non-European asylum system. In the Turkish system, there exist four types of protection, namely, 'conditional refugee protection', 'subsidiary protection', 'temporary protection' and humanitarian protection status for those who cannot be removed due to a number of reasons including non-refoulement, health issues and vulnerability. Temporary protection only applies to those who have fled Syria and sought refuge in Turkey including Syrian nationals as well as refugees and stateless persons in Syria. These four categories provide protection to non-European asylum seekers but of lower standards comparing to the ones benefitting from the Geneva Convention in Turkey or elsewhere[16]. The most important differences concern access to labour market, which is limited especially for the beneficiaries of temporary protection. Significant differences may be found in other areas as well, such as the access to nationality, and duration of residence permits. Regardless of the above, it should be underlined that the second point of Art. 35 (1) (b) of the Asylum Procedures Directive which refers to the application of the principle of *non-refoulement* is, at least in theory, applicable in Turkey.

Whether the refugee statuses granted in Turkey may be considered as 'sufficient' for the purposes of Art. 35 of the Directive will depend on what interpretation one may desire to give to this term. It is reminded that the Directive provides that Member States may optionally decide to apply the higher standards of 'safe

15 See Communication from the Commission to the European Parliament, the European Council and the Council: Next operational steps in EU-Turkey cooperation in the field of migration. COM(2016) 166 final.

16 For a more extended analysis of the refugee protection in Turkey see, Turkey country report at the Asylum Database Information.

third country' to the definition of 'first country of asylum'. In this case, Turkey could not be considered as a 'first country of asylum' either. It should be highlighted that shortly after the entry into force of the EU-Turkey agreement, Greece reformed its asylum legislation[17] dropping the optional clause[18] which calls for equivalent standards in the definition of 'safe third country' and 'first country of asylum' from its national provision that has implemented Art. 35 of the Asylum Procedures Directive[19]. As a result, the Greek authorities can now reject as inadmissible applications even though the country does not satisfy the criteria of a 'safe third country'. It should be mentioned that the same Law does not explicitly name Turkey, or any other country, as a 'safe country'.

Regardless of this reform in the Greek legislation, it is at least questionable whether Turkey qualifies as a 'first country of asylum' especially taking into consideration recent development in the country such as the temporary suspension of the European Convention on Human Rights which constitutes another *non-refoulement* safeguard for asylum seekers, as well as the derogation from the International Covenant on Civil and Political Rights. It should be mentioned that even if Turkey is considered as a 'first country of asylum' this should be decided on a case-by-case basis pursuant to the Directive which speaks about 'first country of asylum' for a *particular* applicant.

After having concluded that Turkey cannot be considered as a 'safe third country' and, although questionably, also not a 'first country of asylum' it should be added that it can also not be regarded as a 'European safe third country'. In particular, the Asylum Procedures Directive provides that a Member State may have no, o no full consideration of an application in case an applicant has entered or is seeking to enter to its territory from a European safe third country which fulfils the following requirements: '(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations; (b) it has in place an asylum procedure prescribed by law; and (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies'[20]. For the same reason of maintaining geographical limitations to the Geneva Convention, Turkey can also not qualify as a 'European safe third country'.

Lastly, a reflection regarding general standards of human rights protection in Turkey deems necessary. In principle, from a legal point of view, the level of protection of human rights in Turkey is not directly relevant as regards its classification as a 'safe country' for refugees or asylum seekers. Indeed, as it has been explained above, whether a country constitutes a 'safe country' for asylum seekers or refugees solely depends on issues related to the refugee protection that is likely to be obtained in that country and not with the general level of protection of human rights. That being said, it should be concluded that violations of other rights such as the freedom of expression is in principle an irrelevant factor from a legal point of view. It might, however, be relevant in individual cases of asylum seekers who may suffer persecution in Turkey for political opinions or religious beliefs. The last remark is important and should be kept in mind, especially if we take into consideration that Turkey is one of the countries of the Council of Europe with high number of convictions from the European Court of Human Rights. In any case, it should be also reminded that the Asylum Procedures Directive provides that the applicant shall be allowed to challenge the first country of asylum and/or the safe third country concept to his or her particular circumstances[21]. The same is true as regards the concept of European safe third country[22].

17 Law 4375/2016

18 It should be noted that the Presidential Decree 113/2013 which was in force before its recent reform by Law 4375/2016 had incorporated this optional provision of the Asylum Procedures Directive

19 Art. 55 of Law 4375/2016

20 Art. 39 (2) of the Asylum Procedures Directive

21 See last subparagraph of Art. 35 and Art. 38 (2) (c) of the Asylum Procedures Directive respectively

22 See Art. 39 (3) of the Asylum Procedures Directive

4.5 Conclusions

The 2014-2016 refugee crisis evidenced the limited margin of action of the EU when trying to deal with complex regional crisis like the one in Syria that produce a large influx of refugees and happen in the EU's backyard. After a while, neighbouring countries could not be able to undertake more refugees, nor the refugees wanted to get stuck on those countries and, together with other mixed flows of immigrants and people fleeing from the region attempted to arrive to EU soil, in the hope of better protection, support services and, at the end of the day, better living chances for them and their children. The crisis showed that the Dublin system was not ready for a mass inflow of refugees through a few entry points (Greece, Hungary, Italy), some of them with poorly funded systems of asylum processing and refugee protection. And that there was very few will among Member States to activate the emergency brake, the Temporary Protection Directive, because it included coercive measures and a stronger role by the European Commission.

Thus, the EU-Turkey Joint Statement represents the recognition that dealing at its borders with a major refugee crisis requires: firstly, a strong commitment of all Member States to act in good faith and coordination; and secondly, the involvement of the relevant transit countries. It is in this sense that the EU agreed with Turkey, a major and key player in the region, a set of measures in order to support Turkey's involvement in the patrolling of the EU borders and the protection of refugees in its own territory. The downside of any agreement with a border country on these topics is that the Joint Statement made the EU even more dependent on Turkey management of the refugee crisis. In addition, the way it was conducted raised several problems not only due to its underlying logic, but also to the way it was drafted, the concrete provisions it included and its implications for refugees seeking protection in EU soil.

Member States and the Council defended the Joint Statement and pleaded for its efficacy at capping the entry of refugees from Turkey, and the data may support somehow that impact. Reducing flows quickly was badly needed in the EU in order to deal with some Member States opposition to the 'open doors' policy privileged at the height of the crisis by Germany, and their decision only to leave them in towards Germany or even in the worst case, refusing to participate in the Relocation Scheme agreed in May-September 2015. Taking responsibility for the integration (and its costs) of the refugees that entered the EU during the 2014-2016 became a key and divisive issue within the EU. This is why the alleged efficacy of the EU-Turkey Joint Statement became a model for the relations with some other Mediterranean third countries like Egypt, Libya or Tunis (Collet, 2017; Collet 2018).

Finally, the involvement of third countries on the management of refugee and migrant flows is not presented either as the dark -though necessary-, side of a wider asylum system that otherwise includes safe and legal paths to reach the EU. To the opposite, there is nothing of an ambitious proposal on the table to include safe and legal paths to the EU, nothing across the different initiatives to reform the ECAS that points out at such shortcoming of the system, with the exception of a shy approach to increasing the commitment to an international resettlement scheme. And that is the problem, the EU badly needs new and ambitious ideas to shape the ECAS into a credible, efficient and asylum-seeker oriented system that puts human rights at its core.

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5. Vulnerability in the context of EU asylum policies: the challenges of identification and prioritisation

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5.1 The concept of vulnerable groups

5.1.1 Vulnerability as an emerging concept

The concept of vulnerability is progressively acquiring greater relevance at both international and national levels, while that of vulnerable groups can be considered an emerging concept in International Law, with particular significance within the Council of Europe (Quesada, 2010), in the case law of the European Court of Human Rights (ECtHR) (Peroni and Timmer, 2013) and in EU Law. National legislations have also begun to address this concept as they seek to implement specific policy actions for disadvantaged social groups (Safeguarding Vulnerable Groups Act, 2006).

Vulnerability, as an inherent human condition (Fineman, 2008), implies that given people or groups are particularly exposed to harm (Suarez, 2013; Ortega, 2001; Peroni and Timmer, 2013) (or likely to suffer harm), and for various reasons are unable to react or to protect themselves (Ortega, 2001). On the basis of this definition, two different approaches to vulnerability have emerged, one in North America, the other in Europe. In the first of these approaches, Martha Fineman builds her concept of vulnerability on the autonomy myth and argues that it may be suitably adopted to tackle the weaknesses of American anti-discrimination law. Thus while according to the author, "A vulnerability approach (…) allows us to celebrate the progress toward racial, ethnic, and gender equality that has been made under the anti-discrimination model" (Fineman, 2008, p. 17), it also fills the gaps in the American anti-discrimination law, which has yet to incorporate discrimination based on social disadvantages, such as access to material goods, capacities and social relations. Additionally, Fineman claims that the concept allows us to identify positive obligations owed by the State to address the needs of certain groups, whose condition would not be considered by

simply adopting a formal equality approach as opposed to a substantive one.

Under the approach developed in Europe, vulnerability has been addressed from a different perspective – though one not excessively removed from the American approach. From a European standpoint, we need to consider that discrimination encompasses the concept of substantive equality, which imposes positive obligations on national legislations aimed at removing social and material disparities. Thus, vulnerability can be understood in a subsidiary context, arising when instruments adopted to avoid material inequalities have failed. In this respect, scholars argue that vulnerability can be profitably invoked to promote the principle of equal opportunities; that is, the vulnerable are those that face a series of obstacles that prevent them from competing on equal terms when seeking to access their rights and social goods (Suárez Llanos, 2013, p. 46). The same scholars refer to vulnerability when they present situations of social exclusion and marginality. Accordingly, they submit that vulnerability – real or potential – is relevant for a wide range of legal conditions, so that people belonging to certain vulnerable groups are subject to harm or submission. Likewise, vulnerability can also be invoked in cases of structural discrimination when multiple elements of disadvantage are transmitted from one generation to another (Office of the Deputy Prime Minister (UK), 2004). Scholars also tackle vulnerability by questioning how a person or group of people that are marginalized and socially excluded, suffering abuses, harm, prejudice and discrimination, can gain access to opportunities (Larkin, 2008).

To date, the only text to provide a legal definition of vulnerability is the Brasilia Regulations which provides access to justice for those deemed vulnerable (OSCE, Brasilia Regulation). According to these regulations, vulnerable people can be defined as “those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognised to them by law”. Additionally, the regulations recognise further causes of vulnerability, namely, “age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty”.

However, the specific causes that might result in a certain group of people being identified as vulnerable can vary greatly, as is reflected in the many different classifications proposed by jurists, the Courts and, above all, by the Inter-American Court of Human Rights (IACtHR) (Estipiñan-Silva, 2014; Beduschi, 2015; Dembour, 2014). Here, however, we propose a classification based on three main grounds. The first recognises the existence of conditions that place a person in a situation in which they are likely to suffer harm: these conditions may include age (minors and the elderly) (*Heinisch v. Germany*, ECHR, 2011), abilities (the handicapped) (*Alajos Kiss v.* Hungary, ECHR, 2010), and sickness (*Kiyutin v. Russia*, ECHR, 2011). The second considers the existence of invariable characteristics placing groups in a situation of vulnerability, as a consequence of past discrimination. Here, we refer to skin colour, phenotype (*B.S. v. Spain,* ECHR, 2012), gender, sexual orientation and gender identity. Finally, the third considers the vulnerability people are placed under from belonging to a group that has been historically discriminated because of its constituting a minority or because of an unequal power relationship that places it in a condition of inferiority or dominance. We refer to ethnic groups (*Chapman v. United Kingdom,* ECHR, 2001; *D.H v. Czech Republic,* ECHR, 2007; *Timishev v. Russland,* ECHR, 2005), indigenous communities, migrants, religious groups and national minorities.

Yet, while vulnerability can be addressed in general terms, it is especially challenging to provide a precise definition, given that in so doing we run the risk of narrowing down attention to a specific group of people that might be considered vulnerable and consequently the object of protection (Ippolito and Iglesias Sánchez, 2015). In fact, dealing with vulnerability gives rise to more questions than it provides unequivocal responses: Which factors produce vulnerability? Are we dealing with a *numerus clausus*?

Should vulnerability be conceived as a temporary or permanent situation? Vulnerability from what? Is vulnerability inherent to the human condition or is it the social circumstances that make people vulnerable? When does a situation of exposure-to-risk become one that that needs to be addressed by public authorities?

Against the backdrop of the above discussion, we will proceed as follows. First, the origins of the concept of vulnerability in case law are outlined, with particular reference to the way it has been interpreted by the IACtHR and the ECtHR (1.2). Second, we turn our attention to the relationship between asylum and vulnerability, initially, in general terms (2) and, then, by focusing specifically on European Asylum Law (3), illustrating how vulnerability has been tackled under the Reception Conditions Directive and within the Relocation Decisions. Finally, the paper provides a number of concluding remarks and identifies various issues that remain open to debate (5).

5.1.2 The concept of vulnerability in case law

In recent years, the concept of vulnerability has acquired increasing importance in the courts, emerging as a pivotal concept that has allowed a series of judgments to be passed that seek to strengthen the protection of those individuals or groups susceptible to harm and who lack the physical and legal means to achieve that protection. This development in the case law has been referred to as a 'quiet revolution' (Timmer, 2013). Both the IACtHR and the ECtHR have recognised vulnerability in imposing positive obligations on States to protect those collectives that are in need, while various national courts have also made recourse to the concept in limiting State action and protecting vulnerable groups[18].

According to the IACtHR, groups or persons that are socially vulnerable are entitled to special protection. This protection arises from the State's duty to satisfy general obligations in respecting and guaranteeing human rights. Following the IACtHR's assessment, vulnerability is promoted by specific *de jure* and *de facto* situations. In the case of the former, the law is the instrument that recognises vulnerability; thus, for instance, irregular migrants are vulnerable because of the situation of *rightlessness* promoted by law. In the case of the latter, the IACtHR emphasises the structural inequalities that are critical for accessing public resources; hence, for example, the situations of widespread vulnerability that result from internal displacement during armed conflicts.

The IACtHR recognises the following groups as vulnerable: minors, women, indigenous people, persons with disabilities, migrants (especially those in an irregular situation), internally displaced, persons deprived of liberty, political opponents and human rights defenders and the homeless. However, if we examine specific cases before the IACtHR, the Court tends to deal with situations of vulnerability that are linked to a broadly defined context characterised by the absence of rights and goods. Thus, it is armed conflicts, cultural and social prejudices, poverty and social exclusion or inaction on the part of the State that trigger situations of vulnerability.

The ECtHR also recognises the vulnerability of various groups, including, the Roma minority, people living with HIV, people with mental disabilities and asylum seekers (Peroni and Timmer, 2013). For example, in relation to the Roma, in the case of *D. H. and others v. the Czech Republic* (2007), it was held that "as a result of their turbulent history, the Roma have become a specific type of disadvantaged and vulnerable minority"; in *Alajos Kiss v. Hungary* (2010) the Court held that people affected by mental disability are "a particularly vulnerable group in society, who have suffered considerable discrimination in the past"; and, finally, in relation to asylum seekers, in the case of *M.S.S. v. Belgium and Greece* (2011) the Court affirmed that they are members of "a particularly underprivileged and vulnerable population group in need of special protection" (*M.S.S. v. Belgium*

18 For the UK see, for instance, the landmark decision in R. v Camden LBC, ex p Pereira, 31 HLR 317.

and Greece, ECHR, 2011, par. 251; *Tarakhel v. Switzerland,* ECHR, 2014, par.99). However, while to date the IACtHR has adopted a very broad notion of vulnerability, the approach taken by the ECtHR is characterised by a greater degree of caution and selectivity, being concerned with identifying subgroups of people with special needs and, above all, attaching relevance to the specific circumstances of the case before the Court. The case of undocumented migrants is highly illustrative of these respective approaches. Thus, while the IACtHR recognises them as a vulnerable group, the ECtHR has, on occasion, recognised that irregular status is a condition that potentially enhances the harm and vulnerability of certain individuals, but it has not gone as far as identifying undocumented migrants as a vulnerable group (*Siliadin v. France,* ECHR, 2005)[19].

19 Concerning a Togolese woman performing domestic work under unbearable conditions. Importantly the Court stated that "she was entirely at Mr and Mrs B.'s mercy, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which had never occurred", par. 126.

5.2 Vulnerability and asylum

As we can see from this brief overview, both Courts have examined the nexus between asylum and vulnerability – albeit from their different perspectives. In the framework of forced migration, certain people or subgroups are exposed to situations of fragility or manifest specific needs that have to be addressed by public authorities. Thus, asylum seekers and refugees alike, besides being persecuted, might be exposed to discrimination based on multiple personal characteristics – including, race, age, gender and disability – as well as their specific life experiences – including, torture, sexual abuse and trafficking. Thus, we could address this double exposure to harm in terms of an individuals' specific vulnerability within a context of their more widespread vulnerability (Crenshaw, 1991; Fassin, 2015).

The procedures provided for under national and European Asylum Law tend to ignore the particular circumstances of vulnerable groups. Consider, for example, the Dublin Regulation, where as late as 2013 no references to situations of vulnerability were contemplated (De Bauche, 2008). This omission leads to a double victimization in which the needs of the most vulnerable are ignored and their legal protection is addressed by general procedures that make them invisible. For instance, LGBTI asylum seekers face prejudice and social discrimination, as asylum decision-makers expect a prototype applicant manifesting certain patterns of behaviour and if the individual does not satisfy those expectations then asylum can be denied (CJUE, X, Y, Z, *Minister voor Immigratie en Asiel* and *A, B, C v. Staatssecretaris van Veiligheid en Justitie*)[20].

In addressing this situation, international law (in particular, the UNHCR) has recourse to various instruments that ensure its general procedures respond to the needs of the most vulnerable. This specific support is achieved by the establishment of specific legal frameworks that can respond to the particular circumstances of refugees at risk, or even by prioritising protection against other groups or people (UNHCR, 2005). Resettlement is paradigmatic in this regard. Over the course of its mandate the UNHCR has gained considerable expertise in identifying those refugees that need to be transferred from the country in which they seek asylum to another country on the grounds of their vulnerability or special needs (UNHCR, 2011)[21].

20 See also International Commission of Jurists (2011).

21 The UNHCR identifies several categories of people that may be resettled, including people with legal or physical protection needs, medical needs, women and girls at risk, children and adolescents at risk, family reunification, those with a lack of foreseeable alternative durable solutions.

5.3 Vulnerability in the framework of EU asylum policies

5.3.1 Reception Conditions Directive and asylum seekers with vulnerabilities or special needs

The vulnerability of asylum seekers as a matter of concern for the EU legislator is a recent phenomenon. Indeed, prior to 2013, none of the EU Directives on Asylum made any reference to the condition of vulnerability of asylum seekers; however, in recent years – in line with the growing relevance that the concept has acquired in other fields – EU law has begun to consider asylum seekers and refugees as vulnerable. In this section, we focus on two legislative instruments that are indicative of this new trend: the Reception Conditions Directive and the Relocation Decisions. In both cases, we examine how EU law addresses vulnerability, examining the virtues and pitfalls of this new legislative intervention.

In European Asylum Law the concept of vulnerability appeared for the first time within Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, which lay down standards for the reception of applicants for international protection. According to the Directive (currently under reform) (Proposal for a Directive COM (2016) 465 final), in the implementation of the reception process of asylum seekers, State Members are required to take into account the specific circumstances of vulnerable persons. The Directive refers specifically to 'applicants with special reception needs' defined as vulnerable individuals in need of special guarantees in order to benefit from the rights and comply with the obligations provided for under the Directive.

In this regard, art. 21 of the Directive specifically recognises the special needs of the following vulnerable persons: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

The duty of assessing whether the applicant is one with special needs and of ensuring that the reception process indicates the nature of these needs lies with the national authorities. More specifically, Member States are required to:

- Provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed (art. 19)
- Take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the [housing] premises and accommodation centres (art. 18)

In addition to these general requirements, the Directive includes specific regulations regarding three groups: minors, unaccompanied minors and victims of torture and violence.

In the case of minors, the Directive sets out that the best interests of the child should be of primary consideration for Member States when implementing its provisions. Moreover, Member States are required to guarantee a standard of living that is adequate for the minor's physical, mental, spiritual, moral and social development. In their assessment of what constitutes the child's best interests they need to take due account of the following factors:

- family reunification possibilities;
- the minor's well-being and social development, taking into particular consideration the minor's background;
- safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
- the views of the minor in accordance with his or her age and maturity.

In the case of unaccompanied minors, the Directive requires Member States to take

measures, as soon as it is possible, to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for under the Directive. Moreover, the Member States must ensure that unaccompanied minors who make an application for international protection are, from the moment they are admitted to the territory until they are obliged to leave the Member State in which the application for international protection was made or is being examined, placed: (a) with adult relatives; (b) with a foster family; (c) in accommodation centres with special provisions for minors; (d) in other accommodation suitable for minors.

In the case of victims of torture and violence, the Directive only includes a general provision, according to which, Member States are required to ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

The Directive allows Member States to detain an asylum applicant when, and after conducting an individual assessment, it is shown to be necessary. In such instances, the protection provided for under the Directive needs to adhere to the following guidelines. First, the necessary health care, including mental health care, should be provided to all applicants. Second, minors should be granted the opportunity of engaging in leisure activities, including play and recreational activities appropriate to their age. Third, detained families should be provided with separate accommodation guaranteeing adequate privacy; likewise, detained women should be accommodated separately from male applicants. Finally, the Directive provides that unaccompanied minors can only be detained as an exceptional measure and, if deemed necessary, they should be accommodated separately from adults, and under no circumstances be detained in prison accommodation (art. 11).

In addition to the Reception Conditions Directive, other provisions of EU Asylum Law tackle vulnerability. For instance, Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection establishes that Member States may prioritise an examination of an application for international protection where the applicant is vulnerable. This Directive also requires that interviewers of asylum seekers be sufficiently competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability.

The current refugee crisis has led to significant reform of the European Asylum System (Peers, 2016). Thus, within the framework of Dublin IV, Member States are required to rethink the present scope of the concept of vulnerability and to provide a broader enforcement of it. Yet, to date, any special measures providing protection of vulnerable groups are limited. The Reception Directive Proposal (COM/2016/0222(COD)(currently under discussion) includes more detailed rules for assessing, determining, documenting and addressing applicants' special reception needs, as soon as it becomes possible, and throughout the period of reception. This includes the need for the staff of the relevant authorities to be adequately and continuously trained, and an obligation to refer certain applicants to a doctor or psychologist for further assessment. It also clarifies that any assessment may be integrated into existing national procedures or into the assessment undertaken to identify applicants with special procedural needs (art. 21).

5.3.2 EU relocation and the prioritisation of vulnerable groups

In response to the ongoing refugee crisis, in September 2015, the EU Council adopted two decisions regarding the relocation of asylum seekers from Italy and Greece to other EU countries. These decisions respond to the aim of the EU institutions to provide assistance to

these two Member States in managing the extraordinary arrivals of asylum seekers on their coasts. As such, both decisions seek to ensure the orderly, managed arrival of asylum seekers in frontline States.

Specifically, the Decision of 14 September 2015 provides for the relocation of 40,000 asylum seekers from Italy (24,000) and Greece (16,000) to other EU countries, which voluntarily accept to take charge of their asylum claims (Council Decision (EU) 2015/1523). Subsequently, the Decision of 22 September increased the number of people to be relocated up to 120,000. Moreover, the second Decision fixed specific mandatory quotas for each Member State (excluding Slovakia, Hungary and the Czech Republic) (Council Decision (EU) 2015/1601). The latest report from the EU Commission examining the implementation of the relocation programme concludes that it has yet to work properly, with an average compliance rate of 17% (European Commission. Press Release, 2017).

Both decisions ruled that relocation would only apply to asylum seekers that had submitted their application for international protection upon their arrival in Italy or Greece, and to the extent that these States are responsible for processing their applications in accordance with the Dublin criteria (Regulation 604/2013, Art. 7-11).

The criteria applied in establishing the country to which asylum seekers should be relocated involve examining their potential capacity for integration. The Decision holds that:

> "...in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the specific qualifications and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation (Recital nº. 34)."

After establishing the criteria that are to be followed, the Decision recognises that priority should be given to applicants deemed vulnerable under Directive 2013/33/EU, with particular reference to children and those requiring medical care. Thus, the preamble to both Decisions reads as follows:

> "When deciding which applicants in clear need of international protection should be relocated from Italy and from Greece, priority should be given to vulnerable applicants within the meaning of Articles 21 and 22 of Directive 2013/33/EU of the European Parliament and of the Council. In this respect, any special needs of applicants, including health, should be of primary concern. The best interests of the child should always be a primary consideration (Recital nº. 33)."

Furthermore, in deciding where vulnerable applicants should be relocated, the capacity of the States to address the specific needs of the applicant should be taken into consideration. In this regard, recital nº. 34 provides that:

> "In the case of particularly vulnerable applicants, consideration should be given to the capacity of the Member State of relocation to provide adequate support to those applicants and to the necessity of ensuring a fair distribution of those applicants among Member States (Recital nº. 34)."

Both decisions also recognise that Italy and Greece should be responsible for identifying asylum seekers that could be relocated to the other member States but that priority should be given to vulnerable applicants. However, the Member State of relocation retains the right to refuse to accept an asylum seeker if they can demonstrate that the person is a danger to their national security or public order.

5.4 Challenges of the concept of vulnerability in the framework of EU asylum policies

5.4.1 Identifying vulnerability in the Reception Conditions Directive

Directive 2013/33/EU identifies various categories of vulnerable people. But the question arises as to whether the Directive's intention is to provide an exhaustive list (*numerus clausus*), which would mean no other groups might be considered vulnerable, or, on the contrary, whether it can be conceived as an open list. An open list would offer the opportunity of incorporating other groups and so it could be adapted to the dynamics and realities of asylum seekers. In this regard, and as indicated above, the ECtHR has identified people living with HIV as a vulnerable group, so it is unclear whether asylum seekers living with HIV would also benefit from preferential protection in their relocation. The same applies to ethnic minorities, groups who find themselves in a position of disadvantage or women suffering gender-based violence.

A further issue raised by the identification of vulnerable groups is the absence under EU law of any specific methods, instruments or indicators to help in identifying a person as being a member of a vulnerable group and, hence, in prioritising their relocation. Beyond the general criteria laid down, there are as yet no further indicators. Directive 2013/33/EU provides a list of the vulnerable based on age, personal characteristics and experiences, which means some groups can be readily defined in line with these criteria. This is the case for example of minors, the elderly, the disabled and single-parent families. However, alongside these groups, we find a grey area comprising, for example, people who have been subjected to torture, rape and sexual violence, and victims of human trafficking, where the identification of the vulnerable is not so straightforward. It is to be hoped, however, that the current reform of the Reception Directive will go some way to making the condition of these latter victims more visible. The recast directive requires Member States to train competent interviewing officers and personnel with responsibility for assessing applications, and to provide medical, social and even specialised psychological services.

Identifying groups of people in situations of vulnerability requires a proper framework, so that legal certainty, as well as the necessary financial and human resources, can be guaranteed. The correct enforcement of the measures provided for under the Reception Directive will depend on the economic resources that State Members allocate to this end, as well as to the attention that the national authorities are prepared to dedicate to the drawing up of specifics protocols for defining vulnerability. These measures apply specifically to the national reception process provided by local authorities and to the relocation of asylum seekers from the so-called hotspots. However, given the current asylum crisis in Europe, we cannot stress enough the importance of the capabilities of the Greek and Italian reception centres to carry out an initial evaluation of vulnerability so as to guarantee the correct identification of people at risk. Thus, the main challenge is to provide adequate human (especially as regards the training of officers with responsibility for managing asylum claims) and economic resources, especially in light of the current situation faced by the asylum hotspots. Here, the EU and the UNHCR have a vital role to play in supporting these training activities.

Identification and prioritisation in Relocation Decisions

The smooth implementation of relocation procedures is affected by an obvious paradox. On the one hand, the UNHCR reports that identifying vulnerable persons can be a lengthy, complex procedure taking up to a year, involving as it does a wide range of actors, including asylum officers, doctors and psychologists; however, on the other hand, the 'proceduralization' of the identification process can consistently delay the whole relocation procedure, affecting the rights and interests of vul-

nerable asylum seekers. Likewise, some vulnerable groups, such as unaccompanied or separated minors, might find themselves undermined by protection procedures, especially as both in Italy and Greece assuming guardianship of a child can be a highly-protracted procedure. As a result, minors may well be excluded from relocation and not benefit from being considered a priority. Thus, seeking a balance between the need to protect the rights of the vulnerable and the need to ensure a rapid, smooth procedure is anything but easy (UNHCR, 2016)[22].

As discussed, both Decisions of September 2015 stress that the relocation process from Greece and Italy should take into account the ability of the Member States of relocation to provide adequate support to meet the special needs of the vulnerable applicants. In principle, procedures for the prioritisation of vulnerable groups are left very much to the discretion of Italy and Greece, yet it is highly improbable that they would have any real awareness of the services available for attending vulnerable groups in the country of relocation.

Relocation also aims at balancing an applicant's potential for integration (in terms of language skills and other qualifications) with their situation of vulnerability. Yet, in practice, such a balance is extremely difficult to achieve. How would such a balance be calculated? Should there be quotas for members of vulnerable groups? Moreover, any attempts at accommodating the interests of the Member States would further delay selection procedures for at least two reasons: first, reports from the EU Commission on the implementation of relocation show that Member States are already lagging well behind in satisfying quotas; and, second, Member States have taken to drawing up lists of preferences. While the main objective of preferences is to facilitate integration of the relocated person in the Member State of relocation, some Member States have expressed long or constraining lists of preferences for the profile of the applicants to be relocated. It has been reported that some Member States of relocation are reluctant to receive relocation requests concerning specific nationalities, single applicants, or unaccompanied minors, due to lack of interpretation, integration programmes or reception capacity; others clearly state that they would only accept families. In short, the majority of Member States use the preferences as "a means to exclude possible candidates rather than to allow for a better matching process for better integration" (European Commission, 2016; Guild et al, 2017).

Finally, it should be borne in mind that the whole procedure of the identification and prioritisation of vulnerable groups is based upon the registration of these people in the asylum hotspots. Indeed, relocation and the so-called hotspot approach are strictly intertwined. Greece and Italy need to provide the initial reception measures within their respective territories – with the financial aid of the EU and Member States (on a voluntary basis). In exchange, asylum seekers registered at the hotspots can be relocated to other Member States, according to a quota system. Yet, both parts of the procedure are only being partially implemented. However, after some initial difficulties, according to data provided by the EU Commission, the hotspots do facilitate the registration of a large number of asylum seekers – though serious concerns about the compatibility of this procedure with national, EU and international law have rightly been raised by scholars, experts and NGOs (Government of Canada, 2017). In contrast, relocation does not proceed at a swifter rate. As of April 2017, no State had complied with its assigned quota, the average rate of compliance with this legal commitment not even reaching 20% (European Commission, 2017). This is clearly illustrative of the different speeds of the migration policies, with security concerns proceeding at a faster rate than enhanced intra-EU solidarity (European Commission Italy, 2016, p.2).

In addition to the problems that vulnerability raises in the context of EU asylum poli-

22 However, there have been positive experiences involving the rapid relocation of refugees. For example, Canada has resettled 40,000 persons applying the criteria of vulnerability. This has been possible because of the decision taken by the new government elected in 2015 to make resettlement one of the priorities of Canadian migration policy.

cies, a further challenge that will have to be addressed concerns the relationship between the vulnerability of asylum seekers and the deprivation of their liberty. Article 8, par. 3 (e) of the Reception Conditions Directive allows Member States to detain asylum seekers and both the ECtHR and the ECJ have upheld the right of Member States to do so. In the leading case of *Saadi v. UK* (2008, par. 65), the ECtHR did not recognise the arbitrariness and disproportionality of the detention of asylum seekers, highlighting the power of State to control the entry of aliens in their territories[23]. As a consequence, States party to the Convention do not have to demonstrate that they have applied the least intrusive measure (Suso Musa v. Malta, 2013; Aden Ahmed v. Malta, 2013; Nabil v. Hungary, 2015)[24]. Last year, the ECJ was asked to rule on whether the detention of asylum seekers on grounds of "national security and public order" was in compliance with art. 6 of the Charter and with art. 5 of the ECHR (Progin-Theuerkauf, 2016; Posse Ousmane, 2016). The Court confirmed the validity of such detentions. However, the vulnerability of asylum seekers is clearly at odds with the deprivation of their personal liberty during the examination of their claims and their detention is particularly incoherent with the statement issued by the ECtHR which sees asylum seekers as "members of a particularly underprivileged and vulnerable group in need of special protection".

23 "To interpret the first limb of Article 5 § 1(f) as permitting detention only of a person who is shown to be trying to evade entry restrictions would be to place too narrow a construction on the terms of the provision and on the power of the State to exercise its undeniable right of control".

24 By contrast, the Court recognized Art. 5 was breached in a case involving the detainment of an unaccompanied minor: Mubilanzika Mayeka and Kaniki Mitunga v. Belgium.

5.5 Conclusion

The emergence of the concept of vulnerable persons and groups within the framework of the European Asylum System is to be welcomed. The prioritisation afforded vulnerable groups over other collectives gives them a comparative advantage that goes some way to compensating them for the challenges they face. Moreover, it can also offset the discriminatory selection criteria that Member States might adopt when selecting applicants from the hotspots and aid them in having their refugee status recognised. Indeed, the 2015 Relocation Decisions have ushered in something of a 'refugee shopping system', with Members States seeking to prioritise the selection of high skilled applicants, since in this way they hope to guarantee their better integration into internal labour markets. Thus, a refugee's work experience, age, job training, knowledge of languages can place them at the top of the list for relocation and resettlement to a Member State. For instance, requiring refugees to show "good potential for integration" in the Member State tends to be a fairly discriminatory criteria for collectives such as women[25], given that they may have had limited access to education and/or employment opportunities. This also obviously applies to those that are considered too old, sick or weak for the job market. Thus, prioritising vulnerable groups in the relocation process is a means of compensating for these disadvantages.

25 Potential for integration is similarly relevant to the question of resettlement. It is paradigmatic in Denmark's resettlement policies, as the country prioritises resettlement – inter alia – on the refugees' language background and education. Know Reset policy. However, the approach has been criticised by the UNHCR, stating, "The notion of integration potential should not negatively influence the selection and promotion of resettlement cases. For example, educational level or other factors considered to be enhancing the prospects for integration are not determining factors when submitting cases for resettlement", UNHCR Resettlement Handbook, p. 253 (emphasis added).

Yet, at the same time, prioritising vulnerability in the relocation decision is perhaps quite perverse when all refugees find themselves in a vulnerable position. After all, the ECtHR, in its ruling in the case of *MSS v. Greece and Belgium* stated that asylum seekers constitute a vulnerable population group. Therefore, if the relocation procedure is to be conducted in line with the Council's Decisions, those that do not have a good background or curriculum to suggest they have the potential to satisfy the Member States' integration criteria, and who also fail to meet the (poorly defined) criteria of vulnerability, are unlikely to find themselves selected for relocation and resettlement. In short, the danger is that under the seemingly protective mantle of vulnerability, the general protection of asylum will be reserved solely for those groups that are vulnerable. And, in this way, the framework to protect refugees in the current crisis is further undermined.

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6. Refugees' reception in Italy: past and present of a humanitarian crisis

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6.1 Introduction

Terms such as 'Migration Crisis' and 'Refugee Crisis' have been widely used to refer to the large numbers of people recently arriving into the European Union by crossing the Mediterranean or travelling by land through the Balkans. Following the Arab Spring of 2011, this mixed-migration flow reached its peak in 2015, as a consequence of the conflict in the Syrian Arab Republic. Overall, in that year, over 1 million migrants arrived in Europe by sea, the highest number ever registered by official statistics. If there is a crisis, however, this is not so much in the numbers, but in the way in which policy-makers and institutions have failed to respond adequately and to prioritize humanitarian concerns rather than allowing xenophobic hysteria and political interests to set the agenda (Peters and Besley, 2015). In all of this, the focus of the EU and, to an extent, of international media outlets, has been very much on border control and the identification of migrants. The crucial issues of reception, accommodation and integration in the countries of arrivals have been very much treated as a national problem, with local populations often shifting from sentiments of solidarity to openly anti-immigration stances. Across the whole of Europe, the 'Refugee Crisis' has been used to channel popular discontent arising from years of political and economic instability and the consequences of Austerity policies (Albahari, 2015).

Although Mediterranean migration is often discussed as one trans-national phenomenon, there are marked differences between the two main receiving countries – Greece and Italy – and it is indeed possible to identify two distinct, though interconnected, sub-systems (D'Angelo et al., 2017). This applies both to the composition of the migration flows and to the national and local responses implemented to manage arrivals. This article focuses on the case of Sicily, which, with the exception of the dra-

matic but relatively brief period between Spring 2015 and Spring 2016, has been the main area of arrival of migration by sea in Southern Europe for quite some time. Indeed, the article aims to debunk the popular notion that mixed-migration from North-Africa to Italy is a very recent and very sudden phenomenon.

The next section starts by providing an overview of the migration flows from North-Africa to Sicily since the early 1990s, explaining how we came to the so-called 'crisis' of the 2010s. This is followed by an analysis of the characteristics and experiences of those who are currently coming to Italy, offering a counter-narrative to the stale dichotomy between refugees and economic migrants. The article then moves to analyse the legal and organisational framework of refugees' reception in the country; also in this case, a brief historical excursus is useful to understand how the current, extremely complex system came into being. This involves a galaxy of state and non-governmental actors and a multi-tier classification of centres and structures. As discussed in the subsequent section, in spite of ambitious national regulations, an overall 'emergency approach' is the norm, rather than the exception. Furthermore, ground level-analysis reveals an implementation characterised by legal gaps, delays, and inadequate provision of services, which dramatically impact on the life and prospects of individual migrants.

The article is informed by the findings of the two-year research project EVI-MED26 (Constructing and Evidence Base of Contemporary Mediterranean Migrations) as well as additional research undertaken by the author. EVI-MED included a survey administered over the course of 2016 to 750 migrants and refugees hosted by national receptions systems across the Mediterranean, of which 400 in Sicily. Although not statistically representative in strict sense, this sample provides important insights in the characteristics and experiences of migrants, allowing us to integrate the evidence available through official data sources. The survey was also complemented by in-depth interviews with migrants, NGOs and local stakeholders and an extensive analysis of grey literature.

26 EVIMED (Constructing an Evidence Base of Contemporary Mediterranean Migrations) was funded by the Economic and Social Research Council (ESRC) – Grant Ref: ES/N013638/1. The project was led by Prof. Brad Blitz, Prof. Eleonore Kofman, Dr. Alessio D'Angelo, Dr. Nicola Montagna, and Martin Baldwin-Edwards. Partner organisations: Borderline Sicilia (Italy), Greek Council for Refugees (Greece), People for Change (Malta). Project website: www.mdx.ac.uk/evimed.

6.2 Mixed-migration from North-Africa to Sicily

The South of Italy has experienced significant flows of irregular migration by sea since at least the 1990s when, following the introduction of a stricter visa policy, the route from North Africa supplied Sicily with seasonal workers for its agricultural sector (Pastore et al. 2006). In the following years, with extremely limited mechanisms for the regular entry of non-EU migrants, the only concrete attempts of the Italian governments at managing these migration flows took the shape of bilateral agreements with North African countries. This 'offshore containment' approach (Albahari, 2015) culminated in the deal reached in 2010 by then Prime Minister Silvio Berlusconi with the Libyan regime of Muammar Gaddafi. In return for substantial payments from Italy and other EU countries, Libya became the key partner in enforcing Europe's externalisation of border control. This included joint naval patrols with Italian authorities, a crackdown on smugglers' networks and the creation of detention centres. The agreement was characterized by a lack of humanitarian considerations – Libya never

signed the 1951 Geneva Refugee Convention and was well known for its brutal methods of policing and migration control – but succeeded in containing the number of migrants from North Africa, albeit only for a very short period of time. The collapse of Gaddafi's regime following the Arab Spring and the NATO military intervention in 2011, led to large numbers of forced migrants leaving Libya for Italy over the following months. The post-Gaddafi's era, characterized by a high level of political instability, conflicts between rival factions and a weak central government unable to exert its authority over the whole territory, saw smuggling – and people's smuggling in particular – becoming the country's main economic sector (Martin, 2017). This led to an unprecedented increase in the irregular migration towards Italy.

According to official sources, in 2014 the number of arrivals by sea in Italy reached the record number of 170,100 (see Table 1 below); this compares to the 41,038 registered in Greece during the same period of time. In summer 2015, however, with the humanitarian crisis in Syria at its peak, migration in the Eastern Mediterranean saw a dramatic growth. The 856,723 sea arrivals recorded in Greece in 2015 dwarfed those in Italy which, with 153,842 people, remained in fact relatively stable. While in an initial phase most people transited through Greece and the Balkans before making it to central and northern European countries – above all Germany – by early 2016 large numbers of migrants were blocked after the imposition of national border controls in several EU states. By spring 2016 – also as an effect of the EU-Turkey deal to block irregular migration through Anatolia – the balance of Mediterranean migration flows appeared re-established. In the whole of 2016, the arrivals in Greece went down to 173,450, compared to 181,436 in Italy. This trend continued in the first half of 2017, with 83,752 arrivals in Italy against less than 9,300 in Greece.

Table 1. Arrivals by sea to Europe, by year and country of arrival.

	2014	2015	2016	2017*
Italy	170,100	153,842	181,436	83,752
Greece	41,038	856,723	173,450	9,286
Other	*4,916*	*4,513*	*7,867*	*7,246*
Total	**216,054**	**1,015,078**	**362,753**	**100,284**

Source: Author's analysis of UNHCR data.

* 2017: 1 January – 30 June 2017.

As far as the composition of arrivals is concerned, the Italian situation is also much different from the Easter Mediterranean one. Whilst the vast majority of migrants arrived in Greece between 2015 and 2016 were from three nationalities – namely Syria, Afghanistan and Iraq – in Italy it takes the top 10 groups to account for 80% of the arrivals (see Table 2). Overall, however, the inflows are dominated by countries from sub-Saharan Africa and the Horn of Africa. In particular, the main country of origin in 2016 was Nigeria (37 551 people, 21% of the total), followed by Eritrea (11%) and then Guinea, Cote d'Ivoire and Gambia – each representing about 7% of all arrivals. Over the last few years, migrants from South East Asia, particularly Bangladesh, have also been quite significant, whilst the number of Syrians who have tried the Central Mediterranean route has been fairly limited. The other distinctive characteristic of the migrant population heading to Sicily is its demographic composition, with a strong predominance of young males, mostly in their late teens and early twenties, whilst women and older people are only a small minority. This is clearly

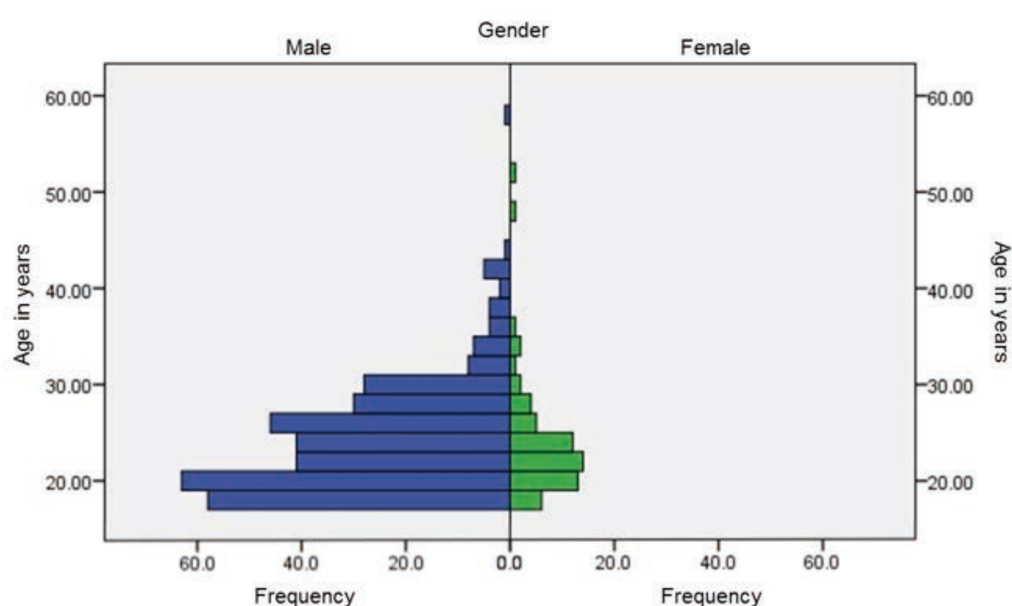
reflected in the composition of the sample of the EVI-MED survey, as visualised in Figure 1. Finally, whilst migrants arriving to Sicily are characterized by a great variety of personal and economic backgrounds, it is interesting to note that the majority of respondents (52.4%) only had primary education or less, whilst just 3.7% had a degree or above.

Table 2. Arrivals by sea in Italy, by year and country of origin.

	2015		2016	
	#	%	#	%
Nigeria	22,455	15%	37,551	21%
Eritrea	39,534	26%	20,718	11%
Guinea	8,937	6%	13,345	7%
Côte d'Ivoire	8,637	6%	12,396	7%
Gambia	3,789	2%	11,929	7%
Senegal	2,672	2%	10,327	6%
Mali	12,433	8%	10,010	6%
Sudan	5,843	4%	9,327	5%
Bangladesh	6,126	4%	8,131	4%
Somalia	5,041	3%	7,281	4%
Others	*38,375*	*25%*	*40,421*	*22%*
Total	**153,842**	**100%**	**181,436**	**100%**

Source: UNHCR.

Figure 1. EVI-MED survey, Sicily. Sample structure by age and gender.



Source: EVI-MED survey data. Sample of 400 migrants in reception centres across Sicily.

The profile of the migrants coming to Sicily strongly influence the way in which they have been perceived in the national public opinion and, crucially, determine their likelihood to obtain the status of refugee or other forms of international protection. Although according to national and international legislation the decisions on asylum applications should be made on an individual basis, it is widely recognized that nationality represents the main factor in determining the outcome of people's legal status (Melchionda, 2016). In fact, with the notable exception of Eritreans, most of those who reach the Italian shores have very low chances to be granted refugee status under the Geneva Convention. According to Eurostat data, of all applications to the EU countries in 2016, the recognition rate among Nigerians was only 22%, whilst for citizens of Cote d'Ivoire was 27% and 31% for those of Guinea. This compares, for example, to a 98% recognition rate for Syrians. All in all, of the applications submitted in Italy in 2016, over 60% were rejected – against an EU-level rejection rate of less than 40% (see Table 3).

Table 3. First instance decisions on asylum applications. 2016.

	EU 28		Italy	
	Recognitions	Rejections	Recognitions	Rejections
Eritrea	92.5%	7.5%	84.4%	15.6%
Côte d'Ivoire	27.0%	73.0%	30.8%	69.2%
Guinea	31.0%	69.0%	29.2%	70.8%
Nigeria	21.7%	78.3%	24.9%	75.1%
Syria	98.1%	1.9%	98.7%	1.3%
Total non-EU	**60.8%**	**39.2%**	**39.4%**	**60.6%**

Source: Author's analysis of Eurostat data.

These statistics appear to reinforce the discourse – promoted both by national media and most political parties – that the vast majority of those entering Italy by sea are coming from 'safe' countries and thus, by definition, are economic migrants. The fact that they are mostly young males makes it even more difficult for them to conform to what in the public opinion has become the stereotype of the 'real refugees' as vulnerable families fleeing from war zones. However, the individual experiences emerging from the EVI-MED fieldwork – consistent with other recent research (Crawley et al. 2016; Ansems et al., 2016; Squire et al., 2017) – tell a very different story. When asked about what made them leave their last country of residence, migrants reported persecution (49%) and concerns about their own security or that of their family (43%) as the main drivers, with a 24% referring specifically to war. Only 18% described their motivation as economic (see table 4). Often insecurity was magnified by other pressures such as inter-ethnic tension, gender-based discrimination or local practices such as forced marriage, as emerged in many of the in-depth interviews and exemplified in the quote below.

> *"When I left Ivory Coast, there was a war everywhere. But I did not quit Ivory Coast because of the war, no. It wasn't my motive to come here. What made me come here was a family problem. It's a family custom which forced me to marry a woman that I was not willing to marry, so when I refused, my family tried to kill me, so that's the main reason why I left".*
>
> *Ivory Coast, Male, 25*

Table 4. Why did you leave your last country of residence?

Main reasons (up to 3 options)	Responses
War	24%
Persecution or targeted violence (e.g. political, religious, sexual)	49%
Concerns about my own or family security	43%
Environmental disaster / Famine	5%
Health care needs	5%
Work (i.e. seeking work in another country)	10%
Economic reasons	18%
Education	3%
Family reunification / join family members	2%
Exploring Europe	2%
Other	3%

Source: EVI-MED survey data. Sample of 400 migrants in reception centres across Sicily. Figures rounded to the nearest unit.

Clearly people's motives are much more complex than the dichotomy between refugees on the one hand and economic migrants on the other (Albahari, 2015). The survey results also record shocking instances of abuse in transit, especially for those – the vast majority – who had travelled via Libya. Over 50% had experienced arrest or detention and 17% underwent a period of bonded (unpaid) labour, sometimes as a way to obtain a sea passage. Equally striking is the answer to another survey question: when asked "Why did you choose Sicily?" as a destination, nearly two thirds (64%) of the migrants simply responded "I didn't choose/I had no alternative". This is revealing of the way in which hundreds of thousands of people have been channeled into the Libyan smuggling system, often with little knowledge of their destination and with little choice on when and how to cross the sea. A situation which is tellingly summarised in the quote below.

> *"Well, I am here but understand that it was not my option, it was not my option to come here. My initial choice was to go to Libya [...] I went to poor countries for a short period of time. [...] I found myself stuck in Libya, I could not go back home. I can guarantee you that amongst us, whether it be a refugee or an economic migrant, 95% of us are stuck against our own will. Once you arrived in Libya it's better for you to cross the Mediterranean Sea than to turn your back to save your life. On your way back, there is the desert".*
>
> *Senegal, Male, 18*

The crossing of the Mediterranean is only the last, though not the least dramatic stage of a long and staggered journey which, for many migrants, started months or even years earlier in their native countries. Travelling on unconceivably overcrowded dinghies and rubber boats, with a high risk of dying at sea before being intercepted by the international 'Search and Rescue' missions or NGO boats (Amnesty International, 2017), by the time they reach the Sicilian shores most people would have witnessed and experienced all kinds of physical and psychological suffering. The very next moment, they are expected to start a new journey, channeled into the Italian reception system.

6.3 Refugee reception in Italy: a complex history

Although the right of asylum is enshrined in the 1947 Italian Constitution (art. 10) and Rome ratified the Geneva Convention on Refugees back in 1954, up until the end of the 1980s Italy was one of the countries receiving the smallest numbers of asylum seekers and refugees in Europe (Caponio, 2004). For this reason, it lacked a specific legal framework and a national approach regarding refugees' reception and accommodation. This issue appeared on the Italian agenda only in the 1990s, with the crisis in Albania first (1991), then with the civil war in Somalia (1992) and above all following the war in Yugoslavia. The arrivals of these different waves of refugees were addressed by the Italian authorities through 'ad hoc' interventions, without introducing a proper, country-wide reception system to be run in the long term. Within this context, the role of establishing accommodation centres and supporting refugees and other recently arrived migrants was in effect left to the initiative of local authorities and civil society (Caponio, 2004).

The increasing arrivals from the Balkans – particularly following the conflict in Kosovo in 1999 – showed all the limitations of this approach and led to the creation of pilot projects (such as 'Azione Comune' and 'Nausicaa') funded by the European Union and the Italian Ministry of Interior and run collaboratively by a number of NGOs and associations. The successful experience of these initiatives, characterised by multi-agency work, with high levels of decentralisation within a national coordination, led the way to the first proper national framework for the reception of asylum seekers and refugees. The so-called 'National Asylum Programme' or PNA (in Italian 'Programma Nazionale Asilo') was established in October 2000 on the basis of an agreement between the Ministry of Interiors, UNHCR and the Italian Association of Local Authorities (ANCI). The PNA had three major aims: the creation of a network of reception centres for refugees, the implementation of integration initiatives, and a programme to assist voluntary returns, in partnership with the IOM – the UN Migration Agency.

In 2002, within the broader context of a new immigration law (so-called 'Bossi-Fini'), Italy established a 'System for the Protection of Asylum Seekers and Refugees' – usually referred to as SPRAR (in Italian: 'Sistema di Protezione per Richiedenti Asilo e Rifugiati'). This built on and further institutionalised the PNA model, aiming to develop a widespread system of hosting centres for asylum seekers and other beneficiaries of international protection. The SPRAR is coordinated and monitored at national level, but managed by the ANCI. Individual centres are run by local social enterprises and cooperatives, with funds assigned by individual municipalities. The role of the SPRAR is not simply to give accommodation, but also to provide legal advice, psychological and health support, as well as running cultural and integration activities, including Italian language classes and professional training. Starting with less than 1,400 places in 2003, by 2010 the network could host 1,346 people (Lopez Curzi, 2016). The following year, to respond to the sudden inflows of refugees from Libya, the Italian government funded an emergency reception plan ('Emergenza Nord Africa' - ENA) which included an increase to the SPRAR capacity of about 1 500 places and, thanks to the involvement of NGOs and religious organisations, saw the short-term reception of nearly 30 000 people over two years. Finally, in 2014 and 2015 the government further increased the financial resources allocated to SPRAR (nearly 440 million euros over 24 months) so that by the end of 2015 the network reached a capacity of 21,613 places.

In spite of this, the SPRAR never managed to offer a number of places sufficient to host all those entitled. These centres require time to be set up, are complex to organise and subject to regular monitoring by a central office. Moreover, they need the initiative – and

political will – of municipal authorities, something which in many cases has been missing due to public opinion resistance. To partially address this issue, in 2014 the Ministry of Interiors created one new instrument: the 'Extraordinary Reception Centres' or CAS (in Italian: Centri di Accoglienza Straordinaria). Managed by cooperatives or private contractors responding directly to the Ministry of Interiors, these are meant to be temporary structures to address particularly high numbers of arrivals in the short term, whilst more places are made available through SPRAR (Barbieri et al., 2016). Nonetheless, as further discussed in the next section, the CAS have become a major and, so far, permanent feature of the Italian refugees' reception.

In parallel to all this, the country saw the gradual development of a distinct system of 'governmental centres' for the immediate response to large numbers of sea arrivals. In particular, the so-called CPSA (Centri di Primo Soccorso e Accoglienza), established since 2006, are large-scale structures where migrants receive first assistance straight after disembarkation, are photo-identified and can express their will to seek international protection – before being transferred to other types of centres for longer term accommodation. The CPSA have been working alongside the CARA (Centri di Accoglienza per Richiedenti Asilo e Rifugiati) – first instituted in 2004 – and the CDA (Centri di Accoglienza), which were established back in 1995 as an emergency response to forced migration from former Yugoslavia. The specific role of these different centres are not clearly defined and they end up playing a range of disparate tasks which can vary across geographical areas and depending on the needs of the moment.

From the end of 2015, the already chaotic system of government centres underwent a drastic and rapid change, with the introduction of the so-called 'Hotspot Approach'. The idea was brought to international attention with the 'European Agenda on Migration, the document produced by the EU in order to set new strategic actions "to better manage all aspects of migration" (European Commission, 2016). In fact, the agenda merely focused on border management (D'Angelo, 2015), promising increased funding to the European border agency Frontex and presenting the 'hotspot approach' as a way to "swiftly identify, register and fingerprint arriving migrants". This aimed to address what was perceived as a very ineffective implementation of the Dublin Regulation (EC 343/2003) determining the member state responsible for examining each asylum application – i.e. the country of first arrival (Casolari, 2015). Specifically, Italian authorities had been accused of an intentionally laid-back approach to fingerprinting at the point of disembarkation, thus making it much easier for migrants to travel to other European countries unregistered (Trauner, 2016). For the Italian government, the implementation of the hotspot approach became a precondition to regain political credibility (D'Angelo, 2016) and thus be able to demand a stronger support from other EU members in the management of the 'refugee crisis'. The first Italian hotspot was opened in the little Sicilian island of Lampedusa on 21 September 2015, followed by Trapani (December) and Pozzallo (January 2016) – with a fourth opening in Spring 2016 in the city of Taranto, in the Apulia region. These are not new facilities as such, but a rebranding of pre-existing reception centres, following some minor refurbishments, and with a much bigger role played by European agencies such as Frontex and EASO. Thus, with the implementation of the hotspot approach, the Italian reception system – with its multi-agency structure involving national institutions, local authorities, NGOs and a myriad of actors, contractors and sub-contractors – became even more complex, with an increased number of overlaps (if not fully fledged conflicts) of responsibilities (Campesi, 2015; Trauner, 2016).

Trying to make sense of such complexity is an extremely discouraging task, as reported even by many of the Italian practitioners, activists and lawyers who have been working on the ground for years. As discussed in the next section, this is even more confusingly daunting

for the migrants who need to live through it. Nonetheless, it is possible to summarise – and simplify – the Italian reception system as a two-tier structure. The first level comprises the government centres. In particular, the hotspots represent the entry point for the near totality of the migrants arriving by sea. Those applying for asylum, or otherwise entitled to protection, should then be moved to the so called 'Regional Hubs' (a recent rebranding of the CARA and CDA government centres). Conversely, those who are deemed to have entered the Italian territory illegally and 'not asylum seekers' should be transferred to dedicated 'Centres for Identification and Expulsion' (CIE) or, in most cases, receive a letter of 'deferred expulsion' that requires them to leave the Italian territory with 5-7 working days (these are all practices which have attracted firm criticism both in terms of their legality, practicality, and impact on individuals – see e.g. Amnesty International, 2016; Vassallo, 2012). The second level of reception is built around the hosting, support and integration work undertaken within the SPRAR centres, though with the supplementary role of the CAS network. However, considering the high level of rejections and expulsions orders issued by the Italian authorities, it is important to highlight that this is a pathway reserved only to a share of the migrants reaching Sicily by sea.

6.4 The reality of reception in Sicily

If some of the problems with the Italian system arise from its own procedural framework and overly complicated structure, others are due to the ways in which these have – or have not – been implemented. Over recent years, migrants' reception in the country, and in Sicily in particular, has attracted strong criticism by local, national and international observers, including NGOs, human rights lawyers and activists, with the publications of often damning reports focusing on several different aspects: from the lack of health and safety considerations to the inadequate qualifications of the staff, from the shady economic interests of some of the providers to the inadequate support for minors and other vulnerable groups (see e.g. Amnesty International, 2016; Barbieri et al., 2016; Chiodo and Naletto, 2016; MEDU, 2016; Oxfam, 2017). The following paragraphs will focus on a few of the specific issues emerged during the EVI-MED research.

The first point to the raise is that of the legality of the whole system, and of the hotspot approach in particular. As noted by many, its introduction took place without passing any new legislation, neither at EU nor at national level (Casolari, 2015) and there is no official document providing a clear and detailed definition of what a hotspot should be and how it should operate (Melchionda, 20016). Indeed, this is just an 'approach', taken forward by "reshaping" (Casolari, 2015) – if not twisting – existing legal instruments. In this respect, the specific aspect of identification via fingerprinting – implemented 'by force' when deemed necessary – is, in the view of many lawyers, illegal within the Italian legislation and a violation of migrants' fundamental rights. The inadequacy of the legal information provided to migrants on their arrival and the hasty methods used in the hotspot to separate 'real asylum seekers' from those who are 'just economic migrants' (D'Angelo, 2016) has also been highlighted by local and international observers as both unfair and illegal. More generally, the practices within the hotspots have received wide condemnation with regard to migrants' living conditions. Notably, in December 2015, the Italian branch of Médecins Sans Frontières announced its decision to leave the hotspot of Pozzallo (near the city of Ragusa) be-

cause of "undignified and inadequate reception conditions" which made it impossible to provide proper healthcare (MSF, 2015).

An additional reason of concern regarding the Italian system is in the prolonged waiting times people have to face at every stage of the asylum application process and before being moved from one type of reception centre to the next. Although, in accordance with national legislation, 48 hours are considered the maximum length of an 'administrative detention', in many cases waiting times in the closed hotspots have been of several days, occasionally even weeks (Suprano, 2016). Once moved to the 'regional hubs', people should be further transferred to the second reception centres in a relatively short period of time – though the guidelines of the Ministry of Interiors vaguely indicate something between 7 and 30 days (Ministero degli Interni, 2015). Next, a 'territorial commission' is required to make decisions on each asylum application within 180 days; however, in practice, a first determination can take up to 18 months. In effect, after their arrival by sea, migrants can spend over two years living in a limbo, with very little information about the status of their application and its chances of success, struggling to make sense of an intricate system which often baffles even those who are supposed to offer advice. The tedious and sometimes undignified life in the reception centres adds to this frustration, as evidenced by quotes like the one below.

"I have been in this centre for months, they do not tell me what is happening ... I do not know when they will make a decision. I am really worried because these are things that can drive you crazy. Some of my friends here have done crazy things ... because you just wait and do not know what will happen to you".

Nigeria, Male, 23

The other major issue regarding second level reception, is the chronic lack of spaces. Because of this, many migrants remain in the government centres for much longer that they should. As explained before, the 'extraordinary' CAS centres should have the function of creating short-term additional accommodations whilst more are available through the SPRAR. In practice, the CAS network ends up hosting the majority of those who are recognised as asylum seekers and refugees. As indicated by official national data (Table 5), at the end of 2016 there were 23,822 people in the whole SPRAR, against over 137 000 in the CAS centres (nearly 80% of the total). In Sicily, less than a third of the migrants registered in the reception system are in a SPRAR centre, with the others split between government centres and CAS. This does not take into account all those migrants (the numbers are hard to estimate) that decide or are forced to leave the official centres and end up living rough or, for example, in squats or camps (D'Angelo, 2016).

Table 5. Migrants in the Italian reception system. 31/12/2016.

	Italy		Sicily		
	#	%	#	%	% on Italy
First level reception					
hot spots	820	0%	584	4%	71%
government centres (CPSA, CDA, CARA)	14,694	8%	4,525	32%	31%
Second level reception					
'temporary' reception centres (CAS)	137,218	78%	4,593	33%	3%
SPRAR	23,822	13%	4,374	31%	18%
Total	**176,554**	**100%**	**14,076**	**100%**	**8%**

Source: Author's analysis of Italian Ministry of Interiors (Ministero degli Interni) data Percentages rounded to nearest unit.

Thus, the most part of refugees' reception in Italy takes place in structures which, by definition, are not fit for purpose. The required standards for the CAS – given their supposed exceptional and short-term nature – are much less prescriptive than for the SPRAR, though the Italian regulations vaguely state that they should "aim" to the same quality of service. Our research – in line with the findings of earlier grey literature (e.g. InCAStrati 2016) – highlighted many cases of inadequate structures, sometimes lacking even in terms of basic health and safety provision. These include out-of-business hotels, 'bed and breakfast', private accommodation and even industrial compounds and the back of restaurants and catering structures. The process of CAS subcontracting bypasses many formal regulations and requirements, with lack of transparency, allowing all sorts of private contractors to run migrant centres, often employing staff lacking skills, qualifications and even appropriate inclinations. Although some examples of good practice exist, for many this is first of all a business opportunity (Melchionda, 2016).

Whilst the SPRAR is supposed to be the 'gold standard' of the Italian reception system, research in the field suggests that only few centres manage to adequately provide the full range of services and functions required. If, on the one hand, some centre managers indicated that the expectations placed on their structures, considering the available economic resources, are unrealistic, on the other hand many activists interviewed during fieldwork pointed their finger at the less than efficient use of funds and the very limited monitoring from the national coordinating offices. Whilst more research in this area is needed, our EVI-MED survey indicates levels of service provision much less than satisfactory. As illustrated in table 6, below, among the migrants surveyed in second-level reception centres in Sicily (SPRAR and CAS), only 50% reported to receive some kind of legal support. The in-depth interviews revealed that even those who, in theory, were supported by a lawyer, often were unable to receive regular and clear information, as shown by the brief interview excerpt below.

A: "I don't understand how this works, I have not met a lawyer, I am not in contact with him…"
Q: "How is this possible? Is there a lawyer who can advise you? Does he speak English?"
A: "He speaks English but I didn't understand why they rejected my application"
Q: "Do you know it is your right to understand why they rejected? So you need to discuss with your lawyer any point of this rejection".
A: "… I have got his number but when you call he is not answering".

Gambia, Male, 20

As far as language support is concerned, the picture is equally, if not more, worrying: 33% claimed to receive no support whatsoever and only 17% reported the presence of proper 'cultural mediators' (a role required by the national guidelines). Overall, about half of the respondents received some kind of assistance with language issues, such as interpreting or translation of documents. However, also in this case, the fieldwork revealed that the quality was often very poor. On countless occasions, when visiting second-level reception centres, the EVI-MED researchers witnessed the attempts of clearly untrained members of staff to translate official documents or other information to English-speaking migrants resulting in vital information being lost in translation or totally misrepresented.

Migrants taking part in the EVI-MED survey were also asked about health and psychological support. Whilst 74% reported to receive some form of health care – again, the quality of it varied enormously – a large majority (64.6%) claimed to not receive any psychological support or counselling. This is quite worrying if one considers not just the traumatic experience of international border-crossing but also, as mentioned above, the stressful conditions within the Italian system. Even with regard to this, centre managers or 'factotum' members of staff often end up providing all sorts of assistance, sometimes in good faith, mostly with dubious results. The quote below is only one example from the many.

"It is now 1 year and 4 months since I arrived in this refugee centre...but if there is a psychologist here, personally, I do not know him. They never, never introduced me to a psychologist here. The only persons that I know here are these two persons, [the managers], only them, only these two persons that I know here."

Senegal, Male, 18

Considering the very large number of second-level reception centres – which in some cases open and close, or change management, in a matter of months – and considering the sheer diversity in terms of size, nature of the providers and geographical location, it is hard to assess the extent to which some of the problems highlighted above are indeed systemic. Many of the key-informants, and most of the reports produced by local activist organisations, indicate that these are not exceptions. Clearly, as mentioned earlier on, there are also examples of good practice and organisations which make an effort to provide genuinely high quality support. However, the extremely patchy and, in practice, unregulated nature of the refugees' reception system in the island is a cause of extreme concern and can produce some devastating effects on the lives of individual migrants.

Table 6. Types of support received within reception centre (Sicily).

Do you receive legal support?	
Yes	50%
No	50%
Do you receive language support?	
Interpreting / translation	50%
Cultural mediators	17%
Other	3%
No	33%

Do you receive health support?	
Yes	74%
No	26%
Do you receive psychological support and/or counselling?	
Yes	35.4%
No	64.6%

Source: EVI-MED survey data. Sample of 400 migrants in reception centres across Sicily. Figures rounded to the nearest unit.

6.5 A humanitarian crisis stuck in time

As examined in the previous sections, the Italian approach to refugees' reception over the last few years has been at best 'reactive', piling up ad-hoc and often short-term solutions to confront a succession of occurrences systematically perceived (or presented) as emergencies. This was not just a matter of inefficiency. Rather, Italian politicians, worried about anti-immigration sentiments amongst the electorate, have not dared formulating a coherent vision which recognises the long-term nature of these mixed-migration flows. Quite the opposite: over the course of 2016 and 2017 the Italian government has increasingly focused on the development of new agreements with the Libyan authorities and on multiplying the efforts for the repatriation of irregular migrants. These approaches are not just reactio-

nary in nature, but are also very unlikely – in the medium to long run – to bring substantial results even in the mere terms of net migration. As discussed elsewhere (D'Angelo, 2016), the most part of migrants which enter irregularly and do not receive formal international protection are destined to remain in Italy for quite some time, often becoming victims of the exploitative mechanisms of illegal employment (Amnesty International, 2014; Caritas Italiana, 2015). In this sense – as made clear by the asylum statistics presented earlier on – the Italian reception system is aimed only at a minority of the arrivals. Within this minority, only a few are hosted in the relatively better resourced and managed 'System for the Protection of Asylum Seekers and Refugees' (SPRAR). The others, at best, end up in the emergency CAS centres, with all the human, legal and economic implications discussed before.

Denying the nature of these migration flows, and the dramatic experiences of individual migrants, pretending that the 'refugee crisis' is a sudden and transitory phenomenon rather than a long-term humanitarian challenge, will not help addressing these problems nor will appease the concerns – more or less spontaneous – of the public opinion. Evidently, what we are witnessing in Sicily, and beyond, is not a 'Migration Crisis' but a humanitarian crisis, exacerbated by the denial of its longstanding nature. Its consequences on individual migrants are dramatically clear, the long-term results of this social and economic time-bomb are more difficult to envision. Italy has been right in criticizing its European partners for refusing to recognise the global nature of this challenge and offering a properly Euro-wide approach. However, it is clear that, without a radical shift in approach, it will be Italy to pay the highest price.

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7. Necesidades de Salud Mental y Psicosociales de los Refugiados en Europa

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7.1 Introducción

El Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR) afirma en el informe titulado Global Trends (UNHCR, 2015) que la actual crisis de refugiados es la peor desde la Segunda Guerra Mundial. En dicho informe se señala que, en promedio, 24 personas fueron forzadas a huir cada minuto en 2015, cuatro veces más que una década antes, cuando 6 personas huyeron cada 60 segundos. El detallado estudio, que registra el desplazamiento forzado en todo el mundo a partir de datos de gobiernos, agencias asociadas y los propios informes del ACNUR, encontró un total de 65,3 millones de personas desplazadas a finales de 2015, comparado con 59,5 millones sólo 12 meses antes. En Europa, según datos de Eurostat, en número de solicitantes de asilo pasó de los 625 000 de 2014 al 1 321.600 en 2015 (Eurostat, 2015).

Entre las múltiples necesidades de los refugiados, se debe prestar atención especial a la protección de su salud mental y bienestar psicosocial. El presente capítulo trata comienza con un análisis de los factores de riesgo/vulnerabilidad que pueden influir en la salud mental de los inmigrantes y refugiados que llegan, o están intentando a llegar a Europa, y los problemas más habituales de salud mental y psicosociales que puedan sufrir. Se presta también especial atención a la competencia cultural como elemento indispensable tanto en el diseño de los programas de salud mental/psicosociales para refugiados e inmigrantes como en la práctica clínica. Por último, se resumen las implicaciones clínicas y de salud mental pública, tomando en cuenta los principales retos en la implantación de intervenciones interculturales con la población diana.

7.2 Factores de riesgo que influyen en el estado de salud mental de inmigrantes y refugiados

Entre los factores (de riesgo o de protección) que influyen en el estado de salud mental y bienestar psicosocial de los refugiados en Europa se incluyen las características de personalidad de cada persona y la percepción de sus vivencias en el país de origen, durante el tránsito y en el país de acogida. Variables que influyen en el proceso migratorio, y que podrían ser factores de riesgo o de protección, son:

- Factores personales: edad, sexo, nivel educativo, estado de salud, problemas físicos, trastornos previos de salud mental, familia disfuncional, responsabilidades familiares, baja autoestima, mecanismos de afrontamiento, etc.
- Factores culturales: distancia cultural entre el país de acogida y el país del origen, lengua, religión, etc.
- Factores sociales, legales y laborales: apoyo social escaso e irregular; estatus previo, (des)empleo, deudas en país de origen, actitudes de la comunidad de acogida, etc.
- Condiciones del viaje: migración planificada, víctimas de trata y de tráfico ilícito, huida de desastres, etc.

Bhugra y Jones (2001) diferencian tres etapas en el proceso migratorio: pre-migración, migración y post-migración. Los factores de riesgo relacionados con los problemas de salud mental y psicosociales son específicos según se trate de adultos o niños (Kirmayer et al., 2011). Para los adultos, en la fase de la pre-migración los factores de vulnerabilidad incluyen el estado económico, educacional u ocupacional en el país de origen; la ruptura del apoyo social, de los roles y de la red; el trauma vivido o del que se ha sido testigo (el tipo, la gravedad, el nivel percibido de las amenazas recibidas y el número de episodios potencialmente traumáticos); la participación política (el compromiso con alguna causa). Para los niños, en la fase de pre-migración los factores de riesgo están relacionados con la edad y su etapa de desarrollo; la posible disrupción de la educación y la separación de la familia extensa y de la red con sus pares. Durante la fase de migración/de tránsito, los factores de riesgo específicos de los adultos están relacionados con la trayectoria (ruta y duración); la exposición a condiciones duras de vida (p.ej. en los campos de refugiados); la exposición a violencia; la ruptura de las redes familiares y comunitarias; o la incertidumbre respecto al resultado de la inmigración. Durante la misma fase, entre los factores específicos de los niños se incluyen la separación del cuidador; haber sido víctima o testigo de eventos violentos; la exposición a condiciones duras de vida; la desnutrición, o la incertidumbre sobre el futuro. En la fase de la post-migración, los principales factores de vulnerabilidad para los adultos se relacionan con la incertidumbre sobre la inmigración y el estatus de refugiado; el desempleo o el subempleo; la pérdida del estatus social; la pérdida de apoyos familiares y comunitarios; la preocupación por los miembros de la familia dejados en el país de origen y la posibilidad de reunificación; las dificultades en el aprendizaje del idioma del país de acogida, la aculturación y la adaptación (p.ej. cambio en los roles de género). Por su parte, los factores de riesgo para los niños en esta fase incluyen el estrés relacionado con la adaptación de la familia; las dificultades con la educación en un nuevo ambiente; el estrés aculturativo (p.ej. identidad étnica y religiosa; conflicto de roles de género; conflicto intergeneracional en la familia); la discriminación percibida y la exclusión social (en la escuela o con sus pares).

Durante la fase de post-migración, tanto para adultos como para niños, el proceso de adaptación al país de acogida varía según los factores personales y relacionales que se establecen entre ambas partes: los inmigrantes y la comunidad local. Berry et al. (1989) ha descrito las actitudes de aculturación, basadas en la distinción entre dos preferencias: a) mantener la cultura e identidad propias, o b) tener contac-

to con la sociedad de acogida y participar con ella junto a otros grupos culturales. La combinación de las respuestas a ambas dimensiones (Sí/No) da lugar al llamado modelo de Berry, que contempla cuatro posibles actitudes: la integración, la asimilación, la separación y la marginación.

- *La integración* (sí/sí): El mantenimiento de la identidad cultura del grupo minoritario a la vez que se produce una apertura y relación con los grupos de la comunidad de acogida-
- *La asimilación (*no/sí): El abandono de la identidad cultural de origen para orientarse fundamentalmente hacia la comunidad de acogida.
- *La separación/segregación* (sí/no): El mantenimiento de la identidad y tradiciones propias, sin relacionarse apenas con el grupo de la sociedad de acogida. Esta actitud se considera *separación* cuando es consecuencia de la voluntad del grupo minoritario, y *segregación* cuando se debe al control ejercido por el grupo dominante.
- *La marginación/exclusión* (no/no): Se produce la *marginación* cuando los individuos o grupos minoritarios pierden el contacto cultural y psicológico tanto con su sociedad de origen como con la sociedad de acogida; y la *exclusión* cuando viene impuesta por el grupo dominante, eliminando cualquier posibilidad del grupo subordinado de mantener sus propias raíces e introducirse en la nueva comunidad.

Todo proceso migratorio implica un componente de pérdida y otro de ganancia, inherentes al cambio que supone dejar el lugar habitual de residencia para trasladarse a otro más o menos lejano y diferente. De esta distancia, tanto en lo geográfico como, sobre todo en lo cultural, se deriva un consecuente esfuerzo de adaptación a las nuevas condiciones de vida. Este esfuerzo de adaptación puede definirse como el "estrés aculturativo", aunque no existe un amplio consenso acerca de lo que este término significa. (Collazos et al., 2008) Se ha sugerido que el estrés aculturativo tiene componentes diferentes, los derivados de la nostalgia o el duelo que implica dejar atrás determinado modo de vida, (Achotegui, 2002) los relacionados con el choque cultural o proceso aculturativo, (Finch et al., 2004) y los vividos en la frecuente experiencia de discriminación (Sandhu y Asrabadi, 1994).

7.3 Problemas comunes de salud mental y psicosociales

La revisión de la literatura muestra una amplia heterogeneidad entre los distintos grupos estudiados, tanto en las tasas de trastornos mentales, como en sus antecedentes. Además, el contexto y la situación en cada país de acogida difieren: en términos generales, cuanto más pobre es el país de acogida, mayor es la prevalencia de trastornos mentales (Carballo et al., 1998; Lindert et al., 2009). No obstante, la calidad metodológica de los estudios es limitada, particularmente en lo referente a los métodos de muestreo. Los estudios de mayor calidad metodológica, con muestreo aleatorio, generalmente encuentran tasas de prevalencia mucho más bajas que otros más limitados que recurren a muestras de conveniencia (Bhugra, 2004; Fazel et al., 2005).

Sin ignorar el necesario debate acerca de la relevancia intercultural de los diagnósticos de enfermedades mentales, ha de recordarse que los problemas de salud mental relacionados con la inmigración forzada varían. Así, podría hablarse de reacciones normales a eventos "a-normales"; exacerbaciones de trastornos de salud mental preexistentes; problemas impulsados por la violencia y el desplazamiento rela-

cionados con conflictos, o problemas relacionados con la adaptación al país de acogida.

Dos revisiones sistemáticas de la literatura sobre la salud mental de los refugiados (Bogic et al., 2015; Fazel et al., 2005) han arrojado resultados interesantes. Las tasas de depresión mayor entre los refugiados son similares a las de la población general en los países Occidentales. Los refugiados son diez veces más propensos a desarrollar un trastorno por estrés post-traumático que la población general: 9% de los refugiados en general y 11% de los niños y adolescentes sufren de TEPT. La prevalencia de la psicosis entre los refugiados es aproximadamente del 2%, no muy diferente a la tasa de psicosis en la población general de los países Occidentales (Llosa et al., 2014). Sin embargo, la prevalencia de los trastornos de salud mental parece ser más alta entre los refugiados que en la población general después de 5 años de estancia en el país de acogida; de donde podría concluirse que el mero hecho de ser refugiado no es el factor de riesgo más significativo para el desarrollo de trastornos mentales.

Silove y Derrick (1999) han desarrollado un modelo para la adaptación psicológica después de haber sido expuesto a eventos de tortura, violación de derechos humanos y/o testigo de ellos, proponiendo que la exposición extrema a eventos traumáticos puede desafiar a cinco subsistemas: seguridad, apego, justicia, identidad-rol y existencial-significado. Entre los refugiados que han sobrevivido a torturas en las que han soportado experiencias humillantes y degradantes, pueden manifestarse síntomas de depresión, estrés post-traumático, ataques de pánico, vergüenza y culpabilidad, síntomas somáticos inexplicables, ideación o intentos de suicidio.

En un reciente estudio de cohortes llevado a cabo en Suecia (Hollander et al., 2016) apreciaron que la tasa de esquizofrenia entre los refugiados era considerablemente mayor que la detectada entre el resto de inmigrantes y la de éstos era, a su vez, mayor que la que presentaba la población autóctona sueca.

En cuanto a la salud mental de los niños de madres refugiadas, ellas describen con frecuencia un cambio en el comportamiento de sus hijos, así como dificultades en el control de sus reacciones e incapacidad para mostrarles afecto (Quosh, 2013). En otro estudio, realizado en Ámsterdam, se señala que las frecuentes reunificaciones en los centros de solicitantes de asilo están asociadas con trastornos mentales en los niños (Goosen et al., 2014).

En línea con lo que señala Almoshmosh (2015), la presencia de síntomas no es necesariamente indicativa de un trastorno mental. La práctica de intervenciones de salud mental comunitaria con refugiados en Europa, permite detectar problemas comunes de salud mental relacionados con el bienestar psicosocial de estas personas, entre los que se podría citar la desesperanza, el miedo, las preocupaciones continuas, los sentimientos de humillación, la pérdida de dignidad relacionada con la frustración por ser dependiente a la ayuda humanitaria, la desmoralización, el posible abuso de alcohol y otras sustancias, la sensación de aburrimiento y letargia, o la falta de confianza a los demás.

7.4 Competencia cultural: Cultura y Salud Mental

La competencia cultural es la capacidad para actuar de manera eficaz en condiciones de interculturalidad. Es preciso para ello la adquisición y el desarrollo de conocimientos y habilidades, a través de la experiencia y la formación. La competencia cultural resulta en un esquema complejo de diferencias culturales, y de habilidades interpersonales que permiten tomar la necesaria perspectiva en un contexto dinámico, dotando al individuo de la flexibilidad adaptativa para poder participar con éxito en nuevos entornos, incluso a pesar de la considerable ambigüedad, a través del autocontrol y la autorregulación (Ross y Thornston, 2008).

La incorporación de la competencia cultural es especialmente importante en la práctica de salud mental/psicosocial con los refugiados. Las intervenciones culturalmente competentes habrían de ser sensibles con las marcadas diferencias que existen, por ejemplo, al expresar el malestar psicológico («*idioms of distress*»), al darle una explicación a ese malestar («*explanatory models*») o en las expectativas y las conductas que surgen cuando se busca ayuda para esos síntomas («*help seeking behaviour*») (Evangelidou et al., 2016). Es innegable que los conceptos culturales de «yo» («self») pueden influir en cómo las personas *experimentan y expresan* su sufrimiento; en cómo *explican* su enfermedad y su desgracia, y en cómo solicitan ayuda.

Característicamente, los hombres en algunas culturas encuentran dificultades para reconocer sentimientos como la tristeza y la ansiedad. Los hombres criados en el discurso de que «no se debe llorar o sentir miedo o tristeza», por ser muestras de debilidad, presentan frecuentemente comportamientos coléricos y agresivos.

Otra diferencia destacable entre la cultura occidentalizada y las que no lo están, es que en las últimas no tiende a existir una separación tan marcada entre la experiencia de síntomas somáticos y psicológicos. Esto hace que sean comunes algunas expresiones somáticas que, a su vez, pueden ser reflejo de síntomas de salud mental. Referencias a quejas sobre la sensación de presión en el pecho, dolor en el corazón, entumecimiento de partes del cuerpo, o sensación de hormigueo sobre la piel, son habituales. La presentación de este tipo de síntomas invita, por tanto, a explorar el bienestar psicosocial de los pacientes y sus posibles problemas de salud mental. A la hora de ponerlo en palabras, no es raro que se recurra a imágenes, metáforas y proverbios que asumen la interconexión de lo psicológico y lo físico.

En Alemania, un estudio mostró que el dolor (37,9%) y los problemas psicológicos (depresión: 54,7%, trastorno de ansiedad 40,2%, TEPT 18,2%) eran los síntomas más comunes reportados por los solicitantes de asilo (Führer et al., 2016). En un estudio clínico llevado a cabo en Suiza destaca la alta incidencia de síntomas físicos sin explicación médica (somatización) entre los solicitantes de asilo de Siria y Oriente Medio (Pfortmueller et al., 2016). 880 pacientes que acudieron al servicio de urgencias presentaron problemas gastrointestinales (15%), trastornos musculoesqueléticos (12,3%) y cefaleas (8,9%).

Los modelos explicativos permiten entender cómo las personas contemplan las causas, el curso y los resultados de sus problemas de salud mental o psicosociales. Estos modelos abarcan la percepción de problema, la afectación en su condición de personas; la repercusión en su entorno social y la aceptación del tratamiento más apropiado para ellos. Hay varios modelos para darle explicación a todo esto: biológicos, psicosociales, religiosos, sobrenaturales; pudiendo coexistir varios para dotar de sentido a los síntomas y al sufrimiento que generan. Los modelos explicativos atribuidos por los individuos tienen implicaciones importantes sobre los mecanismos de adaptación; las conductas de solicitud de ayuda; las expectativas respecto al tratamiento; las preocupaciones sobre las consecuencias a largo plazo de su enfermedad; o el estigma y la discriminación que acompañan con frecuencia a las personas con problemas de salud mental.

7.4.1 Implicaciones clínicas y de salud mental publica

La correcta evaluación de las necesidades de salud mental y psicosociales de los refugiados en Europa plantea una serie de retos a los profesionales al tiempo que pone a prueba al sistema de salud. La falta de competencia cultural, tanto individual de los profesionales como institucional del sistema, puede generar resultados negativos al no ser capaces de ofrecer una calidad asistencia equitativa a todos los usuarios, independientemente de su contexto social, étnico o cultural. La necesaria formación de los profesionales y la aconsejable adaptación de los recursos en salud mental han quedado recogidas en algunas guías breves recientes sobre el apoyo en salud mental/psicosocial a los refugiados sirios tanto en España (Evangelidou et al., 2016) como en Europa (Ventevogel et al., 2015).

7.4.2 Implicaciones clínicas

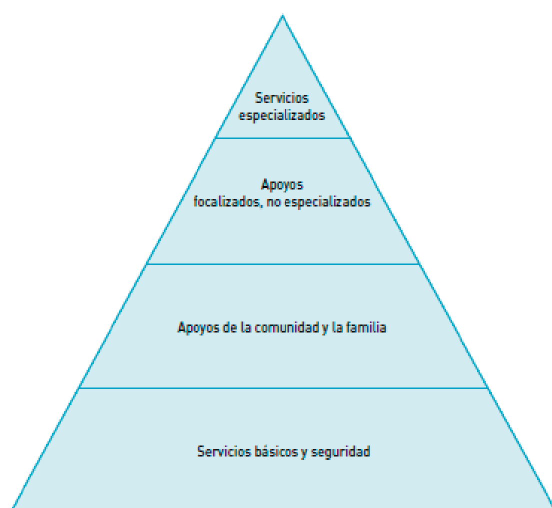
La falta de competencia cultural de los profesionales de salud mental implica un riesgo de incurrir en sobrediagnósticos, pudiendo psiquiatrizar casos que no lo necesitan. Por ejemplo, se puede creer, equivocadamente, que la mayoría de los refugiados están "traumatizados" como consecuencia del impacto de los eventos potencialmente traumáticos experimentados, y que, por tanto, han de recibir tratamiento psiquiátrico o asesoramiento psicológico. Con excesiva frecuencia, la atención clínica a los refugiados se enfoca en los «eventos traumáticos» en lugar de los estresores sociales actuales. Se tienden a dedicar más recursos a la detección e identificación de síntomas que a la implantación de servicios de salud mental y psicosociales con los medios necesarios para ofrecer una asistencia culturalmente competente. Estos «modelos de servicio» que ponen el énfasis en patología y victimización deberían sustituirse por otros más centrados en el desarrollo de la resiliencia y la movilización comunitaria.

La figura del mediador cultural resulta esencial para poder llevar a cabo intervenciones culturalmente competentes. Sus tareas van mucho más allá que las de un mero «intérprete lingüístico»; es un facilitador de la comunicación y de la relación entre el paciente y el profesional sanitario. Gran parte de su trabajo consiste en «normalizar» las diferencias para reducir la incomodidad de todas las partes. En este sentido es importante asegurar que los mediadores interculturales sean competentes para desempeñar su trabajo.

7.5 Implicaciones en salud mental pública

Las intervenciones de salud mental/psicosociales (SMPS) han de adaptarse a las necesidades identificadas de los grupos de la población afectada directa o indirectamente. La propuesta más aceptada en el enfoque de las estrategias SMPS es la de la pirámide de intervenciones de IASC (Inter-Agency Standing Committee, 2007; Figura 1) que establece 4 niveles de intervención.

Figura 1. Pirámide de intervenciones para los servicios de salud mental y apoyo psicosocial.



Las intervenciones clínicas (servicios de atención en salud mental especializados e intervenciones de salud mental integradas en atención primaria, así como apoyos focalizados no especificados) deben discurrir paralelamente a las intervenciones psicosociales (servicios básicos y de seguridad, y apoyos a la comunidad y a la familia) para mitigar las condiciones de vida difíciles, y fortalecer los mecanismos de protección comunitarios, con el fin de ayudar a las personas a recuperar la normalidad de su vida diaria. Las intervenciones destinadas a mejorar las condiciones y los medios de vida pueden contribuir significativamente a la mejora de la salud mental de los refugiados, incluso más que cualquier intervención psicológica y psiquiátrica.

La pirámide de intervenciones de SMPS ofrece un enfoque multi-disciplinario que pone de relieve la importancia de las intervenciones no clínicas, introduciendo un modelo de prevención del desarrollo de trastornos mentales en cualquier etapa del proceso migratorio y abordando el amplio espectro de necesidades psicosociales (servicios básicos, seguridad y protección, empoderamiento y potencialización del apoyo comunitario y familiar, etc.).

7.6 Conclusión

La evaluación y el abordaje multi-disciplinario de las necesidades de salud mental de los refugiados en Europa es una temática que no implica solamente a los profesionales de la salud mental, sino a todos los profesionales de la salud en general y de los servicios sociales, así como a los coordinadores de salud mental pública. La movilización de todos los sectores implicados genera las condiciones para que los refugiados e inmigrantes en Europa sean tratados dignamente, como personas y sin ser etiquetados y estigmatizados como «refugiados» o «pacientes de salud mental».

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