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Disentangling the Migration and Asylum Knot. Dealing with Crisis Situations and Avoiding Detention

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Abstract

While the control of irregular migration and the return of undocumented migrants to their countries of origin has been a priority in the European migration policy since the late 2000s, it has now achieved a new sense of urgency. The EU is faced with a double challenge: to limit irregular migration while keeping its borders open to people in need of international protection, in line with its traditions as well as with its own international conventions and declarations. Offering asylum to those who are persecuted or are unable to return to their countries of origin includes a set of inter-related challenges. It requires providing access to asylum (notably the information and ability to file a claim), safeguarding the fundamental rights of asylum seekers while their cases are being processed, while also ensuring that the asylum "burden" is shared among member states and that borders remain tightly controlled as regards overall irregular migration flows. This policy paper takes a closer look at these challenges and offers recommendations on how to act upon them. The paper starts with an overview of numbers (of immigration flows, stocks, asylum seeking flows and estimates of irregular migration) so as to put the overall issue into perspective (How large are the irregular migration or asylum seeker flows? How large is the overall migrant population in the EU? What are the trends?). Second, it discusses the main features of the EU policy on irregular migration and asylum and highlights the key problematic issues, notably the fuzzy line that separates irregular migrants from asylum seekers; and the systematic use of detention for disciplinary rather than administrative purposes. It proposes new strategies for dealing with these two challenges that do not require legislative changes but rather a change in the practice and an implementation of both national and EU legislation and an increase in cooperation among member states.

Keywords

Irregular migration, asylum, detention, border control, EU policy, Dublin III, fundamental rights, southern Europe

Executive Summary[*]

While the control of irregular migration and the return of undocumented migrants to their countries of origin has been a priority in the European migration policy since the late 2000s, it has now achieved a new sense of urgency. The EU is faced with a double challenge: to limit irregular migration while keeping its borders open to people in need of international protection, in line with its traditions as well as with its own international conventions and declarations. Offering asylum to those who are persecuted or are unable to return to their countries of origin includes a set of inter-related challenges. It requires providing access to asylum (notably the information and ability to file a claim), safeguarding the fundamental rights of asylum seekers while their cases are being processed, while also ensuring that the asylum "burden" is shared among member states and that borders remain tightly controlled as regards overall irregular migration flows.

Sharing the Burden

Asylum is a common concern for both Northern and Southern European countries. Southern countries are exposed to pressures at their borders because of their geographical proximity to zones of instability and conflict. Northern European countries have been traditionally the preferred destinations of asylum seekers from all over the world. Thus **both groups of countries have a common concern to share this burden, albeit look at the problem from different perspectives**: southern European countries face simultaneously the pressure of irregular migration and asylum seeking and have to find ways to effectively filter applications. Northern European countries are more "protected" from irregular migration because of their geographical position and hence face mostly the problem of processing applications rather than that of filtering them at their borders.

Pressures on Southern European Countries

Four countries have taken the brunt of irregular migration arrivals and asylum seeking applications in the past 15 years: Spain, Italy, Malta and Greece. While Spain was a preferred route for irregular migrants from sub-Saharan Africa in the mid-2000s, this western Mediterranean route is by now largely abandoned. Italy by contrast has been registering high numbers of arrivals of irregular migrants throughout the last ten years and ranks 12th in terms of its share of asylum seekers among the top ten receiving countries worldwide in the period 2008-2012. In 2011, arrivals were related to the Arab spring: an estimated total of 25,000 Tunisians arrived at the island of Lampedusa in the first two months of 2011. An additional 20,000 sub- Saharan Africans arrived in the spring and summer of 2011 in Lampedusa and Sicily fleeing the war and racial violence in Libya. Currently there is a dramatic increase of Syrian asylum seekers fleeing the war in their country which explains the sudden upsurge of the arrivals in Lampedusa and southern Sicily. Numbers have picked up in Malta too with nearly 2,000 arrivals in 2013 and more than 1,300 unauthorised migrants and asylum seekers landing at Maltese shores in the first seven months of 2013. Malta is actually receiving the highest number of asylum seekers compared to its total population. Greece remains also one of the main geographical points of entrance to the EU for Asian and African irregular migrants and asylum claimants travelling through Africa or Asia to Turkey and then crossing to Greece. Apprehensions of irregular migrants (including potential asylum seekers) at the Greek Turkish land and sea borders have nearly doubled in the period 2007-2010 but decreased back to the 2007 levels of just over 30,000 in 2012 and dropped further in the first 8 months of 2013.

[*] I would like to thank Eleonora Carcascio, Angeliki Dimitriadi, Costanza Hermanin, and Fulya Memisoglu for critical comments on an earlier version of this policy paper as well as for pointing out to me recent studies and data that have been incorporated here. Naturally I am sole responsible for all errors and omissions.

The Challenge: Offering International Protection while Controlling the Border

The **three Mediterranean routes of irregular migration (and hence also of asylum seeking) function as communicating containers**: when one route is stopped, another is under pressure. When this route is abandoned it is not because irregular migration and asylum seeking pressures overall fall but rather because the routes shift. In the late 2000s and early 2010s, the Greek Turkish land and sea corridor was heavily under pressure, in the last year we witness another dramatic change as irregular migrants and particularly asylum seekers seek to cross from Libya to Italy. These asylum seekers were mainly sub Saharan Africans fleeing war torn Libya in 2011, in 2013 they are Syrian refugees and continuing flows of people fleeing ethnic conflict in sub Saharan Africa (from Eritrea, Somalia etc.).

There are two kinds of problems that prevent the effective management of irregular migration and asylum seeking. First, irregular migration and asylum seeking **pressures are so high** and the **human and financial resources so far dedicated to asylum so low** that it has been nearly **impossible to guarantee an adequate control of the Greek, Italian and Maltese southern sea borders while also providing to apprehended unauthorised migrants information and the option of applying for asylum**. While a lot has had to do with an initial **lack of political will** of these countries, Greece in particular, to deal effectively with the problem, the inherent difficulty of the challenge is of an objective character: by accident of geography these countries stand at the forefront of asylum seeking and irregular migration flows from Asia and Africa. Compared to their size and resources and given the "first safe country" principle, they will always face important difficulties in controlling the external EU borders while guaranteeing appropriate reception and protection to asylum seekers.

Policy Recommendations: Crisis Management

We would like to propose here that the European Asylum System makes better use of what is called subsidiary or international protection. Thus, there could be **a constant monitoring system implemented by the European Asylum Support Office which assesses the political situation and risk level in countries in the wider EU Neighbourhood and which defines that for a certain period of time nationals of X country should be automatically granted international protection, upon proof that they are citizens or residents of that count**ry. Such a system would have allowed for a speedy processing of sub Saharan Africans fleeing Libya in view of racial violence or also of Syrians arriving in Greece, and moving further in fear that their asylum application would not be accepted in that country. There is urgent need for a mechanism that **combines crisis management with an active involvement from EASO and a focus on the irregular arrivals and asylum seekers**. More specifically, we would like to propose a new practice within the current Dublin III system which would allow for a better distribution of asylum seekers across Europe

- In cases of **(imminent or actual) mass influx of displaced persons** from third countries who are temporarily unable to return to their country of origin and hence in need of temporary international protection, a double course of action is needed. On one hand, the EU countries which are affected should receive immediate financial and operational aid by the European Refugee Fund and, if necessary, through exceptional humanitarian relief funds.
- Under such conditions of exceptional inflows, **a practice of annual asylum quotas could be activated**:

  Each country should have a certain number of permits available each year for recognized refugees and for people under temporary international protection. This number should be a percentage of its population – e.g. France has 62 million inhabitants, the related quota could be 0.10%, i.e. 62,000 permits. When, within a year, a country has achieved its annual quota, the remaining asylum seekers accepted in this country should be immediately resettled to one of the countries that have still available slots in their own quota.

  The existence of an annual quota of refugees for each country and the possibility of resettlement when a country exceeds its quota ensures that all countries **share equally** in the Common European Asylum System. It also takes away the incentive of rejecting all applicants with a view of (a) spreading the rumour that, X country is not a good place to apply for asylum, (b) expelling the asylum seekers and thus 'solving' the 'problem' of having too many asylum seekers in the country.

  The role of the **European Asylum Support Office** could be crucial here not as a place that prepares reports and makes recommendations or prepares Action Plans – that serve little in facing an emergency situation – but as **an operational agency for crisis management that would activate the quota mechanism with a joint Task Force** (much in the way that the RABIT Rapid Border Intervention Teams function in the context of FRONTEX for assistance with border controls) **that would help with the processing, when one of the countries faces a disproportionate influx** and exceeds its quota.
- The choice of the country where a refugee should be resettled (among the countries whose quota has not yet been filled) should **take into account the wish of the applicant** and her/his effective proof of where s/he has family or where s/he knows the language or prefers to live.
- In the case **of Search and Rescue Operations**, any legal clauses referring to the facilitation of unauthorised migration should be suspended so that fishermen or other civilians helping migrants at sea or indeed migrants crossing a river (as has happened at time at the Greek Turkish border area on the river Evros) should be **exempted** from such accusations.

The Problem of Detention as Routine Measure

The challenges that Europe faces with regard to controlling irregular migration while providing for international protection to people that need it are complex as they include the very measures through which a state seeks to implement its sovereign right to control its territory. Thus, we notice that an effective policy for irregular migration control including **arrest and return** (through voluntary, semi-voluntary or indeed forced return**) seems to be best served by regular detention of apprehended undocumented immigrants and asylum seekers whose case is in process.** At the same time, if this policy is to be in line with international obligations and the European Chart of Fundamental Rights it must provide for adequate services and safeguards so that **those apprehended are informed of their rights, of the possibility to apply for asylum, and are not routinely detained**.

There is a common agreement among scholars and NGOs that using detention in its disciplinary and punishment dimension is increasingly common in European countries. Relevant studies and NGO experiences documented in Forced Migration Review (fall 2013) note that there is a pressing need for assessing the costs (both direct in terms of lodging, guarding etc detained people, and indirect in terms of the damage inflicted to these people whose only crime is to have crossed the country's borders unauthorized and/or having applied for asylum) of detention.

In other words, assessing the costs and benefits of detention does not only involve counting executed expulsions or forced returns but requires an overall assessment of material costs, human costs and benefits of custodial detention versus other forms of soft surveillance.

Policy Recommendations: Alternative Schemes

There is clearly a need that the European Refugee Fund continues to support the countries whose borders are external EU borders and which naturally face the largest incoming irregular migration and asylum seeking flows in capacity building. An area where help is absolutely necessary is in their putting up surveillance schemes alternative to detention. Pilot schemes have been tried in Belgium, Germany, Sweden and the United Kingdom but also Australia and the USA.[1] While state authorities have been often reluctant to adopt such schemes, the overall assessment is positive.

Asylum seekers and irregular migrants put into alternative schemes such as house arrest and community integration have been overall more cooperative, have faced the process of awaiting decision for asylum or awaiting removal with more calm and have prepared better for a sustainable return. Such schemes share a few features that need to be underlined:

- Avoid detention from the start, particularly when minors and families are involved
- Screen and assess individual cases, presuming that detention is normally not necessary.
- Assess the community setting and work with local stakeholders to organise the integration into the community.
- Provide accommodation in public housing and assign a case manager that visits the family every day.
- Provide legal counselling and regularly updated information on the progress of their case.
- Offer social and psychological support to adults and families
- Enrol children to school
- Supervise regularly especially when the time comes when removal is imminent but seek to resort to detention only in exceptional circumstances.

Such schemes appear to ensure the respect of fundamental rights for irregular migrants and asylum seekers while also guaranteeing that people do not simply "disappear in the woods".

Introduction

Migration debates in the first decade of the 2000s have been marked by the threat of international terrorism and a reconsideration of multiculturalism policies. Indeed cultural and religious diversity was considered to be the big migration challenge of the 2000s, alongside with the effort to seal the borders for terrorists but not for economic migrants. In a period of Euro-phoria (marked by the ambitious experiment of a European Convention that prepared a European Constitutional Chart and the launch of the common currency) and of economic growth, these last were actually a welcome workforce boost both in the lower and higher ends of the labour market.

In the second decade of the 21st century the priorities have changed. Cultural diversity has been relegated to the back row while **attention has concentrated on irregular migration and asylum seeking**. This shift has been caused both by internal and external factors. The global financial crisis and the more acute Eurozone crisis have dried up job opportunities for migrant workers in both the formal and informal labour market in most European countries. The crisis has fuelled the ranks of populist parties in both sides of the spectrum which have found in immigrants suitable scapegoats. Intra EU migrants, particularly of Roma ethnicity, have been targeted as the kind of undesirable migration that comes along with Eastern enlargement. Also those dramatically visible "immigrants" landing on the southern European shores from war torn countries in Asia and Africa were pointed at as threatening "our" public order and security. At the same time irregular migration and asylum seeking flows have been further fuelled by political instability and civil war in North Africa and the Middle East (the Arab spring and its aftermath) as well as by continuing political unrest and ethnic conflict in several parts of Asia (e.g. Iraq and Afghanistan) and Africa (e.g. Sudan, Somalia).

While the control of irregular migration and the return of undocumented migrants to their countries of origin has been a priority in the European migration policy since the late 2000s, it has now achieved a new sense of urgency. **The EU is faced with a double challenge: to limit irregular migration while keeping its borders open to people in need of international protectio**n, in line with its traditions as well as with its own international conventions and declarations. Offering asylum to those who are persecuted or are unable to return to their countries of origin includes a set of inter-related challenges. It requires providing access to asylum (notably the information and ability to file a claim), safeguarding the fundamental rights of asylum seekers while their cases are being processed, while also ensuring that the asylum "burden" is shared among member states and that borders remain tightly controlled as regards overall irregular migration flows.

This combined challenge and the specific issues that it raises is particularly difficult to address despite the fact that the EU has developed a set of asylum and irregular migration directives with a view of creating a common EU migration policy and a common European asylum system.

The difficulties arise from the fact that member states have different levels of **actual capacity** but also of **political will** to deal with asylum and irregular migration issues; they are differently exposed to irregular migration and asylum inflows (those at the southern European geographical periphery bear the brunt of such pressures with Morocco-Spain, Italy-Libya and most notably Turkey-Greece being the main three "corridors"). Moreover **at times of crisis, resources are scarce** and citizens can find facile justifications of their own problems by attributing them to the presence of both legal and irregular migrants/asylum seekers. The sense of **threat** that particularly irregular migration creates and the fear that "things are out of control" serves well actually at times of crisis to strengthen a sense of positive collective identity that may have been undermined by an acute economic or political crisis.

These challenges present a puzzle hard to solve both for national and EU policy makers. This policy paper takes a closer look at these challenges and offers recommendations on how to act upon them. The paper starts with an overview of numbers (of immigration flows, stocks, asylum seeking flows and estimates of irregular migration) so as to put the overall issue into perspective (How large are the irregular migration or asylum seeker flows? How large is the overall migrant population in the EU? What are the trends?). Second, it discusses the main features of the EU policy on irregular

migration and asylum and highlights the key problematic issues, notably the fuzzy line that separates irregular migrants from asylum seekers; and the systematic use of detention for disciplinary rather than administrative purposes. It proposes new strategies for dealing with these two challenges that do not require legislative changes but rather a change in the practie and an implementation of both national and EU legislation and an increase in cooperation among member states.

The Size of the Challenge: Putting irregular migration and asylum seeking into perspective

The total population of the EU28 stood at 506.8 million[1] in 2012 (the EU27 population was approximately 502 million). In 2011, the EU27 has received a little less than 1.5 million immigrants each year while at the same time a total of 0.6-0.7 million of non EU citizens have left the EU annually[2]. This has resulted in a net immigration rate of approximately 0.75 million in 2009 and in 2010, and of just over 0.6 million in 2011. These numbers do not include the total migration movements to, from and within the EU as a large part of migration takes place between EU countries but they give a sense to the total size of in and out flows.

On 1 January 2012, the third country nationals living in the EU 27 stood at 20.7 million representing 4.1% of the total EU27 population.

While there are no statistics concerning the irregular migrant population residing in the EU (as the phenomenon by its very nature eludes any form of formal registration), the independent research project CLANDESTINO has produced in 2008 a scientifically rigorous calculation estimating irregular migrant residents in the EU27 at 1.9–3.8 million (Vogel et al. 2009) in a total of the then approx. 498 million inhabitants[3] in the EU, i.e. below 1% of the total population. According to van Hook et al. (2005), undocumented migrants in the USA were estimated to be 10.3 million in 2005 (estimated at 11 million in 2013, in a total population[4] of 307 million on 2009, i.e. just over 3% of the total US population). According to Koser (2007, p.57-59)[5], the percentage of irregular migration among total movements in Asia and Latin America might be beyond 50%. The above estimates show that irregular migration is a phenomenon of global concern but also that it may have attracted disproportionately high attention compared to the overall percentage of irregular migrants within the total population.

It is important to note **the elusive nature of the irregular migration phenomenon** in general and the common confusion between border apprehensions, regularisation programmes, refusals of entry,

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1 Based on Eurostat data, available at

http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tps00001, last accessed on 23 September 2013.

2 Source of data Eurostat March 2013

http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Migration_and_migrant_population_statistics, last accessed on 23 Sep 2013, and Infographics, 2013, available at http://ec.europa.eu/dgs/home-affairs/e-library/multimedia/infographics/index_en.htm#0801262488c180fa last accessed on 23 September 2013.

3 Data taken from Eurostat, see

http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tps00001, last accessed 23 Seeptember 2013.

4 Data taken from http://www.migrationinformation.org/Resources/unitedstates.cfm, last accessed 24 September 2013.

5 Koser, K. (2007) International Migration: A Very Short Introduction. Oxford: Oxford University Press; Van Hook, J., Bean, F., Passel, I. (2005) Unauthorized Migrants Living in the United States: A Mid-Decade Portrait, http://www.migrationinformation.org/Feature/display.cfm?id=329 last accessed 24 September 2013; Vogel, D. (2009) Size and Development of Irregular Migration to the European Union, http://clandestino.eliamep.gr/comparative-policy-briefs/#more-1068 last accessed on 23 September 2013.

expulsion orders and executed returns, notably the different types of data used to estimate the size of the irregular migrant population in a given country. Nonetheless, the CLANDESTINO project has shown that **irregular migration is lower than previously 'guesstimated' particularly in the EU15, and has decreased in the period between 2002 and 2008** by an estimated 32%. This decrease has been partly due to the enlargement of the EU to the east and thus the conversion of previously undocumented immigrants from the Central Eastern European countries to EU citizens. However it was also related to large regularization programmes that took place in several countries particularly in southern Europe as well as to increased border enforcement in the southern and eastern borders of the EU.

Although we do not dispose of more recent scientific estimates of the size of irregular migration in the EU, we need to note that the last two years, notably since the Arab spring in 2011 have witnessed an **upsurge in arrivals of both irregular migrants and asylum seekers**. Nevertheless **the large numbers of temporarily displaced persons in North Africa and the Middle East has been directed to the neighbouring countries within the region** rather than reaching to European shores.

The continuation of political instability and conflict in the Middle East and North Africa and the related inflows of people from these regions to Europe point to **the close relationship between irregular migrant and asylum seeking flows**.

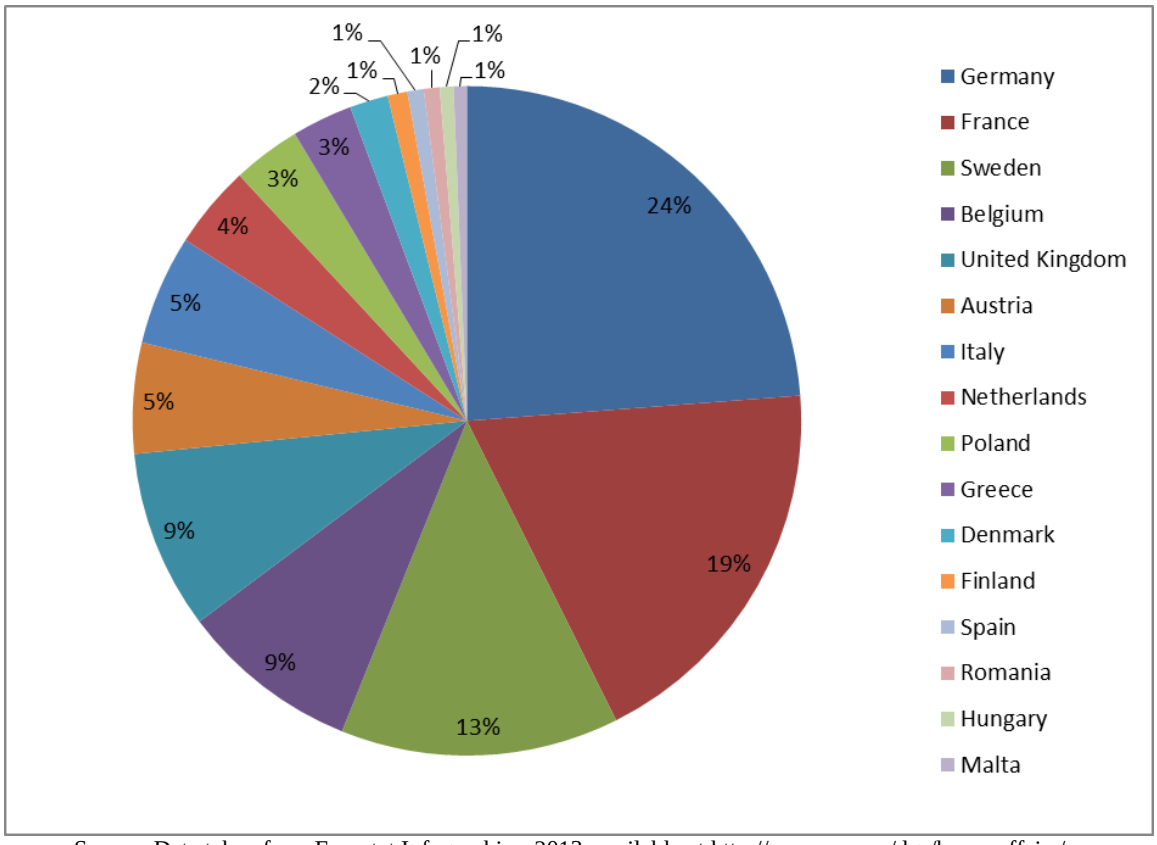
Looking at **global data** provided by Eurostat, the EU received 44% of the total asylum applications filed in the world in 2011, a percentage much higher than that of the USA that received only 7% or South Africa that received 12.4%. **The total refugee population in the world has been 10.4 million** of whom about **0.5 million reside in Germany and 0.2 million in France**. Nonetheless some of the poorest countries in the world host a large number of refugees (1.7 million in Pakistan, 0.2 million in Yemen and in Bangladesh, or 0.5 million in Kenya).[6]

The asylum seeking population in the EU is rather small (despite the high attention that it attracts). In 2012, there were just over 330,000 applications filed in the EU for asylum. Of those 23% were filed in Germany (nearly 80,000 applicants), 18% in France (just over 61,000 applicants), 13% in Sweden (43,000 applicants), approximately 8% in Belgium and the UK (nearly 28,000 applicants each). The other EU countries received the remaining 28% of all applications. Greece, which has attracted a lot of negative attention in recent years due to its failing asylum system, ranked 10th, with a total of 9,500 applicants (see Figure 1 below).

[6] See Eurostat Infographics, 2013, available at http://ec.europa.eu/dgs/home-affairs/e-library/multimedia/infographics/index_en.htm#0801262488c180fa last accessed on 23 September 2013

Figure 1:

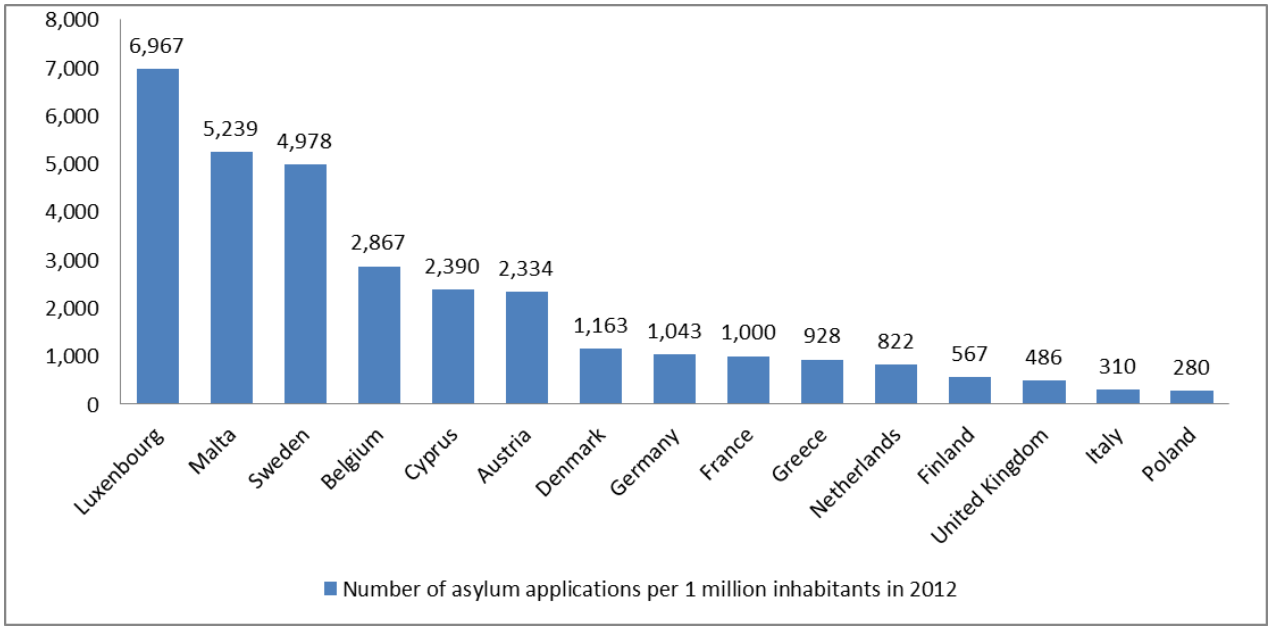
Top 17 EU Member States per Total Number of Asylum Applications submitted in 2012



Source: Data taken from Eurostat Infographics, 2013, available at http://ec.europa.eu/dgs/home-affairs/e-library/multimedia/infographics/index_en.htm#0801262488c180fa last accessed on 23 September 2013

However if we consider the number of asylum applicants in relation to the size of the population of each member state, Malta is at the top with 21.4 asylum seekers per 1,000 inhabitants, Sweden comes second with 16.4, compared to 5.7 of Greece, 4 of France and 1 of the USA.

Figure 2: Asylum Applications in relation to the Size of the Overall Population



Source: Data taken from Eurostat Infographics, 2013, available at http://ec.europa.eu/dgs/home-affairs/e-library/multimedia/infographics/index_en.htm#0801262488c180fa last accessed on 10 October 2013

Asylum is a common concern for both Northern and Southern European countries. Southern countries are exposed to pressures at their borders because of their geographical proximity to zones of instability and conflict. Northern European countries have been traditionally the preferred destinations of asylum seekers from all over the world. Thus **both groups of countries have a common concern to share this burden, albeit look at the problem from different perspectives**: southern European countries face simultaneously the pressure of irregular migration and asylum seeking and have to find ways to effectively filter applications. Northern European countries are more "protected" from irregular migration because of their geographical position and hence face mostly the problem of processing applications rather than that of filtering them at their borders.

This policy paper reviews the recent irregular migration and asylum seeking trends and proposes ways of effectively reconciling the concerns of the two groups of countries while safeguarding the human rights of both irregular migrants and asylum seekers without compromising migration controls.

Trends in irregular migrant and asylum seeker arrivals at the EU

During the last two decades the European Union has created a common European asylum system. Indeed, long standing concerns of the EU member states that asylum seekers from other continents were abusing their asylum systems, engaging into what has been called 'asylum venue shopping', have led as early as 1990 to the creation of the Dublin Convention. The Dublin Convention[7] (named after Dublin, Ireland, the city in which it was signed on 15 June 1990) introduced one main principle, notably that asylum seekers **should lodge their application at their first safe country of arrival** and not in a country of their choice. Thus the first EU country where they entered the wider EU territory

[7] The Dublin Convention first came into force on 1 September 1990 among twelve signatory states: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom). Later on 1 October 1997, Austria and Sweden joined in and on 1 January 1998 Finland. Recently Norway, Iceland joined in and in December 2008 Switzerland too.

was considered the country where their asylum seeking application should be processed and decided upon.

The aim behind the Dublin Convention was to limit the movement of asylum seekers transiting in Europe and avoid that they would lodge their application in the country that they preferred (because for instance they already had family or friends there or because they spoke the language or indeed because they had heard that this country had a higher approval rate than others). The underlying principle was that **the right to asylum is very important but the person in need should just seek international protection, not really express a preference as to where s/he would like to receive this protection**. In addition of course the underlying policy and political priority was that the countries with the largest immigrant and refugee communities such as the UK, Germany, the Netherlands or France would face less pressure and the countries in the periphery of Europe that are the 'natural' geographical stepping stones of asylum seekers should receive at least part of the applications.

The Dublin Convention has been replaced in 2003 by the Dublin Regulation (Regulation 2003/343/CE, in common parlance referred to as Dublin II) and most recently by the Dublin III Regulation which entered into force on 19 July 2013. The Dublin Regulation is complemented by the EURODAC Regulation[8] which establishes a Europe-wide fingerprints' database for unauthorized entrants to the EU. This database combined with the provisions of the regulation allows member states to **rapidly and relatively easily establish which is the member state responsible for dealing with an asylum claim and hence to transfer the asylum seeker to that member state**.

Ironically it may be argued that the Dublin II Regulation has been successful if we assume that its main aim has been to shift some (or indeed most) of the asylum seeking examination burden to the peripheral countries of the EU. If however the aim of the Dublin Convention and the Dublin II regulation has been **the streamlining of the asylum system in Europe**, then it has actually been a big failure. Indeed the side-effects have been important and had to do with the fact that the southern European countries that are the first safe countries that asylum seekers from Asia and Africa – more often than not travelling on foot, by car, truck, with the help of human smugglers – encounter on their way, faced **disproportionate pressures** with which they were unable to deal. These uneven pressures and the mixed character of the flows (both asylum seekers and irregular migrants cross the borders unauthorised) have exposed in dramatic ways the limitations of Dublin II and the uneven capacity of southern EU member states to deal with the issue.

The Southern European countries

Four countries have taken the brunt of irregular migration arrivals and asylum seeking applications in the past 15 years: Spain, Italy, Malta and Greece.

While Spain was a preferred route for irregular migrants from sub-Saharan Africa in the mid 2000s, this western Mediterranean route is by now largely abandoned. After a peak of arrivals of unauthorised migrants in 2003 and again in 2006-2007 (see Table 1), Spain has seen the number of irregular migrants who arrive at its shores decrease significantly. In terms of asylum seeking applications Spain had a total population of approximately 4,500 refugees and a little less than 3,000 asylum seekers in 2012 (in a total population of 46.8 million according to the 2011 census).[9] Thus, Spain has *not* been among the top 15 countries that receive asylum claims globally nor in the top ten receiving countries in the EU.

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8 The Dublin Regulation is part of the broader Common European Asylum System (CEAS) which includes the Recast Asylum Procedures, Reception Conditions and Qualifications Directives. It is beyond the scope of this policy paper to discuss the overall CEAS in detail.

9 Source: http://www.unhcr.org/pages/49e48eed6.html last accessed on 5 October 2013.

Italy by contrast has been registering high numbers of arrivals of irregular migrants throughout the last ten years and ranks 12th in terms of its share of asylum seekers among the top ten receiving countries worldwide in the period 2008-2012. It has actually received 8% of total applications in 2008 and 2011 but 3% in the other years.[10]

As regards irregular migrants apprehended at the Italian southern sea borders, after a sudden drop in 2009 attributed to the accords between the Libyan and Italian government that irregular migrants intercepted at sea would be pushed back to Libya without being given the chance to apply for asylum, numbers picked up again, as a result of social unrest in Tunisia and civil war in Libya. Indeed Italy registered peaks in apprehensions at its sea borders in 2006-2007 and again in 2011 and again now in 2013. In 2011, arrivals were related to the Arab spring: an estimated total of 25,000[11] Tunisians arrived at the island of Lampedusa in the first two months of 2011. An additional 20,000 sub- Saharan Africans arrived in the spring and summer of 2011 in Lampedusa and Sicily fleeing the war and racial violence in Libya. Currently there is a dramatic increase of Syrian asylum seekers fleeing the war in their country which explains the sudden upsurge of the arrivals in Lampedusa and southern Sicily (see also Table 2).

Numbers have picked up in Malta too with nearly 2,000 arrivals in 2013 and more than 1,300 unauthorised migrants and asylum seekers landing at Maltese shores in the first seven months of 2013 (see Table 3). Malta is actually receiving the highest number of asylum seekers compared to its total population.

Greece remains also one of the main geographical points of entrance to the EU for Asian and African irregular migrants and asylum claimants travelling through Africa or Asia to Turkey and then crossing to Greece. Apprehensions of irregular migrants (including potential asylum seekers) at the Greek Turkish land and sea borders have nearly doubled in the period 2007-2010 (from 32,000 in 2007 to 53,000 in 2010) but after the peak of 2010 and 2011, decreased back to the 2007 levels of just over 30,000 in 2012 and dropped further in the first 8 months of 2013.
There have been also considerable shifts between the Greek Turkish land and sea borders during these last few years. While in 2008-2009, the sea crossings from the Turkish coasts to the large islands of the Aegean (Samos, Lesvos, Chios) were the preferred routes, things changed suddenly towards the end of 2009. Irregular migrants apprehended at the Greek Turkish land border in northeastern Greece quintupled while those apprehended at the sea borders fell by 70%. During the first 8 months of 2013, apprehensions have fallen dramatically[12] at the Greek Turkish land borders, while they have doubled (by comparison to 2012) at the sea borders suggesting both a considerable decrease and a changing trend, that makes the islands the preferred target destinations of irregular migrants and asylum seekers (see Table 4). Greece accounted for 5% of the total asylum seeking applications worldwide in 2008 but has since seen the percentage falling to reach only 2% in 2011 and 2012.

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10 Data available at UNHCR. Asylum Trends 2012.

11 Up to 6 April 390 boats had arrived in Italy, with a total of 25,867 undocumented migrants and asylum seekers, mainly Tunisian. In total, up to 6 April 2011, only 10 boats had arrived from Libya (Monzini, 2011).

12 In 2012, in response to pressures from the EU but also the continuous arrivals of irregular migrants, Greece further tightened border controls through Operation 'Shield' (*Aspida)* involving the transfer of 1,800 border guards to the region of Evros, concluded the building of a border fence across the 12.5 km used as the main entry point, increased passport controls and upgraded technologically the harbours of Patra and Igoumenitsa - main exit points to Italy. These measures have contributed to the shift of migrant smuggling routes back to the islands and/or to Italy.

Table 1: Migrants apprehended at sea borders, Spain 1999-2011

	1999	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
Strait of Gibraltar	2,694	12,789	14,405	6,795	9,788	7,245	7,066	7,502	5,579	4.233	5,039	3,436	n/a
Canary Islands	875	2,410	4,112	9,875	9,388	8,426	4,715	**31,678**	12,478	9.181	2,246	**196**	**340**
Total	3,569	15,195	18,517	16,670	19,176	15,675	11,781	39,180	18,057	13,424	7,285	3,632	5,443

Source: Data for 1999-2010 based on Triandafyllidou and Maroukis (2012), table 2.1, page 37. Data for 2011 based on data provided by the Spanish Coastguard authorities, available at: http://migrantsatsea.wordpress.com/2012/02/13/increase-in-numbers-of-migrants-reaching-spanish-coast-in-2011/ last accessed on 28 February 2013, emphasis added.

Table 2: Migrants apprehended at sea borders, Italy 1999-2013

	1999	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
Sicily	1973	2782	5504	18,225	14,017	13,594	**22,824**	**21,400**	16,585	**34,540**	8,282	107	**50,483***	15,900	**30,000****
Sardinia							16	182	1,548	1621	484	318	n/a		
All Italy	49,999	26,817	20,143	23,719	14,331	13,635	22,939	22,016	20,165	36,951	9,573	4,406	64,300		

Note: n/a = not available.
Source: Data for 1999-2008, UNODC (2010), table 1, p11. Data for 2009-2011, Caritas Migrantes, Dossier Statistico, Roma, 2012, p131. Data on 2012 and 2013 based on Frontex data available at http://www.frontex.europa.eu/news/update-on-central-mediterranean-route-5wQPyW, last accessed on 5 October 2013. * Data here refer to Lampedusa only. ** Until end of September 2013.

Table 3: Arrivals of irregular migrants in Malta 2001-2013

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013 (till end July)
57	1,686	502	1,388	1,822	1,780	1,702	**2,775**	1,397	28	1,577	**1,890**	1,294

Source: data for 2001-2010 from Triandafyllidou and Maroukis (2012), table 2.5, page 43. Data on 2011, available at http://www.crimemalta.com/frontexwatch.htm last accessed on 22 July 2012, data on 2012-2013, available at http://www.independent.com.mt/articles/2013-07-31/news/record-number-of-irregular-migrant-arrivals-for-july-2210660356/, last accessed on 5 October 2013.

Table 4: Greek-Turkish border apprehensions 2008-2012

Border areas	2008	2009	2010	2011	2012	2013*
Land Border	14,461	8,787	47,088	54,974	30,433	585
Sea Border	30,149	27,685	6,204	1,030	3,651	5,579
Total apprehensions	44,610	36,472	52,269	56,004	34,084	6,834

Source: Ministry of Public Order & Citizen Protection (2012). * Data for January-August 2013.

The above analysis shows that the southern European countries bear the brunt of unauthorised entries in the EU and a large share of the asylum seeking applications in the EU. While these asylum seeking applications may seem in absolute numbers relatively small, when put into perspective (comparing with a country's total population), their true magnitude comes into focus.

The challenge is complex as on one hand, **the three Mediterranean routes of irregular migration (and hence also of asylum seeking) function as communicating containers**: when one route is stopped (e.g. the western Mediterranean route to Spain), another is under pressure (the central Mediterranean route to Italy). When this route is abandoned it is not because irregular migration and asylum seeking pressures overall fall but rather because the routes shift. In the late 2000s and early 2010s, the Greek Turkish land and sea corridor was heavily under pressure, in the last year we witness another dramatic change as irregular migrants and particularly asylum seekers seek to cross from Libya to Italy. These asylum seekers were mainly sub Saharan Africans fleeing war torn Libya in 2011, in 2013 they are Syrian refugees and continuing flows of people fleeing ethnic conflict in sub Saharan Africa (from Eritrea, Somalia etc.).

Key Issues and Recommendations

Dublin III and the fuzzy line between irregular migration and asylum

The Dublin III Regulation[13] was voted on 26 June 2013 and while it upheld the first safe country principle it introduced important safeguards (see Article 3, paragraphs 1 and 2) highlighting that member states should consider the situation in the first country of arrival at the time of arrival as well as the current situation before returning an asylum applicant to that country. They should ensure that such return would not expose the asylum seeker to inhuman or degrading treatment in the sense of article 4 of the European Convention for Human Rights. Nonetheless the Dublin III regulation does not manage to address the close link between asylum seeking and irregular migration and particularly the main question of how to control irregular migration while ensuring that asylum seekers have access to international protection.

Afghans remain the top nationality among asylum seekers worldwide accounting for 8% of all applications worldwide in 2012 but Syrians have climbed up to second position accounting for 6% of all applications. Afghans have applied in all 44 industrialised countries included in the UNHCR data. **Syrians have lodged most of their claims in Germany and Sweden in 2012 but it is known that large numbers of Syrians have transited irregularly from Greece** but did not lodge their applications[14] there.

Recent research[15] has shown that people who would qualify for asylum, for instance Afghan citizens, cross the "first safe country" notably Greece without submitting an application there but rather move on (and often are apprehended but try again) from Greece to Italy and then to France or other European countries. They are aware of the deficiencies of the asylum seeking system in Greece and their near impossibility of receiving protection there plus they have their own plans seeking to reunite with family and friends in the UK or Germany.

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13 Réglement UE no. 604/2014 du Parlement Européen et du Conseil Europeen du 26 Juin 2013 établissant les critères et mécanismes de détermination de l'État membre responsable de l'examen d'une demande de protection internationale introduite dans l'un des États membres par un ressortissant de pays tiers ou un apatride (refonte).

14 UNHCR, Asylum Trends 2012, p. 16.

15 Schuster, Liza (2011) Turning refugees into 'illegal migrants': Afghan asylum seekers in Europe, *Ethnic and Racial Studies*, 34, 8, 1392-1407.

The flows of irregular migration and asylum seeking are inextricably intertwined and it becomes nearly impossible to disentangle them at the border. The Greek case particularly highlights this problem and shows the difficulties in addressing it:

FRONTEX estimated that in 2010 three quarters of all irregular migrants that crossed borders illegally (i.e. not visa overstayers) had entered the EU through Greece. It would be more accurate to say through the Greek Turkish borders. **Indeed the Greek Turkish land border has remained the most crucial border for unauthorised entrance to the EU until the end of 2012**.[16]

Nonetheless during the last 7 years, asylum applications remain relatively low. With a peak in 2007-2008 (of approximately 25,000 and 20,000 applications respectively), they have been decreasing since, and currently amount to nearly 10,000 per year, a rather low number compared to the overall number of irregular migrants intercepted at the Greek Turkish borders.

Asylum seekers arriving in Greece actually hardly have had the opportunity to seek asylum. Irregular migrants / potential asylum seekers arriving at the Greek land or sea borders with Turkey are routinely detained in overcrowded reception centres and indeed in inhuman and degrading conditions. They did not receive information in a language that they understood regarding their right to claim asylum. They were usually informed through their co-ethnics or through the smuggling networks about the procedure for seeking asylum, notably the need to lodge their application at a special office located in Athens.

Table 5: Asylum applications in Greece, 2000-2012

Years	2005	2006	2007	2008	2009	2010	2011	2012
Number of asylum applications	9,050	12,267	25,113	19,884	15,928	10,273	9,311	9,577

Source: Data available from the Ministry for the Protection of the Citizen at http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=12630&Itemid=73&lang= last accessed on 5 October 2013.

Routinely first instance applications were rejected, mainly upon consideration of the country of origin of the applicant. Eventually Greece voted Law 3907/2011 creating two separate Agencies, the Asylum Agency and the Agency for First Reception[17]. So far the first First Reception Centre has opened in the Evros region at the Greek Turkish land border in March 2013 (i.e. two years after the law was voted), while the first Asylum Office started operating[18] on 7 June 2013. A mobile reception centre has been prepared to be sent to the Aegean islands where an upsurge in irregular migrant arrivals is registered.

While the launching of the new Greek Asylum Service has dramatically improved the situation as regards informing potential asylum seekers, there are **two critical pitfalls** that persist. First, the Police remains the sole responsible along with the old asylum committees for processing the asylum claims lodged before the opening of the new Asylum Service in June 2013 (the backlog was estimated at 45,000 cases in end 2011). Second, where there is no local Asylum Service office for filing an application, the local police person registers the claims and sends to the central office in Athens. Nonetheless, asylum seekers are routinely detained and are actually informed that if they apply for asylum they are likely to be detained for the maximum allowed period (18 months).

[16] For a more detailed discussion see the quarterly reports of FRONTEX, for instance: http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q3_2012.pdf last accessed on 5 October 2013.

[17] Thus transposing into Greek law the provisions of the European Directive 2008/115/EC concerning common standards for the return of illegally staying third country nationals.

[18] Four new Asylum Offices will be opened in the coming months in Thessalonike, in Evros and in Rhodes.

It follows from the above analysis that the main problem in Greece is that irregular migration **pressure is so high** and the **human and financial resources so far dedicated to asylum so low** that it was **impossible to guarantee an adequate control of the Greek Turkish borders while also providing to apprehended unauthorised migrants information and the option of applying for asylum**. While a lot has had to do with an initial **lack of political will** of Greece to deal effectively with the problem, the inherent difficulty of the challenge is of an objective character: by accident of geography Greece stands at the forefront of asylum seeking and irregular migration flows from Asia and Africa and is and will be in the foreseeable future at constant pressure. Compared to its size and resources and given the "first safe country" principle, it will always face important difficulties in controlling its borders while guaranteeing appropriate reception and protection to asylum seekers.

The case of Italy points to another related challenge that arises from the close link between irregular migration and asylum seeking. The Italian law on migration, notably the Single Text 286/1998 as it has been modified by law 189/2002 (the so called Bossi Fini law) defines as a crime punishable by penal law any action that facilitates the entry or stay of an illegally staying alien in the Italian territory. These provisions were further strengthened by the "Security Package" of 2008 (law 125/2008). While the law targeted mostly the criminal networks of migrant smuggling and human trafficking, it has been extended in such a way that it covers actions such as the renting of accommodation[19] to undocumented migrants, the employment of undocumented migrants as care workers, and a range of other actions that are actually largely part of everyday life for most Italian families. Case law and decisions[20] of the Cassation Court have restricted the area of application of this provision to cases where there is a clear intention for exploiting the undocumented migrant. Nonetheless, there have been cases in which this law led to the incrimination of fishermen who had rescued irregular migrants at sea and who saw their vessels confiscated and their work interrupted.

The recent tragic events at Lampedusa (3 October 2013) have led to a generalised appeal of local authorities (the mayor of Lampedusa) and national politicians (most notably Laura Boldrini, President of the Italian National Assembly and former UNHCR representative in Italy) to call for a change in the relative law as it was suggested that the tragedy could have been partly avoided if fishermen were not afraid that by rescuing migrants they might get into real trouble.

Policy Recommendations on Meeting Asylum Seeking Pressures

The above observations suggest that we need a more effective system for dealing with asylum seekers especially when civil conflict or social unrest in a given country produces a high number of internationally displaced people in need of protection.

We would like to propose here that the European Asylum System makes better use of what is called subsidiary or international protection. Thus, there could be **a constant monitoring system implemented by the European Asylum Support Office which assesses the political situation and risk level in countries in the wider EU Neighbourhood and which defines that for a certain period of time nationals of X country should be automatically granted international protection, upon proof that they are citizens or residents of that count**ry. Such a system would have allowed for a speedy processing of sub Saharan Africans fleeing Libya in view of racial violence or also of Syrians arriving in Greece, and moving further in fear that their asylum application would not be accepted in that country.

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[19] See also http://www.wiss-lab.dirpolis.sssup.it/files/2013/05/Libro-dirpolis-1.pdf

[20] Corte di Cassazione, particularly for instance Cass. Pen., sez III, sent. n. 3162/03 or also most recently Cass. Pen. 26457/2013 for a commentary see: http://www.giurisprudenzapenale.com/favoreggiamento-della-permanenza-nello-stato-di-immigrati-clandestini-il-reato-e-a-dolo-specifico-e-richiede-il-fine-di-trarre-un-profitto-ingiusto/.

The decision on M.S.S.vs Greece and Belgium (2012 European Court of Human Rights), the situation at the Greek-Turkish border in the years before but especially in the 2010-2011 period, and the Arab Spring that preceded the influx at Lampedusa, were some of the events that precipitated the discussion around an early warning process mechanism (Article 33). The latter, was eventually integrated in the Dublin III mechanism that came into force on July 19th 2013. The early warning preparedness and management of asylum crises is envisaged as a tool box to improve the solidarity between Member States. However, as ECRE (January 2013) has pointed out, the mechanism does not compensate for the fundamental problems in the recast Dublin Regulation. The early warning mechanism essentially seeks to ensure the continuous and proper functioning of the Dublin Regulation. The identification of a crisis, whether through the request issued by a particular country, EASO and/or FRONTEX reports, triggers a sequence of actions to be taken by the member state under pressure, or in cases where the asylum system is malfunctioning or collapsing. First the problem is identified through information gathering, assistance is offered (EASO will undertake this role) in drafting either recommendations or an action plan, and the member state is 'monitored' during its implementation (which is voluntary); If the plan fails or the crisis continues or worseness, a crisis management plan is set out for implementation. At the same time, the Regulation allows for member states to cease returns, on an individual basis to ensure the rights of asylum-seekers are protected. The 'tool box' as such, aims at preserving the Regulation itself, by ensuring a road map exists for the continuing returns under the safe-country principle. In that sense, it is less about the people and more about the process.

What is needed however instead is a mechanism that **combines crisis management with an active involvement from EASO and a focus on the irregular arrivals and asylum seekers**. More specifically, we would like to propose a new practice within the current Dublin III system which would allow for a better distribution of asylum seekers across Europe. Thus while keeping the first safe country principle,

- In cases of **(imminent or actual) mass influx of displaced persons** from third countries who are temporarily unable to return to their country of origin and hence in need of temporary international protection, a double course of action is needed. On one hand, the EU countries which are affected should receive immediate financial and operational aid by the European Refugee Fund and, if necessary, through exceptional humanitarian relief funds. On the other hand, **the people concerned should be exempted from the Dublin III regulation and hence be able to seek temporary protection in any EU country.**
- Under such conditions of exceptional inflows, **a practice of annual asylum quotas could be activated**:
- Each country should have a certain number of permits available each year for recognized refugees and for people under temporary international protection. This number should be a percentage of its population – e.g. France has 62 million inhabitants, the related quota could be 0.10%, i.e. 62,000 permits. When, within a year, a country has achieved its annual quota, the remaining asylum seekers accepted in this country should be immediately resettled to one of the countries that have still available slots in their own quota.
- The existence of an annual quota of refugees for each country and the possibility of resettlement when a country exceeds its quota ensures that all countries **share equally** in the Common European Asylum System. It also takes away the incentive of rejecting all applicants with a view of (a) spreading the rumour that, X country is not a good place to apply for asylum, (b) expelling the asylum seekers and thus 'solving' the 'problem' of having too many asylum seekers in the country.
- The role of the **European Asylum Support Office** could be crucial here not as a place that prepares reports and makes recommendations or prepares Action Plans – that serve little in facing an emergency situation – but as **an operational agency for crisis management that would activate the quota mechanism with a joint Task Force** (much in the way that the RABIT Rapid

Border Intervention Teams function in the context of FRONTEX for assistance with border controls) **that would help with the processing, when one of the countries faces a disproportionate influx** and exceeds its quota.

- The choice of the country where a refugee should be resettled (among the countries whose quota has not yet been filled) should **take into account the wish of the applicant** and her/his effective proof of where s/he has family or where s/he knows the language or prefers to live.
- In the case **of Search and Rescue Operations**, any legal clauses referring to the facilitation of unauthorised migration should be suspended so that fishermen or other civilians helping migrants at sea or indeed migrants crossing a river (as has happened at time at the Greek Turkish border area on the river Evros) should be **exempted** from such accusations.

Detention

The challenges that Europe faces with regard to controlling irregular migration while providing for international protection to people that need it are complex as they include the very measures through which a state seeks to implement its sovereign right to control its territory. Thus, we notice that an effective policy for irregular migration control including **arrest and return** (through voluntary, semi-voluntary or indeed forced return**) seems to be best served by regular detention of apprehended undocumented immigrants and asylum seekers whose case is in process.** At the same time, if this policy is to be in line with international obligations and the European Chart of Fundamental Rights it must provide for adequate services and safeguards so that **those apprehended are informed of their rights, of the possibility to apply for asylum, and are not routinely detained**.

Detention should be an extreme measure used only when there is a fear that the person will abscond and in view of an imminent expulsion, or when there is a well-founded fear that the person will commit a crime. However, detention is currently used in Greece and in many other European countries as a punishment for having crossed a border illegally or even for having filed an asylum application without due examination of the specific personal and family circumstances of an irregular migrant or asylum seeker, on their probability to commit crimes, on the harm that detention will do to them and to the minors often accompanying them.

Detention has been a hotly debated issue in Greece. The country was heavily criticized for its detention facilities on the islands[21], particularly in Lesvos. It has also been criticized for detaining asylum seekers[22], a practice which in 2012 not only continued but also was strengthened, through the modification of the Presidential Decree 114/2010 that enables the detention of asylum seekers for 12 months (rather than 3 and under special circumstances 6 months in place until then). Greece, currently, imposes the maximum time for detention, which is 18 months (prescribed in the Return Directive for exceptional circumstances) for both irregular migrants and asylum seekers. Detention is now being increasingly linked with "voluntary" return, procedure initiated during detention often with the assistance of IOM, whereby the migrant is presented with the alternative to "go home" or remain in detention while his/her asylum claim is processed or travel documents are issued for removal. Because voluntary return means the migrant cooperates and embassies tend to also be more cooperative (when the individual wishes to return), it is also a more expedient process however it has raised criticism as to what an extent it is "voluntary" and how "sustainable" is the return (or whether the migrant re-migrates upon return).

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[21] For the situation at Greek detention centers see ProAsyl (2007), Human Rights Watch (2008), Frontex (September 2011).

[22] UNHCR (18 October 2012) 'Η κράτηση των αιτούντων άσυλο δεν πρέπει να αποτελεί γενικευμένη πρακτική αλλά εξαιρετικό μέτρο' ('Detention of asylum seekers should not be the norm but the exception'), URL: http://www.unhcr.gr/nea/artikel/b007e6faf3f8f128db0b7075b5aafe33/ypati-armosteia-i-k.html, 9/2/2013 *in Greek*.

As Claire de Senarclens argues[23] immigration detention is usually thought of as a way to facilitate the removal of illegally staying foreign nationals. However it is useful to distinguish between **administrative detention**, mainly aiming at guaranteeing that the individual is present when it comes to the execution of their removal, and **the disciplinary function of detention**, when it is thought of as an instrument of coercion for forcing people to cooperate for the purpose of their own removal. Indeed the distinction may be subtle but is real. There is a third type of detention: **detention as sanction** for having crossed the border unauthorized and/or for seeking asylum. This punishment dimension is used by governments to deter prospective irregular migrants from entering their territory or asylum seekers from applying for international protection. The latter is related to the view that applying for asylum actually stalls the removal procedure until the application is processed (which in countries like Greece for instance may take several years).

There is a common agreement among scholars and NGOs that using detention in its disciplinary and punishment dimension is increasingly common in European countries. Relevant studies and NGO experiences documented in Forced Migration Review (fall 2013) note that there is a pressing need for assessing the costs (both direct in terms of lodging, guarding etc detained people, and indirect in terms of the damage inflicted to these people whose only crime is to have crossed the country's borders unauthorized and/or having applied for asylum) of detention.

Indeed there is an overall need for **a cost analysis of detention.** Recent studies[24] have shown that Italy is spending a minimum of 55 million Europe per year for the functioning of its CIE centres (Centres for Identification and Expulsion). In the period between 1998 and 2012 nearly 170,000 individuals have been "hosted" at CIE but only 46.2% of them have been effectively removed from the Italian territory. In addition the Italian government has invested in the period 2005-2012 a total sum of 1.668 billion Euros (of which 1.3 billion contributed by the Italian state and 281.3 million from EU funds) with a dubious success in limiting the phenomenon of irregular migration. In addition the studies show that there is a lack of transparency on how policies are implemented and how money is spent. There is a lack of evaluation and assessment of the activities conducted and the expenses sustained. In addition under the current Spending Review, the funds available for the CIE have been reduced further jeopardising the quality of life and the respect of the basic human rights of people detained there.

Such studies point to the urgent need of considering and implementing alternative measures such as community integration of asylum seeking or irregular migrants awaiting proceedings. Such community integration schemes at their more restrictive version can involve house arrest and electronic surveillance with daily or weekly reporting requirements and/or curfews which are still better than custodial detention. They may also however involve more generous schemes of integration into a local community with children attending school which has been showed in pilot schemes in the Netherlands and Sweden to help preparing the irregular migrants for a sustainable return while at the same time guaranteeing to minors the possibility to attend school. Such practices which respect the human dignity of the person and the fundamental rights of both adults and minors show that where the migrant or asylum seeker is treated with respect, s/he is more cooperative and may even return voluntarily to their country of origin when apprehended or when their asylum application is rejected.

In other words, **assessing the costs and benefits of detention does not only involve counting executed expulsions or forced returns but requires an overall assessment of material costs, human costs and benefits of custodial detention versus other forms of soft surveillance.**

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[23] Forced Migration Review, fall 2013, Issue 44, page 60.

[24] For more details see http://www.lunaria.org/wp-content/uploads/2013/05/SINTESI_COSTIDISUMANI_def.pdf and http://www.wiss-lab.dirpolis.sssup.it/files/2013/06/Libro-dirpolis-ita.pdf

Policy recommendations on alternatives to detention

There is clearly a need that the European Refugee Fund continues to support the countries whose borders are external EU borders and which naturally face the largest incoming irregular migration and asylum seeking flows in capacity building. An area where help is absolutely necessary is in their putting up surveillance schemes alternative to detention. Pilot schemes have been tried in Belgium, Germany, Sweden and the United Kingdom but also Australia and the USA.[25] While state authorities have been often reluctant to adopt such schemes, the overall assessment is positive.

Asylum seekers and irregular migrants put into alternative schemes such as house arrest and community integration have been overall more cooperative, have faced the process of awaiting decision for asylum or awaiting removal with more calm and have prepared better for a sustainable return. Such schemes share a few features that need to be underlined:

- Avoid detention from the start, particularly when minors and families are involved
- Screen and assess individual cases, presuming that detention is normally not necessary.
- Assess the community setting and work with local stakeholders to organise the integration into the community.
- Provide accommodation in public housing and assign a case manager that visits the family every day.
- Provide legal counselling and regularly updated information on the progress of their case.
- Offer social and psychological support to adults and families
- Enrol children to school
- Supervise regularly especially when the time comes when removal is imminent but seek to resort to detention only in exceptional circumstances.

Such schemes can ensure the respect of fundamental rights for irregular migrants and asylum seekers while also guaranteeing that people do not simply "disappear in the woods".

[25] Forced Migration Review, fall 2013, Issue no. 44, pages 40-62.