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Final Thesis

The European Union approach to migration and asylum: changes and evolutions from the 1990s to the recent refugee crisis.

The case of the EU-Turkey Statement as an opportunity for a contextualised analysis.

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Ai miei genitori,
che hanno sempre creduto in me
e senza i quali nulla sarebbe stato possibile.

E ad una persona speciale,
fonte inesauribile di amore e ispirazione.

Contents

Abstract

Sin dai tempi più antichi, quando l'*Homo Sapiens* ha iniziato a compiere i suoi primi passi sulla Terra, il desiderio di viaggiare, spostarsi e migrare si è affermato come una componente essenziale e intrinseca dell'essere umano. La fondazione delle prime società (e il modo in cui culture diverse sono entrate in contatto le une con le altre per secoli) non può essere capita a fondo senza prendere in considerazione il ruolo fondamentale ricoperto dal processo migratorio. Il fatto che la migrazione costituisca un fenomeno sociale tanto antico quanto l'essere umano stesso non deve però portare alla conclusione secondo cui essa sia facilmente descrivibile ed etichettabile. In effetti, i due aggettivi che meglio descrivono la migrazione sono complessità ed eterogeneità. Proprio queste due caratteristiche permettono di capire perché, ad oggi, non esistano ancora teorie in grado di spiegare il fenomeno migratorio in un modo esauriente ed approfondito. Analizzando gli studi svolti negli anni, si nota facilmente come essi abbiano scelto punti di partenza molto diversi tra loro, e come questo abbia portato al raggiungimento di conclusioni fortemente discrepanti. Per esempio, alcune teorie ritengono che la migrazione sia il risultato delle diseguaglianze economiche tra i diversi paesi; altre vedono i flussi migratori come il prodotto di una scelta fatta da individui profondamente razionali che decidono di spostarsi in nome di quella che è una strategia familiare ben specifica; altre ancora percepiscono tale fenomeno come una conseguenza diretta di eventi fortemente destabilizzanti (quali disastri naturali, guerre, crisi economiche, ecc.). Tutte queste teorie sono accomunate da un unico fattore: non essere in grado di spiegare in modo esaustivo il fenomeno migratorio.

Questa tesi nasce proprio da un profondo e sincero interesse per il tema della migrazione, interessamento che si è ulteriormente rafforzato a causa degli avvenimenti che ogni giorno affollano, con immagini e titoli a caratteri cubitali, i quotidiani e i telegiornali di tutta Europa. Queste notizie riguardano quella che viene generalmente descritta come la crisi migratoria europea. Nel momento in cui si inizia a qualificare questo fenomeno in termini di crisi, bisogna necessariamente domandarsi se questa definizione sia corretta e appropriata. Sicuramente le cifre registrate da varie organizzazioni e istituzioni (tra cui l'Alto Commissariato delle Nazioni Unite per i Rifugiati, l'Organizzazione Internazionale per l'Immigrazione, e Frontex – tanto per citarne alcune) sono preoccupanti. Il fatto che, a partire dal 2014 (in seguito alla Primavera Araba e alla conseguente Guerra Civile Siriana) un numero crescente e apparentemente

inarrestabile di persone abbia cercato disperatamente e continuamente di lasciare il proprio paese di origine con l'obiettivo di raggiungere una destinazione capace di garantire a loro (e alle loro famiglie) ospitalità, aiuto, protezione e tutela dei diritti essenziali non può che destare un profondo turbamento nei paesi europei. Se a questo si aggiungono considerazioni riguardanti sia i pericoli a cui sono sottoposte queste persone nel loro viaggio verso le porte dell'Europa, sia gli sfortunati decessi che quasi quotidianamente vengono riportati dalla cronaca, allora la situazione non può che essere percepita come allarmante. Il tutto viene ulteriormente alimentato (e peggiorato) dalla paura che pian piano si sta appropriando degli animi delle popolazioni europee, le quali percepiscono questi incontrollabili e incessanti flussi di persone come una minaccia, non solo da un punto di vista economico e culturale, ma anche in termini di sicurezza nazionale. Tuttavia, è necessario andare oltre a questi fattori e avere una visione più ampia del fenomeno. Innanzitutto, le cifre analizzate devono essere inserite all'interno di un contesto adeguato. Dire che quasi due milioni di persone hanno raggiunto l'Unione Europea via mare nel periodo che va dal 2014 al 2017 è sicuramente impressionante; dire che questi quasi due milioni sono stati accolti da una società di circa 510 milioni di Europei ha un impatto sicuramente diverso. In secondo luogo, è importante ricordare che in realtà soltanto una parte dei flussi realmente esistenti raggiunge l'Europa, dato che quello che sta oggi avvenendo dovrebbe essere concepito più come un fenomeno mondiale piuttosto che solamente europeo.

Detto questo, è importante sottolineare come la situazione corrente sia caratterizzata da un ampio ricorso a opzioni illegali. In poche parole, i migranti tendono a privilegiare rotte e percorsi irregolari (e soprattutto pericolosi) per raggiungere l'Unione Europea. Questa scelta è motivata essenzialmente da due fattori: da un lato, la scarsità di vie legali offerte dai vari Paesi Membri; dall'altro, la paura di essere respinti o rifiutati. Gli itinerari maggiormente utilizzati dai migranti sono essenzialmente quattro: Mediterraneo occidentale (che collega l'Africa alla Penisola Iberica), Mediterraneo centrale (dal Nord Africa a Malta/Italia), Mediterraneo orientale (dalla Turchia alla Grecia), e i Balcani occidentali (usato sia dai migranti che, una volta giunti in Grecia, cercano di raggiungere i paesi del nord Europa, sia da popolazioni di paesi dell'est europeo). Le rotte sono, tuttavia, in continua evoluzione. Di conseguenza, la semplice chiusura dei confini non può essere considerata una soluzione capace di limitare efficacemente i flussi; di fatto, chiusa una rotta, i migranti non fanno altro che riversarsi su un'altra, che può essere sia già esistente, sia appositamente creata.

La scelta dell'itinerario può essere il risultato di un'analisi ponderata, oppure una semplice coincidenza. Se nel primo caso le persone possono optare per un percorso secondo criteri quali i costi del viaggio, la durata, i pericoli che si possono incontrare lungo il tragitto, la facilità/difficoltà di attraversare il confine, e così via, nel secondo caso la decisione può essere dettata semplicemente da obiettivi poco chiari (per esempio, non avere in mente uno specifico paese di destinazione) o dalla scarsità di informazioni possedute (ovvero, i migranti possono non essere a conoscenza dell'esistenza di altri tragitti). Questa però non è l'unica scelta che deve essere fatta. Infatti, prima di decidere che percorso seguire, le persone devono valutare se sia effettivamente giusto lasciare il proprio paese di origine. Una serie molto ampia di fattori viene presa dunque in considerazione, e disposta lungo uno spettro i cui estremi sono rappresentati dalle opzioni 'rimanere' o 'partire'. I principali elementi che si collocano lungo questa sequenza possono essere divisi in due categorie. Da una parte ci sono i fattori che 'spingono' i migranti a lasciare il loro paese, quali le caratteristiche personali (età, sesso, livello di istruzione, posizione lavorativa, ecc.), l'influenza della famiglia, la percezione che la comunità d'origine ha della migrazione, le reti sociali a cui si può avere accesso non solo nella fase decisionale ma anche nelle diverse fasi del processo migratorio, le informazioni in proprio possesso, e l'influenza che i trafficanti e gli scafisti riescono ad esercitare. Dall'altra parte ci sono i fattori che 'attraggono' i migranti verso un altro paese, come ad esempio il livello di benessere, i controlli ai confini, le politiche migratorie e di accoglienza adottate da quel paese, e così via. È necessario comunque sottolineare come un determinato fattore possa avere un'influenza diversa su soggetti differenti.

Dinanzi a una situazione le cui principali caratteristiche sono state appena descritte, i Paesi Membri dell'Unione Europea hanno dimostrato chiaramente la loro impreparazione, la quale ha contribuito a creare forti tensioni e divisioni tra i vari Stati. Alcuni hanno manifestato un più forte spirito umanitario, ritenendo che l'accoglienza dei migranti (nonostante il bisogno di una migliore regolamentazione) sia un dovere a cui l'Unione non può sottrarsi; altri invece hanno iniziato a spingere verso soluzioni sempre più radicali (come, ad esempio, la chiusura forzata dei confini europei).

L'obiettivo di questo lavoro è dunque quello di capire in che modo l'Unione Europea abbia gestito questioni concernenti immigrazione e diritto d'asilo, partendo dalle sue origini nel 1992 fino ad arrivare alla recente crisi. Per fare ciò, è stato necessario iniziare l'indagine esaminando

la storia della migrazione in Europea, poi affiancata da un approfondimento sull'evoluzione del controllo dei confini; questo studio ha di fatto permesso di capire l'origine dell'odierna percezione dell'immigrazione e degli immigrati, un elemento importante per comprendere il contesto in cui opera l'Unione Europea oggigiorno. L'excursus prende in considerazione il periodo che va dal sedicesimo secolo fino ai giorni nostri, ponendo particolare enfasi sugli avvenimenti che hanno caratterizzato il ventesimo secolo.

In breve, è possibile affermare che gli spostamenti di gruppi di popolazione hanno contraddistinto la storia europea per molti secoli; inizialmente, questi movimenti erano tendenzialmente motivati o da gravi perturbazioni (quali carestie, guerre ed epidemie) o da motivazioni economiche. Fino all'inizio del diciottesimo secolo, l'Europa era essenzialmente contraddistinta da una società agraria, basata su un sistema produttivo domestico e su una rete commerciale ben sviluppata. È inoltre in questo secolo che il trend demografico decrescente inizia a essere corretto. Tuttavia, ci si rende rapidamente conto che la popolazione stava crescendo più rapidamente rispetto alle opportunità lavorative; l'eccesso di abitanti viene perciò gestito tramite migrazione, principalmente da aree agricole/montagnose a quelle urbane, oppure da zone con un eccesso di offerta di forza lavoro a quelle in cui invece l'offerta era insufficiente. Due sono gli eventi che più profondamente modificano la struttura sociale del periodo: la trasformazione da società agraria a società industriale, e l'emigrazione verso l'America. Il processo di industrializzazione ha contribuito a trasformare non solo le dinamiche di produzione (aumentando la domanda di forza lavoro), ma anche il modello demografico europeo (passando a un sistema con bassa fertilità e bassa mortalità infantile). L'emigrazione verso le Americhe, invece, è stata motivata soprattutto da innovazioni nel settore dei trasporti e dai legami che l'Europa aveva precedentemente stabilito con questi territori durante la fase di colonizzazione. È importante evidenziare come la percezione di quest'ultimo fenomeno sia stata parzialmente fuorviata dai dati disponibili; in altre parole, i dati dell'epoca registravano soltanto i movimenti di persone che lasciavano l'Europa per raggiungere il nuovo continente, ma non tenevano nota degli spostamenti molto più significativi che avvenivano all'interno del vecchio continente stesso. In breve, la migrazione in Europa era molto significativa già a quell'epoca.

È però nel ventesimo secolo che si sono verificati i cambiamenti più importanti. Le due guerre mondiali hanno generato immensi spostamenti forzati di persone costrette a scappare dal

conflitto stesso e da persecuzioni di varia natura. Il periodo tra le due guerre rappresenta il primo vero momento nella storia europea moderna in cui i migranti hanno iniziato a essere effettivamente percepiti come un problema, se non addirittura una minaccia, per le società ospitanti. Questo sentimento si è rafforzato sempre più durante la seconda guerra mondiale, fino ad arrivare alla forma più estrema con la crisi petrolifera degli anni Settanta. Infatti, questo episodio ha messo profondamente in crisi il sistema liberale e universalistico (creato con la Convenzione di Ginevra relativa allo Statuto dei Rifugiati del 1951), dando spazio ad approcci privilegianti la promozione dei diritti (economici, sociali e culturali) dei 'veri' cittadini dei paesi europei. È questo il sentimento che ad oggi domina il pensiero comunitario.

L'analisi condotta in questa sede ha preso in considerazione quelli che sono i tratti determinanti e i cambiamenti che hanno caratterizzato l'approccio all'immigrazione dell'Unione Europea. Visto che il focus è proprio sull'Unione Europea (e non sui suoi predecessori), lo studio non può che partire dal 1992 (anno in cui è stato firmato il Trattato sull'Unione Europea) per arrivare poi, grazie al caso-studio scelto (la Dichiarazione UE-Turchia del 18 Marzo 2016), fino agli anni più recenti. Ovviamente, data l'attualità del tema affrontato, non è stato possibile analizzare gli avvenimenti contemporanei, ponendo dunque il limite della ricerca agli anni 2016-2017, ovvero un arco temporale sufficiente per esaminare le prime conseguenze derivanti dall'adozione della Dichiarazione UE-Turchia.

Per capire come l'Unione Europea abbia gestito la questione migratoria, è stato necessario compiere un'indagine su due livelli strettamente correlati. Il primo è quello della dimensione interna, espressione che indica la struttura normativa comunitaria in materia d'immigrazione. Detto altrimenti, la dimensione interna fa riferimento al processo con cui gli Stati Membri hanno trovato un accordo per gestire comunitariamente il fenomeno all'interno dei confini dell'Unione stessa. In poche parole, la dimensione interna è il risultato di un lungo e complesso lavoro di armonizzazione tra gli stati, i quali hanno dovuto allineare le loro politiche in base ad un sistema sovra-nazionale. Tuttavia, questo processo si è dimostrato essere particolarmente problematico, soprattutto a causa del modo in cui il tema dell'immigrazione viene generalmente concepito. Di fatto, la gestione dei migranti è una questione delicata, e gli stati dimostrano di avere grandi difficoltà nel cedere parte della loro sovranità in quest'ambito, preferendo mantenere una maggiore autonomia sul diritto di decidere chi (e secondo quali criteri) può entrare o meno nel territorio nazionale. Nonostante le difficoltà evidenziate, i Paesi

Membri hanno compiuto una serie di passi significativi nella direzione di una maggiore armonizzazione. I principali riferimenti in questo processo volto alla coesione interna sono: il Trattato di Maastricht del 1992, il Trattato di Amsterdam del 1997, il Consiglio Europeo di Tampere del 1999, il Consiglio Europeo dell'Aia del 2004, e il Consiglio Europeo di Stoccolma del 2009. Malgrado ciò, ulteriori sforzi sono assolutamente necessari; il livello di armonizzazione attuale non permette un'adeguata gestione comunitaria della questione migratoria. Di fatto, se da un lato gli stati sembrano essere maggiormente concordi riguardo a come affrontare congiuntamente l'amministrazione dell'immigrazione illegale, dall'altro la migrazione legale continua a essere particolarmente dibattuta. Nel complesso, si evince che (sebbene ci siano stati dei progressi) la dimensione interna continua a essere sottosviluppata.

Questo problema non è invece presente in quella che viene comunemente definita come la dimensione esterna della politica migratoria europea, la quale fa riferimento ai rapporti e alle collaborazioni che l'Unione Europea stabilisce con i paesi terzi (sia di origine che di transito) al fine di gestire congiuntamente il tema dell'immigrazione, un fenomeno internazionale per natura. Tale dimensione si sviluppa secondo due binari distinti ma complementari. La prima è la prevenzione, ovvero il tentativo dell'Unione di affrontare in modo deciso e definitivo le cause alla base del flusso di migranti; questo sforzo si concretizza attraverso operazioni concernenti l'assistenza allo sviluppo e gli aiuti umanitari. La seconda è l'esternalizzazione, vale a dire il tentativo di attribuire parte della responsabilità nella gestione dei flussi ai paesi terzi, riducendo così l'onere dell'Unione; questo processo avviene sia tramite un''esportazione' degli strumenti di controllo tipicamente europei, sia tramite condizionalità. La dimensione esterna riceve sicuramente molta più attenzione rispetto a quella interna; questo è dovuto al fatto che gli Stati Membri cercano di adottare tutte le opzioni che, in un modo o nell'altro, favoriscano il più possibile una diminuzione della pressione migratoria sui confini e sul territorio europeo. Tuttavia, ciò comporta anche dei problemi, quali ad esempio l'aumento delle incombenze e dei costi che devono essere sopportati e gestiti dai paesi terzi, e il rischio di una diminuzione della tutela e della protezione spettanti a rifugiati e richiedenti asilo.

I processi di prevenzione ed esternalizzazione vengono messi concretamente in pratica attraverso una serie di strumenti. I principali sono gli accordi di riammissione, le partnership per la mobilità, gli accordi sui visti (es. accordi di esenzione dal visto e accordi per la facilitazione del rilascio del visto), e infine fondi e aiuti finanziari di varia natura. Tutti questi

strumenti possono essere concepiti sia come accordi a sé stanti, sia come clausole e/o concessioni volte ad agevolare la conclusione di un accordo più complesso e ampio. Per esempio, l'Unione Europea può decidere sia di lavorare alla redazione di un accordo di esenzione dal visto con un paese, sia di negoziare un accordo di riammissione usando la concessione dell'esenzione dal visto come incentivo alla conclusione dell'accordo stesso. Inoltre, tutti questi espedienti rientrano in quelli che sono i programmi, i piani d'azione e le agende ideate dall'Unione nel corso degli anni, di cui l'Approccio Globale alla Migrazione, l'Approccio Globale in materia di Migrazione e Mobilità, e l'Agenda Europea sulla Migrazione sono gli esempi più significativi. Tutti questi strumenti e piani d'azione vengono perciò analizzati attentamente in questa sede, al fine di individuarne i pregi e i difetti.

Tenendo in considerazione tutti gli elementi presentati fino a questo momento, si cercherà di comprendere quale approccio per la gestione dell'immigrazione sia stato favorito dall'Unione Europea e dai suoi Paesi Membri, non solo nei suoi primi anni di attività ma anche oggigiorno nel contesto della cosiddetta crisi migratoria. Per poter supportare tale dibattito, si è ritenuto necessario (nonché particolarmente interessante) prendere in considerazione un caso studio. La scelta è ricaduta sulla Dichiarazione UE-Turchia conclusa il 18 marzo 2016. La Dichiarazione è il prodotto di un lungo e complesso processo di negoziazione, fortemente influenzato dalle preesistenti relazioni tra le due controparti. Infatti, i primi rapporti tra Unione Europea e Turchia risalgono ad alcuni secoli fa, ovvero ad un periodo in cui i territori e i sistemi politici sia dell'attuale Unione che della Turchia erano molto diversi da come sono oggi concepiti. Se inizialmente si trattava soprattutto di una relazione determinata dagli interessi economici e dalla vicinanza geografica, a partire dal 1959 essa è stata fortemente condizionata dal desiderio della Turchia di diventare parte integrante della comunità europea. La possibilità o meno di diventare un membro a tutti gli effetti dell'Unione ha da sempre rappresentato un tema oggetto di accesi e controversi dibattiti. Tuttavia, almeno fino ai primi anni del 2010, la Turchia sembrava avere poche (o addirittura nessuna) possibilità di poter realizzare questo suo obiettivo politico.

La situazione è profondamente mutata con l'inizio della crisi migratoria. Questo è principalmente dovuto al fatto che una delle rotte maggiormente utilizzate dai migranti per raggiungere l'Europa è quella del Mediterraneo orientale, ovvero il percorso che vede passare i migranti dalla Turchia alla Grecia. Questo avvenimento ha comportato da un lato una maggiore

irrequietezza e preoccupazione da parte dei Paesi Membri, i quali sembravano non essere capaci di gestire e arrestare i flussi; dall'altro lato, ha permesso alla Turchia di rafforzare la sua posizione negoziale rispetto all'Unione, ottenendo delle concessioni che non sarebbero state possibili in altre circostanze. Di conseguenza, è possibile affermare che la crisi migratoria abbia avvicinato le parti, dando nuovo vigore ai negoziati e (più in generale) al rapporto esistente tra i due.

Tuttavia, le dinamiche sono ben più complesse di quanto ci si possa aspettare. Per questo motivo, al fine di comprendere al meglio in che modo si sia giunti alla Dichiarazione del 2016, è importante analizzare tutte le principali caratteristiche che hanno contribuito al raggiungimento di tale risultato, prestando attenzione non solo alle posizioni e agli interessi delle parti, ma anche agli attori che maggiormente hanno avuto un ruolo nelle fasi di negoziazione; a questo si deve aggiungere la percezione dei vari Paesi Membri riguardo sia le modalità di negoziazione, sia i contenuti della Dichiarazione stessa. Inoltre, la conclusione di tale 'accordo' non può essere capita nella sua interezza senza un'adeguata considerazione dei due obiettivi precedentemente raggiunti, ovvero l'Accordo di Riammissione del 2013 e il Piano di Azione Congiunta del 2015.

Come si può notare, la parola *accordo* è stata scritta tra virgolette. Questo è dovuto al fatto che esistono delle accese discussioni riguardanti la natura legale di tale documento; è una Dichiarazione o un Accordo? Che implicazioni ne derivano? Ma questo non è l'unico problema; un'ulteriore (e forse più complessa e delicata) discussione concerne la dimensione etica. Numerose sono le preoccupazioni sorte in seguito all'implementazione della Dichiarazione, preoccupazioni sollevate soprattutto dalla società civile e dalle organizzazioni no-profit, le quali hanno percepito tale documento come uno strumento capace di minare in modo significativo i diritti e le tutele che spettano ad ogni singolo migrante. In poche parole, ci si domanda se l'Unione Europea abbia concluso tale Dichiarazione tenendo a mente quelli che sono i suoi principi fondanti (quali il rispetto e la promozione dei diritti umani), o se invece abbia dato la precedenza al suo obiettivo politico a breve termine di controllo dei flussi migratori. I risultati ottenuti ci permetteranno di ipotizzare se tale accordo possa essere considerato come un modello valido e, dunque, esportabile anche in altri contesti, o se invece l'Unione Europea debba compiere ulteriori sforzi al fine di raggiungere un esito in grado di

soddisfare sia le necessità dei Paesi Membri, sia le richieste dei paesi terzi, sia (e soprattutto) i diritti dei migranti.

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Introduction

Migration is a phenomenon as old as humankind; the foundation of the first societies and cultures cannot be understood without the recognition of the active role played by human displacement. At the same, migration is always new. Attributing to it features such as a static or immutable nature is not possible, since it is a process that keeps on transforming itself so as to adapt to the continuously evolving elements and events characterising a determined period of time. In a sense, migration is both the reflection of a specific epoch and one of its determinants, being it one of the driving forces at the basis of development, change, and innovation.

The current (so-called) refugee crisis, started with the Arab Spring and the consequent Syrian Civil War, is only the most recent manifestation of how some events (like wars, natural disasters, epidemics, economic crisis, and so forth) may be the cause of a massive and unexpected emigration which, in turn, produces significant changes and challenges both in sending and hosting countries. In the present case, the principal destination for refugees and asylum seekers is Europe. Hosting countries quickly started to feel overwhelmed by waves of people asking for help and protection, individuals who are ready to resort to any means capable of ensuring them a new life.

The European Union was caught unprepared. The management of migration does not represent anything new for this organisation that came into existence with the 1992 Maastricht Treaty, an institution which is 'only' an evolution of previous forms of community. In spite of the fact that the European Union can rely on a well-developed legal apparatus in the field of asylum and immigration, the proportions of this migratory phenomenon managed to destabilise its foundations. Member States did not agree with one another on the best way to deal with this emergency; some opted for the closure of European (or national) borders, others focused on the importance of promoting and defending communitarian chief values and principles (of which the protection of human rights and hospitality are key examples). The constant growth of the numbers of arrivals (and, unfortunately, of fatalities) combined with some Member States' feeling of having been abandoned in the management of the crisis increased the general discontent, to the point that the refugee crisis started to be considered the cause of a more serious internal political crisis, capable of dividing Member States and of bringing the Schengen system to its knees.

How has it been possible? Why do European countries seem to be unprepared or lacking the appropriate instruments for handling the flows of immigrants arriving at European borders on a daily basis? How is the migratory issue really managed by the Union? This thesis is the fruit of the efforts made by a young and convinced European citizen who strongly desires to understand the European Union's approach to migration and asylum from its origins in the 1990s to the recent refugee crisis, by taking into consideration the evolutions and changes it experienced over the years. The belief in the European Union's capacities is associated with an equal (if not stronger) academic interest for migration, issue on which the author has already delved into in another work, in that case with a focus on the stories and experiences lived by the most vulnerable categories (mainly, women and children) in a context of migration and displacement. Hence, the European Union and migration have to be considered the two conceptual pillars around which this whole dissertation pivots.

In order to be able to effectively analyse European policies in relation to migration and asylum, a meticulous and in-depth research has been carried out. The reference list includes a great variety of sources, from books to newspaper articles, from European acts and laws to research and working papers, from scientific articles to reports of international and non-governmental organisations. Books, scientific articles, laws and norms do constitute the skeleton, the hard supportive framework of the entire work, while the 'grey' literature served the scope of integrating and displaying possible interpretations of the main concepts provided by more scientific references. However, it has been necessary to 'break' this scheme in two circumstances. The first one is chapter 2 whose main topic (i.e. the current refugee crisis) is still poorly or not sufficiently analysed in more official materials (rather, more space is attributed to it in newspapers and reports of NGOs directly involved in the management of the process); this should be mainly attributed to its topicality. The second one is in chapter 4 (precisely, 2.4 The negotiations through the lens of the media), which is focused on the degree and quality of information received by Member States' citizens during the development of the negotiations of the EU-Turkey Statement; it goes without saying that newspapers and the media are the first indicators to be considered if the level of awareness of a country's population is to be examined.

The work focuses on the period that goes from the beginning of the 1990s to a few years ago (2016-2017 approximately). The reason for the chosen time period is quite obvious. The

starting point is determined by the moment in which the European Union was created, i.e. with the signing of the Treaty of Maastricht on 7 February 1992 (then come into force on 1 November 1993); this is because of the fact that the investigation aims at specifically understanding *the European Union approach* to migration and asylum, without considering the activities of its predecessors. The end is associated to the years 2016-2017 because of the topicality of the issues examined; in other words, in order to offer a clear and well-organised analysis, it has been necessary to establish a specific timeframe on which the research will focus. Since the selected theme is characterised by constant changes and updates (both in the political/legal domain and in the socio-cultural one), the author has deemed it appropriate to focus on a period on which precise and certain information is available, without attempting to report and explain more recent facts and evolutions. Obviously, this offers the possibility to conduct further research on the issue in future.

This thesis is divided into four main chapters. The first one opens with a brief explanation of the concept of migration, which is characterised by complexity and heterogeneity; these two features contribute to clarifying why there are so many divergent theories trying to explain the main causes of migration. The objective of this chapter is to provide a short presentation of the European migratory history and tradition, taking into consideration the period that goes from the sixteenth century (approximately) to the end of the twentieth century. Furthermore, due to the strict connections between migration and countries' borders, the issue of borders control is also considered, paying particular attention to the increasing use of technology in this context. All this information put together will help understanding how Member States' perception of migration and border management has changed over the years, and how this evolution has exerted an influence on and determined the current mechanisms and dynamics of migration management in the European Union.

The second chapter is devoted to the description of the recent so-called refugee crisis. To begin with, the very concept of migration crisis is carefully scrutinised, in order to understand if it is really possible to speak about a crisis as far as the European present situation is concerned. After having explored this matter, the main illegal routes chosen by migrants for reaching Europe are presented, and this is complemented with an analysis of the so-called push-and-pull factors, that is to say, the determinants pushing migrants away from their countries of origin and attracting them to the European ones.

The third chapter is the densest one in terms of contents dealt with. Here, the strategies and policies implemented by European Union since the 1990s in order to manage migration and asylum are examined. Two are the central themes of this chapter. The first one relates to the concepts of internal and external dimensions of the European migration policy; by addressing these aspects, this thesis has tried to explain why, on the one hand, it is so difficult for Member States to find an agreement as regards the internal policies to be adopted in order to jointly regulate immigration, and why, on the other hand, it has been much easier to develop a common approach as far as the relations with third countries are concerned. It has to be kept in mind that the external dimension develops along two rather different tracks, namely externalisation and humanitarian/developmental assistance to third countries. The second main subject matter is the European toolbox; in this section, the main instruments devised and deployed by the European Union are described delving into their pros and cons. Additionally, the main programmes and plans devised to implement these tools are considered. The chapter ends with a summary of the main deficiencies and problems observed.

The fourth and final chapter is devoted to the EU-Turkey Statement, concluded by the European Union and Turkey on 18 March 2016. This case-study has been selected among many others equally interesting because of three main reasons: firstly, its topicality; secondly, it constitutes a very good example of the way the European Union currently runs its relations with third countries with regards to the joint management of international migration; and thirdly, the difficult decade-long relations between the actors, which contribute to increasing the complexity and awkwardness of the negotiations. The chapter can be divided into four main blocks or thematic areas. The first one presents the contents of Statement. The second one focuses on the negotiations, starting from the background (the EU-Turkey relations and the way they have been influenced by migration, and the previous agreements concluded by these two parties on the same issue) and arriving to the concrete dynamics of negotiations, together with a consideration of both the main actors involved in the process and the way in which the negotiations themselves were perceived by the public opinion (through the lens of the media). The third block proposes some debates and discussions concerning the legal nature and the ethics of the EU-Turkey Statement. Finally, an evaluation of the main consequences and results deriving from the implementation of the Statement rounds up this section of the chapter.

The conclusion provides a short summary of the main contents illustrated in this thesis, offering some interesting reflections and considerations on both the way in which the European Union has decided to manage its crisis and the validity of solutions such as the EU-Turkey Statement.

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Chapter 1. A short history of European migration.

Summary. This first chapter opens with a brief presentation of the social phenomenon called migration, emphasising two of its main features (complexity and heterogeneity) which contribute to clarifying why there are so many divergent theories trying to explain the main causes of migration. Sub-chapter 1 (and its sections) proposes a presentation of a shortened but complete history of the evolution of migration in the European continent (from the sixteenth to the end of the twentieth century). Sub-chapter 2 focuses on the study of European borders control, due to the strict connection this issue has with migration.

From the earliest times, when the *Homo sapiens* was moving his first steps on Earth, the desire to travel and to migrate characterised his very essence. Migration has always been part of the human nature and, as such, it cannot be stopped. Heterogeneity and complexity are the two words that best reflect the quintessence of this social phenomenon, since it is not possible to give an all-encompassing definition of it, apart from affirming that it consists in the movement of persons within or between different regions of the world or, by using different words, the displacement of people from a point of origin to a point of destination, transiting through different intermediate legs, and involving different types of obstacles[1]. Complexity and heterogeneity have an effect on the way this topic is studied by researchers and scholars, who have encountered some difficulties in finding an agreement on the best way to deal with it. Moreover, when a more detailed observation of such phenomenon is made, a wide range of peculiar features emerges. Indeed, the distances covered during the journeys, their duration, the reasons pushing people in movement, and so forth vary according to historical, geographical, environmental, social, economic, and cultural circumstances. Therefore, only the most naive approach may presume it is an easy task to analyse migration in its most intrinsic characteristics.

An interesting instance that can be provided as a proof of both the complexity and the lack of a homogeneous viewpoint on the issue is the one of the theories on the causes of migration. Over

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[1] Everett S. Lee, "A theory of migration" in *Demography*, 1966, 3(1): 47-57.

the last centuries, several theories have tried to identify the key factor at the basis of migration[2], starting from rather different perspectives and reaching dissonant conclusions too. At first sight, these theories, which have been thoroughly illustrated in *The determinants of international migration. Conceptualising policy, origin and destination effects* by Hein de Haas[3], are apparently in contrast with one another. Functionalist migration theories are the first to be presented, due to their preponderance in the field of study; in particular, the Neo-Classical migration theory is the best-known application of this paradigm. In simple words, these theories are based on the idea that society is a system formed by various interdependent components which tend towards equilibrium. In this context, migration is the result of existing spatial disequilibria, that is to say, migrants move from one country to another because of unequal distributions of income, resources and opportunities[4]. This theory, which has broadly shaped the understanding of migration, should be criticised for the nonexistent role it attributes to migrants; as a matter of fact, these individuals are depicted as static, lacking any agency and power of decision[5]. They are subjected to migration, rather than being the agents of their movement.

The second theory to be proposed is the conflict theory (best represented by the New Economics of Labour Migration), which was born in reaction to the purely rational vision of migration typical of the functionalist theories. In this case, migration is seen as the product of a collective household strategy aiming at tackling poverty and market failures; in other words, people decide to migrate in order to escape from the economic difficulties they experience in their home country. Thus, the theory is considered to be particularly useful for understanding migration in developing countries, since people are supposed to move towards those countries

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[2] It has to be emphasised that such theories offer a quite modern insight on the causes of migration; this means that these theories cannot be applied in a scattershot and retroactive way, without having a proper awareness of the content of the theory and the context to which it has to be applied.

[3] Hein de Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* – International Migration Institute Working Paper No. 32 (DEMIG project paper No. 2). University of Oxford, April 2011. Available at: https://www.imi.ox.ac.uk/publications/wp-32-11.

[4] Ernst Georg Ravenstein, "The laws of migration" in *Journal of the Royal Statistical Society*, 1885, 48: 167-227; and Ernst Georg Ravenstein, "The laws of migration" in *Journal of the Royal Statistical Society*, 1885, 52: 214-301. Both sources are quoted in: Hein de Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* (see footnote 3).

[5] Hein de Haas, "Migration transitions: A theoretical and empirical inquiry into the developmental drivers of international migration" – International Migration Institute Working Paper No. 24 (DEMIG project paper No. 1). University of Oxford, 2010. Quoted in: Hein de Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* (see footnote 3).

which are characterised by better economic conditions[6]. However, also this second theory has a weakness, as it is not able to explain migration when it is not associated to economic factors (e.g. refugee migration)[7]. In a way, the conflict theory is much more similar to the functionalist theory than it was intended to be; indeed, both approaches are guilty for their lack of comprehensiveness, having tried to understand migration by using rigid labels and classifications not corresponding to concrete phenomena. The conflict theory finds expression in other paradigms as well, such as Marxism, the dependency theory and the world system theory[8]; they all share a common perception of migration as the by-product of capitalism and the consequent marginalisation of the rural population, which is then forced to migrate towards urban areas. Even in these cases, however, determinism and the predominance of the economic dimension over all the other possible factors make these paradigms not suitable for producing an all-comprehensive theory on the cause of migration.

A penultimate group of theories gears at correcting the economic and social biases characterising the other two theories already presented; in particular, migration transition theory focuses on the concept of development in origin countries, emphasising the fact that development actually increases migration movements instead of reducing them. This theory is becoming increasingly influential; many scholars and researchers have started to analyse the relation development-migration, and even the European Union is paying more and more attention to this dynamic (especially when strategies aiming at managing migration have to be devised)[9].

The final category of theories has the goal to combine traditional paradigms focusing on purely economic aspects as the main drivers of migration with a more social and personal dimension. This attempt wants to overcome the existing dichotomy (also reproduced by the terminology used) between economic migration on one hand, and the forced/refugee migration on the other. As it is going to be criticised several times in the following chapter (2), existing labels are too

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[6] Oded Stark and David E. Bloom, "The new economics of labour migration" in *American Economic Review*, 1985, 75: 173-178. This article is quoted in: *Hein de Haas, The determinants of international migration. Conceptualising policy, origin and destination effects* (see footnote 3).
[7] See footnote 5.
[8] *Ibidem*.
[9] On the relation development-migration, see for instance: 1) Leonhard den Hertog, *Money talks: Mapping the funding for EU external migration policy*, CEPS Paper, 2016, 95. 2) Sandra Lavenex and Rahel Kunz, "The migration-development nexus in EU external relations" in *Journal of European Integration*, 2008, 30(3): 439-457. 3) Nicholas R. Micinski and Thomas G. Weiss, "The European migration crisis: Can development agencies do better?" (Briefing 37), in *Future United Nations Development System*, January 2016.

rigid and "primarily reflect legal categories, which are useful for administrative procedure, but are not very meaningful categories to help understand migration as a social process"[10].

The critical presentation of all these theories and their drawbacks serves a double purpose: on the one hand, it is a confirmation of what has been stated in the opening lines of this chapter, i.e. migration is a hugely intricate and multifaceted phenomenon, on which scholars, theorists and researchers are not able to find an agreement (notwithstanding the important progresses made over the years, in particular thanks to the increased attention and interest this topic has raised); on the other hand, it aspires to emphasise a key point of the analysis made by Hein de Haas. Each theory taken in isolation is incomplete and incapable of giving an accurate account of the modern and present migratory reality; at the same time, every theory has the advantage of proposing an interesting perspective thanks to which migration can be observed in a different way. What needs to be done is to combine all the relevant contributions coming from each paradigm so as to produce an "all-encompassing and all-explaining"[11] new theory of migration. To put it in simple words, existing theories are not mutually exclusive; they can be combined to produce a better understanding of such a complicated and continuously evolving phenomenon.

Now, after a premise sanctioning the indissoluble link between human history and migration history[12], it can be affirmed that "migration out of, to and within Europe is nothing new"[13]; and when migration historians try to venture in the study of European migration, they find themselves 'entrapped' into a historical reality characterised by an extraordinary and nearly impenetrable complexity[14]. This can easily been explained by simply reminding that while Europe started to become a more unified entity during the twentieth century, previously it was an area in which numerous and diversified countries and population groups interacted and clashed with one another. On the basis of the most disparate factors (such as historical, geographical, economic, cultural, and so on), it is possible to identify different migration patterns characterising the main periods of European migration history.

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[10] See footnote 3, p. 14.
[11] *Ivi,* p. 15.
[12] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003.
[13] Heinz Fassmann et al., *Statistics and reality. Concepts and measurements of migration in Europe*, Amsterdam: Amsterdam University Press, 2009, p. 21.
[14] See footnote 12.

This chapter has the objective to present a shortened but complete history of the evolution of migration in the European continent, going from the early sixteenth century to the end of the twentieth century; differently, the recent refugee crisis characterising the period going from the 2010s onwards is described more in detail in the following chapter (2), being it of fundamental importance for understanding the context in which the European Union has negotiated the EU-Turkey Statement analysed in chapter 4. What is more, a section is devoted to the study of European borders control, since international migration becomes visible only when borders are crossed. As Aristide R. Zolberg affirmed[15], it is the very existence of states and their borders that allows the recognition of international migration, even if the globalisation process is challenging the same concept of border[16].

1. The main defining periods of European migration history.

In this section, the principal phases of the European history of migration are considered (in broad terms, the phase going from the sixteenth century to the industrialisation era, and the twentieth century). While the epoch previous to the twentieth century is described in more general terms, the same twentieth century has been paid more attention; this is because of the fact that it is in this century that the present perception of migration and migrants started to take its current form. Thus, if the present approach towards this salient issue has to be understood, its origins and developments cannot but be contemplated.

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[15] Aristide R. Zolberg, "The next waves: Migration theory for a changing world" in *International Migration Review*, 1989, 23(3): 403-430. This author is quoted in Andrew Geddes and Peter Scholten, *The politics of migration and immigration in Europe,* Sage, 2016.
[16] Huub Dijstelbloem et al., "The migration machine" in Huub Dijstelbloem and Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011: 1-21.

1.1 From the sixteenth to the nineteenth century. [17]

In the epoch following the Middle Ages, Europe was a continent in movement. The discovery of new territories occurred in the end of the fifteenth century (together with the possibilities annexed to it), wars, epidemics, famines, and limited options for work were all factors that contributed to put the European population in motion[18]. As it can immediately be inferred, the variety of reasons causing displacement was translated into different types of migration; as a matter of fact, people who in those years were forced to leave because of wars and famines cannot be equated to those who, instead, decided to migrate in search for better economic opportunities. This sentence should immediately sound familiar; in reading it, the reader cannot but draw a parallel between the situation of Europe in the sixteenth century and the current refugee crisis. As a matter of fact, while in the past European inhabitants were either forced to move because of some 'external' and uncontrollable factors or decided to do as such because they were moved by personal ambitions and by the wish to find better living and economic conditions, the same is true for the desperate migrants who are trying to reach the European Union on a daily basis since the end of 2014 approximately. It is true that the context is not the same, and that the great majority of movements happened inside Europe itself (if the migration towards the New World is not counted); however, it is also equally true that, at that time, European countries did not form a community, thus the flows of people characterising that period has to be considered a fully-fledged form of international migration. This simple consideration is not aimed at forcing a comparison or to detect similarities at present not studied by the existing literature; rather, it modestly tries to raise some sort of awareness (and, maybe, sensitivity) on the fact that the experiences[19] now lived by non-European migrants may be compared with those endured by the European ones in the past.

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[17] In writing this sub-paragraph (1.1), the contribution of Klaus J. Bade with his *Migration in European history* (Wiley-Blackwell Publishing, 2003) has been of the utmost importance. The book he wrote offers a very detailed analysis of the main migratory trends characterising the European history from the sixteenth to the twentieth century. During the research period, it has been difficult to find other sources adding significant contents to what Klaus J. Bade described in his book. This is the reason why the book has been chosen as the main pillar on which this sub-paragraph should be written.
[18] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003.
[19] The reasons pushing people in movement in the past (as said, wars, famines, economic crisis, and so on) can be equated to the ones currently guiding migrants' flows (this issue is going to be thoroughly addressed in chapter 2). As it happens nowadays, in the past migrants found it very difficult to be accepted by host communities; feelings such as diffidence, xenophobia, racism, fear and prejudices were common, and social and economic integration very difficult. This is why it is possible to say that the two situations may be compared with one another.

Until the beginning of the eighteenth century, Europe was essentially an agrarian society[20] which functioned thanks to a system based on domestic production and highly differentiated trade patterns; big cities had developed significant trade networks, while the rural areas kept on showing elements of underdevelopment. After having lived a phase of severe population decline principally caused by the factors already mentioned (i.e. wars, famines, epidemics, and so on), in the first decades of the eighteenth century the decreasing trend started to invert, allowing a correction of the population gap left by what Marcel R. Reinhard et al. classified as a "demographic crisis"[21]. However, it became quickly obvious that the population was growing more rapidly than the available options for work. The only solution was migration in the forms of labour migration and itinerant trade; the direction of the movements was either from agricultural or mountainous to urban areas, or from regions with insufficient working options to those where labour force was urgently needed. Generally, these flows were cyclical, that is to say that they were consolidated and tended to be reproduced over the years (even through different generations), even if in many occasions these transfers became definitive. The types of migration just mentioned did not involve only male heads of the household, but also youngsters capable of working. Essentially, this was because of the fact that the decision to migrate served a double purpose: on the one hand, thanks to it, emigrated family members would contribute to the household income; on the other hand, it alleviated the burden on poor families living in areas not offering sufficient options for subsistence[22].

An important change happened with the renowned transformation of the European area (especially the Western side) from an agrarian to an industrial society; this industrially-driven evolution was accompanied by an increasing interest aroused by the advancements occurring in the Atlantic economy[23]. The development trend was homogeneous neither among different European countries, nor within the single states; as a matter of fact, northern countries (mainly England and Germany) quickly became the new economic leaders, while the southern ones (such as Greece, Spain and Italy) actually lived their economic and productivity transition only in the first decades of the 1900s. As regards the revolution, the most significant economic and production segments involved were the textile sector, the construction industry (in particular as regards the building of roads, canals, railroads, but also residences and factories), the coal and

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[20] See footnote 18.
[21] Marcel R. Reinhard et al., *Histoire générale de la population mondiale*, Paris, 1968: 146-173, quoted in *ibidem*.
[22] See footnote 18.
[23] *Ibidem*.

steel industry, and the textile sector[24]. Each of these portions of the production mechanism attracted an abundant labour force which, in order to work, was willing to travel long distances and to settle into a new region or even country. The process of industrialisation had a relevant impact also on the household formation system. Indeed, during the pre-industrial phase, the European demographic model[25] was mainly characterised by high (child) mortality[26] and high fertility rates[27]; differently, some years after the beginning of the new era of production, the generative structure was changed, with a diminution of fertility accompanied by a parallel increase in children's life expectancy. These two determinants, accompanied by both the improvements of living conditions and welfare services and the decline of deadly-diseases, contributed to a constant growth of European population. However, during the initial phases of industrialisation, the growth of the population rate was again quicker than the development of new labour opportunities associated to the new production phase; what is more, this problem could only partially be resolved thanks to emigration flows (in particular, the ones directed towards the Americas). It is only during the most significant phase of industrialisation that the existing tension between supply and demand (i.e. the main cause of transnational migration in those years) started to be attenuated. It is also important to remind that, up until the years of high industrialisation, international labour migration was highly unregulated and unrestricted, since it is only after the emergence of the first forms of structured and well-defined welfare state (roughly in the second half of the 1800s)[28] that countries started to draw a distinction between national and foreign workers (or, in more general terms, between national citizens and foreigners) and, consequently, to restrict movements linked to labour reasons.

Industrialisation and population growth can also be considered together as the main factors encouraging a considerable process of urbanisation (which continued also during the twentieth

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[24] *Ibidem*.

[25] John Hajnal, "Two kinds of preindustrial household formation system" in *Population and Development Review*, 1982, 8(3): 449-494.

[26] Mainly caused by famine, epidemics and, more generally, poverty.

[27] In essence, large families.

[28] Chris Renwick, *Bread for all: The origins of the welfare state*, London: Penguin, 2018. It is usually believed that the welfare state saw its origins in the end of the Second World War, with the publication of the Beveridge Report; however, according to the author of this book, such origins have to be traced back to the nineteenth century, when Britain started to adopt a series of policies aiming at protecting workers and their families from the consequences deriving from workplace accidents. This was only the first of a long series of steps this country undertook (followed by other European partners, first of all Germany) so as to provide for its population's needs and to reduce social inequalities. But these measures had a cost, which was essentially covered through public money; hence, the need for the State to make a distinction between its native workers (i.e. those who pay the taxes and have the right to be assisted by the welfare state) and foreigners.

century), understood as both the development and enlargement of already existing cities and the emergence of new ones. This process, too, encouraged migration, in particular towards those cities or urban areas offering attractive labour opportunities[29]. Nevertheless, one should not make the mistake of believing that urban development was a synonym of countryside depopulation. In other words, if on one hand the period was characterised by flows of people moving from the rural areas to the cities, on the other hand migratory movements associated to seasonal (agricultural) needs were also present, hence avoiding a total depopulation of these areas. In a way, it is the same process of urbanisation that caused a rise in terms of labour migration associated to the agricultural sector; and this is because of two main reasons: firstly, people living in the cities were ready to temporarily migrate towards rural areas in exchange for labour retribution; secondly, and most importantly, the growth of cities (and of the number of people living in these cities) required an increase in agricultural production which, consequently, provoked an increase in the demand of seasonal workers.

Before concluding this section, some words should be spent for speaking about the process of emigration towards the new world[30], which was contemporary to the European transition from the agrarian to the industrial society. This emigration was possible mainly thanks to the innovations introduced in the transportation field; however, without the existence of strong connections between the two continents (established during the previous phase of Euro-colonial migration), the simple development of new technologies for transportation would not have been sufficient for explaining a migratory trend of such a magnitude[31]. The composition of migrants moving towards America was widely varied, including free settlers, representatives and officials of the church or the state, workers (mainly unskilled) and servants. These persons decided to undertake the journey either because they looked for better economic or social opportunities (since the majority came from peripheral areas) or so as to escape from regions of origins where crisis or conflicts were flaring up. The almost sudden rise in the demands of transportation brought about an augmentation of the costs of the transportation itself, and a parallel reduction of the quality of the services provided (i.e. the journey happened in pitiful conditions, without any form of respect for those who were emigrating). Flows continuously grew over the years up until the beginning of the twentieth century, fostered by the regulation

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[29] Heinz Fassmann et al., *Statistics and reality. Concepts and measurements of migration in Europe*, Amsterdam: Amsterdam University Press, 2009, p. 22.
[30] Frequently defined as an "exodus".
[31] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003.

of transportation, costs' reduction, and further technological advancements. Mass immigration from Europe was not accepted without complaint, though; rejection became more pronounced in the end of the nineteenth century, and it was associated to xenophobia (fomented by justifications having their roots in the exploitation of the fears local population had), prejudices and disapproval for different ideologies (being them political, religious, social, and so forth). In simple words, migrants were depicted as people excessively loyal to their country of origin, and as unskilled workers negatively impacting on the achievements arduously reached by trade unions. Such complaints and discontents got the attention of the political sphere, whose representatives began (in the 1890s) discussing some proposals on the restriction of immigration.

The history of European emigration towards America is very interesting, and much more can be said on this issue. However, now the objective is to direct readers' attention towards the way in which this phenomenon was perceived in comparison to national and intra-European migration[32]. Notwithstanding the dimensions and the significance of European emigration, internal movements should not be underestimated. Actually, this is what has happened. The reason for this misjudgement is related to the matter of data collection. As a matter of fact, while extra-European migration was (more or less precisely) recorded, data concerning intra-European migration were incomplete, generic and sometimes even missing. This example has to receive the proper attention, since it reminds that statistics may not always be accurate and, as such, an objective eye is necessary so as to give to data the correct interpretation; what is more, it allows affirming that, through an inappropriate use of data and information, it may be quite simple to manipulate people's perception of a issue[33].

To sum up, migratory movements caused by a great variety of reasons (such as labour, trade, development, and so forth) could be detected in Europe before the nineteenth century. However, "what changed with the industrialisation of the eighteenth and nineteenth centuries was the quantitative degree of intra-European and intercontinental migration, as well as the

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[32] Heinz Fassmann et al., *Statistics and reality. Concepts and measurements of migration in Europe*, Amsterdam: Amsterdam University Press, 2009.

[33] It has to be clear that the example just provided is not a case of data manipulation. Wrong statics have been caused by the inefficiency or rudimental nature of the systems of data collection used in those years. Nevertheless, the example has allowed the reflection proposed, hoping that it may be a point of departure for further considerations on the issue, in particular in the context of the recent European refugee crisis.

average distance of migration"[34]. To put it in simple words, "geographical mobility 'exploded' in the nineteenth century"[35].

1.2 The beginning of the twentieth century and the two World Wars.

The period of transition from the end of the nineteenth century and the beginning of the twentieth century is associated to the emergence of a very specific European labour migration pattern, characterised essentially by the movement of people from eastern and southern countries to northern ones (especially France, Germany and the Netherlands)[36], basically as a result of the same stimulus for personal economic improvement that guided people's actions also in the previous century. These movements of workers were mainly encouraged by the important progresses made in the infrastructural and transportation fields, producing a reduction of both the costs and the times of travel. In parallel, the mass emigration towards America continued.

But the notorious characteristic of the first half of this century is the presence of two of the most tremendous and dramatic conflicts of the history, namely the First and Second World Wars. Destruction, fatalities, massacres, suffering, and inhumanity are only some of the words that can be used to describe this thirty-year period. Another, fundamental one is migration; "immense refugee and forced migration – beyond the mass military movements – accompanied the two world wars and their aftermath"[37]. If the same presence of an ongoing conflict is per se sufficient to understand the reasons at the basis of migration[38], more caution is necessary for analysing both the interwar and the post-war periods (the latter being discussed in the

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[34] See footnote 32, pp. 21-22.
[35] *Ibidem*.
[36] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003.
[37] *Ivi*, p. 165.
[38] Wars of such magnitude provoke important movements and displacements of people, who either try to escape from the very conflict (i.e. they move away from the battlefield and the surrounding areas) or from the consequences of such conflict, like unemployment and lack of basic commodities. Moreover, it has to be kept in mind that, at the outbreak of the War, people living and working within a country different from the one of origin were numerous (because of the flows and movements of the previous decades and century). Their presence became a problem when they started to be considered as infiltrated citizens of enemy countries, hence being a threat for the security of the country and for the possibility of winning the war; consequently, so as to find a solution, these persons were expelled, repatriated, forced to resettle or even interned.

following section – 1.3). Echoing the words of Mark Mazower[39], the Europe of the inter-war period does not offer a praiseworthy image of itself if countries' behaviour in the field of democracy and human rights protection and promotion is taken into consideration. As a matter of fact, it was during those years that it was possible to observe the promotion of laws and measures aiming at both reducing the rights of minorities and limiting the possibility of movements, so as to increase the chances of maintaining a strict distinction between pure nationals and 'impure' foreigners. It is not necessary to recall that this social climate reached its most extreme form with Nazism and the purge of Jewish people.

An additional element worth considering is the displacement caused by the conclusion of the Treaties of Peace ending the First World War, and sanctioning the beginning of a new European order in which the concept of national self-determination was particularly catching[40]. In the name of this principle, the leaders of those years decided to re-organise the borders between the existing states, and to draw the new ones necessary for dividing those empires which had come to an end because of the war[41]. However, these new boundaries were established by taking into consideration the interests of powerful protagonists, rather than by analysing the consequences for the common people living in these territories. Accordingly, the main outcome was the appearance of numerous groups of ethnic minorities which were encouraged (if not forced) to leave so as to find a new accommodation in a proper country[42]. In simple words, refugee migration did not end with the war, but it continued also in the following years up to the point that it reached "proportions that had been unheard of even during the First World War"[43].

Another constituent factor of the interwar period was the economic crisis, which mainly originated from war itself, that is to say, from the destruction it caused, from the need to

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[39] Mark Mazower, *Dark continent: Europe's twentieth century*, London: Vintage, 2009. This author is quoted in: Ali Bilgic and Michelle Pace, "The European Union and refugees. A struggle over the fate of Europe" in *Global Affairs*, 2017, 3(1): 89-97.
[40] The principle of self-determination is quite an awkward one, since it was invoked only in those situations in which it was convenient to do so. For instance, while the US President Woodrow Wilson strongly believed in and even supported the application of this principle in Europe, the same was not true for the colonies. In a way, the underlying idea was that only European peoples deserved the right to self-determination. Differently, colonies' inhabitants (being 'inferior') did not need to enjoy this right; hence, they could continue to be subjected to European dominators' will.
[41] Alberto De Bernardi and Scipione Guarracino, *La conoscenza storica. Manuale, fonti e storiografia. Vol. 3: Il Novecento*, Milano: Mondadori, 2000, pp. 35-36 and 67-71.
[42] Heinz Fassmann et al., *Statistics and reality. Concepts and measurements of migration in Europe*, Amsterdam: Amsterdam University Press, 2009, p. 26.
[43] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003, p. 181.

reconvert arms production so as to satisfy the demands typical of a peacetime economy, from inflation, and from border closure. What deserves the most attention in this context are not the historical developments per se[44], but rather the effects such context produced on migration. As a matter of fact, it can be noticed that the first significant measures in favour of the restriction of people's freedom of movement were introduced exactly during the 1930s; and this is due to a combination of economic, political and social factors which convinced European leaders of the urgency of limiting the entrance of foreigners and refugees in their territories[45]. Thus, the introduction of increasingly stricter controls and regulations in the economic and social fields (so as to cope with the difficult situation of the post First World War) had a profound effect on the way in which migration was perceived and managed during the interwar period. Let's make a brief digression, or better let's ask a frank question: in reading these lines, has it not come to readers' minds that there may be a similarity between the way in which migration was perceived during the inter-war period and the way in which it is currently perceived? In other words, can it be denied that the existence of a complex and precarious context (in particular when the economic situation is concerned) usually leads to the exasperation of the feelings towards migrants? And further, being aware of the consequences these feelings produced over the years, should we not be afraid of the outcomes which may derive from the present system chosen for managing migration? At this point in the paper, it is too early to try to answer to these questions; nevertheless, keep them in mind because the right moment to reply will come.

With the Second World War, the migratory trend experienced during the previous conflict reappeared, and it even took up pace. Indeed, military mobilisation and populations' movements were greater than in the past, both in terms of covered geographical distance and of number of people forced to leave[46]. The main causes for displacement were Nazism and Fascism, which forced millions of Jewish persons (but also disabled, homosexuals, gypsies, and political enemies[47]) to escape and find shelter in countries granting protection to these

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[44] Of course, history has always to be attributed the importance it deserves; nevertheless, it is not the objective of this thesis to provide a thorough report of all the historical events happened in the periods considered. Rather, history serves as the background allowing understanding the changes in the dynamics and perceptions of migration and migrants.
[45] Christina Boswell, "European values and the asylum crisis" in *International Affairs*, 2000, 76(3): 537-557.
[46] See footnote 43.
[47] Alberto De Bernardi and Scipione Guarracino, *La conoscenza storica. Manuale, fonti e storiografia. Vol. 3: Il Novecento*, Milano: Mondadori, 2000, pp. 191-196.

refugees, such as America[48]. To them, one should add all the persons who were compelled to leave their homes because of the advances and conquests of German troops. All this can be summarised by saying that German policies and actions were guided by the desire to affirm the superiority of the Aryan race and to conquer the *Lebensraum*. What is more, at least in the first years of war, the flows of displaced people was further increased by the thousands who, during the Spanish Civil War (1936-1939), escaped from Spain and looked for hospitality in other European countries, especially France[49].

1.3 From the 1950s to the opening of the new century.

The atrocities perpetrated during the two World Wars, and in particular during the Second one, left an indelible mark on people's minds and consciences. It was in response to the events occurred during the so-called thirty-year war that political leaders from all the world decided that it was necessary to create a framework under which better coordination between countries was possible. In simple words, a tentative was made aimed at creating an international organisation capable of peacefully managing international relations. As a consequence, on 26 June 1945, fifty-one countries signed the *Charter of the United Nations*[50] in San Francisco. What is more, significant steps were made in the field of human rights protection, with the drafting on the part of the General Assembly of the United Nations of the *Universal Declaration of Human Rights*[51]. The same holds true in terms of refugee protection since, as it has been explained, the decades of wars were also decades of movement and displacement of people whose status was not internationally determined. Accordingly, the United Nations adopted on 28 July 1951 the *Convention relating to the Status of Refugees*[52]. Originally, the Convention applied solely to refugees in Europe; therefore, the way in which refugees were perceived and the rights they were entitled to were shaped according to a European (or, more

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[48] Remember that when speaking about the flows in Second World War Europe, the utmost importance has to be attributed to the phenomenon of deportation, which significantly fuelled the numbers of the people in movement.

[49] There, the conditions of reception and hospitality of refugees were poor and inadequate, essentially because of both the sudden massive influx of people and because of the beginning of the Second World War. For a detailed analysis of this event, see: Geneviève Dreyfus-Armand, *L'exil des Républicains espagnols en France. De la guerre civile à la mort de Franco*, Albin Michel, 1999.

[50] United Nations, *Charter of the United Nations*, 26 June 1945. San Francisco: United Nations. The Charter, which entered into force on 24 October 1945, laid the foundations for a new international organisation substituting the precedent League of Nations (founded during the Paris Peace Conference of 1919).

[51] United Nations, *Universal Declaration of Human Rights*, 10 December 1948. Paris: United Nations.

[52] United Nations, *Convention relating to the Status of Refugees*, 28 July 1951. Geneva: United Nations.

generally, Western) viewpoint. Then, with the adoption of the 1967 *Protocol relating to the Status of Refugees*[53], the geographical limitation was lifted, granting the Convention an almost global coverage. The adoption of the Refugee Convention marked the beginning of a "'liberal universalist' approach to asylum"[54]. This expression conveys the idea of a system which is liberal because it provides to individuals adequate protection against every possible threat to the personal freedom, dignity and life; and it is universal because it is based on an impartial and indiscriminate application of the rights and principles this document contains.

The post-war period was characterised by considerable flows and movements of people not only between European countries but also of migrants coming from outside Europe. This is associated to two main factors, namely reconstruction and the dismantlement of colonial empires. As regards the first aspect, the aftermath of the war was characterised by an intense economic activity mainly directed towards the reconstruction of a continent devastated by bombs and tanks. Recovery was supported by the 1947 Marshall Plan (also known as European Recovery Programme), which thanks to loans or unconditional economic aid tried to help Europe in the process of reconstruction, economic development and employment growth[55]. So, in a so positive and encouraging climate, immigration was perceived in quite a positive way, since the work of immigrants contributed to the process of reconstruction[56]. What is more, it is also possible to say that the positive feeling towards these migratory flows was partially based on the idea that, sooner or later, these migrants would have returned to their country of origin; in other words, immigration was assumed to be a temporary phenomenon only encouraged by the favourable economic conditions of the post-war years[57]. As far as decolonisation is concerned (i.e. the second factor), with the end of the war, European colonial powers began conceding freedom and independence to the colonies formerly under their control. This process was the result of both a new moral awareness of colonial powers and of the inability of countries (brought to their knees by the war) to maintain a firm control over distant and (in some cases) rebelling colonies[58]. Several inhabitants of newly independent countries, however, preferred to migrate to Europe, since living conditions there were better than those in their

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[53] United Nations, *Protocol relating to the Status of Refugees,* 31 January 1967. New York: United Nations.
[54] Christina Boswell, "European values and the asylum crisis" in *International Affairs*, 2000, 76(3), p. 539.
[55] Alberto De Bernardi and Scipione Guarracino, *La conoscenza storica. Manuale, fonti e storiografia. Vol. 3: Il Novecento*, Milano: Mondadori, 2000, pp. 275-276.
[56] Andrew Geddes and Peter Scholten, *The politics of migration and immigration in Europe,* Sage, 2016, p. 8.
[57] *Ibidem*.
[58] See footnote 55, pp. 279-286.

country of origin. This is particularly true for states such as France, Belgium, Great Britain and the Netherlands, which experienced high rates of immigration[59]. Similarly, but in consequence of a different cause, Germany underwent an important inflow of people (around twenty million) which returned to their homes after having been forced to leave during the war[60]. In spite of what has just been described, it has to be highlighted that "a clear preference for European immigrants"[61] was evident; this can be proved by referring to the quotas some northern countries introduced so as to limit the 'import' of foreign workers.

It is only during the 1970s, essentially in response to the oil price shock of 1973 and the consequent economic stagnation, that the perception of immigration and immigrants started to assume quite a negative connotation. More and more frequently, European receiving countries tried to introduce measures aiming at restricting the inflows of people (especially workers). This defensive attitude was further strengthened by the reinforcement of nationalist and xenophobic ideologies[62], which tended to describe immigrants only in terms of costs borne by the state and opportunities stolen to the 'real' citizens of the country. New regulations, however, did not always produce the expected outcomes[63]. As a matter of fact, while a limited proportion of migrants already living in the European territory was effectively returned to countries of origin, the greater majority not only permanently settled (thus refuting the assumptions made in the 1950s-1960s), but they were also joined by their families. In other words, the limitation on the part of European countries of the legal options for migration forced migrants to look for other opportunities, such as family reunification, asylum applications and illegal immigration[64]. By rephrasing what has been said so far, the 1970s crisis put under pressure the liberal universalist approach brought into existence with the Refugee Convention of 1951, leaving space for two main kinds of arguments, respectively based on the concepts of welfare and ethno-centrism[65]. In essence, while the welfare-based model focuses on the importance of primarily promoting and safeguarding both the economic and the social rights and benefits which nationals are entitled to, in the ethno-centric argument the greater

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[59] Klaus F. Zimmermann, *European Migration: What do we know?*, New York: Oxford University Press, 2005, p. 4.

[60] *Ibidem*.

[61] Christina Boswell, "European values and the asylum crisis" in *International Affairs*, 2000, 76(3), p. 549.

[62] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003.

[63] Heinz Fassmann et al., *Statistics and reality. Concepts and measurements of migration in Europe*, Amsterdam: Amsterdam University Press, 2009, p. 29.

[64] Christina Boswell, "The 'external dimension' of EU immigration and asylum policy" in *International Affairs*, 2003, 79(3): 619-638.

[65] See footnote 61.

importance is given to factors such as race, culture and ethnicity. In brief, in spite of the fact that they are originated from different perspectives, both arguments are invoked so as to halt and restrain immigration in Europe. As it will be seen later, they do not have lost their grip over the years, since they can both be met again in the debates about the recent refugee crisis.

The last step in the direction of a more restrictive attitude towards immigration is associated to the end of the Cold War, when the walls and borders dividing Europe and separating it from the Eastern world were destroyed; migrants were obviously able to take advantage of this evolution. Additionally, the dissolution of the Soviet Union and the ongoing conflicts in Yugoslavia increased the numbers of people wanting to find a shelter in Western Europe. On the whole, all the happenings mentioned contributed to a diversification in terms of both the migrants' countries of origin and the European countries which were actually chosen as destination[66]. As it can be expected, European countries, which had already undertaken their path towards a more 'exclusive' Europe[67], felt threatened by the new developments, and reacted accordingly. In particular, they started to give serious consideration to the possibility of externalising migration control[68], that is to say, to delegate to neighbouring non-European countries the task of controlling the borders and to limit the inflows of migrants into Europe[69]. Being this issue strongly related to the controls of European borders, it will be thoroughly discussed in the following section.

2. The evolution of borders control.

The history of (European) migration is strongly interrelated to the history of (European) borders control. However, in this case, the story is quite a shorter one. Indeed, there is a specific event which marks the separation between what was before and what is today. This seminal moment is represented by the 1985 Schengen Agreement[70]. In this sub-chapter, the

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[66] Andrew Geddes and Peter Scholten, *The politics of migration and immigration in Europe,* Sage, 2016, p. 9.
[67] The more restrictive attitude has become a constant in the European approach to migration and asylum. This is going to be demonstrated in the following chapters.
[68] The concept of externalisation is analysed more in detail in chapter 3.
[69] See footnote 64.
[70] *Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.* 14 June 1985, Schengen: contracting parties.

exact evolution from a pre- to a post-Schengen Europe is analysed, so as to comprehend how some changes in the management of countries' borders may impact on migratory trends.

The expression 'border' is used to describe a demarcation line which separates "two countries, administrative divisions, or other areas"[71]. The capacity and power to exert control over territorial borders (and, consequently, to decide who can enter the national territory or who has to be excluded from it) is one of the most important expressions of state sovereignty[72]. It is not difficult to understand why European countries have found (and, to some extents, keeps on perceiving) it problematic to leave this authority into the hands of a supra-national power represented by the European Union. Indeed, even after the creation of the first forms of Community within the European continent (such as the European Coal and Steel Community and European Economic Community), control over borders, but also over migration, was exerted at the national level. This means that every country decided on its own how to deal with migration and who was entitled to enter (or not) its territory. What is more, even the creation in 1993 of a Single European Market based on the freedom of movements of goods, services and capitals seemed to have not been sufficient for promoting people's freedom of movement[73]. As it has been demonstrated throughout this chapter, the power to control borders allowed European countries to react to specific economic and social dynamics by adopting all the measures they judged necessary. For instance, during the inter-war period, European countries, being oppressed by both the difficulties associated to reconstruction and by the economic crisis, decided to close their borders in order to limit the influx of immigrants which could provoke further pressures on the weak and precarious economic conditions. Again, during the 1973 oil shock, European countries thought it indispensable to 'isolate' themselves so as to have the possibility of recovering from the consequences of the crisis.

Nevertheless, it is necessary to take a small step back. Why is the concept of border so important for defining international migration? As it has been revealed in advance in the introduction of this chapter, borders are the place where international migration becomes

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[71] Oxford Dictionary online, *Border*. Available at: https://en.oxforddictionaries.com/definition/border.
[72] Andrew Geddes, "Europe's border relationships and international migration relations" in *Journal of Common Market Studies*, 2005, 43(4): 787-806.
[73] Andrew Geddes and Peter Scholten, *The politics of migration and immigration in Europe,* Sage, 2016.

visible[74]. It is only by crossing a border that the movement of a person can be detected. It is not by chance that internal migration is much more difficult to be measured as compared to the cross-border form[75]. Another example in support of this argument has already been provided in section 1.1, when it has been demonstrated that, in the eighteenth century, the rate of emigration towards the New Continent was very similar to migratory movements inside Europe. However, while the crossing of internal European borders happened almost freely, the same was not true for the American ones. Indeed, the moment a foreign citizen crossed external European and American borders, his or her presence was recorded and, consequently, noticed.

The very moment in which national sovereignty over borders started to be undermined was on 14 June 1985, when the Governments of the French Republic, the Federal Republic of Germany, the Kingdom of Belgium, the Grand Duchy of Luxembourg, and the Kingdom of the Netherlands agreed to cooperate so as to gradually abolish controls at their common borders[76]. This is commonly known as the Schengen Agreement. It aimed at facilitating the crossing of internal borders on the parts of goods, services and (most importantly) people, while external borders should be reinforced so as that the entrance of citizens not belonging to the contracting parties could enter this 'small Union' only through the official border crossing points and only at the hours established by law[77]. This can be considered a first step in the direction of the revolution of border management. However, two aspects have to be kept in mind. Firstly, only the five countries part of the Agreement effectively experienced the shift towards a more 'supra-national' form of borders control; secondly, it happened because it was their will to do so.

However, it is only with the conclusion of the Treaty of Amsterdam[78] that the Schengen *acquis* acquired relevance on a European scale, being thus applicable to all the parties on the exact

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[74] Aristide R. Zolberg, "The next waves: Migration theory for a changing world" in *International Migration Review*, 1989, 23(3): 403-430. This author is quoted in Andrew Geddes and Peter Scholten, *The politics of migration and immigration in Europe,* Sage, 2016.

[75] Heinz Fassmann et al., *Statistics and reality. Concepts and measurements of migration in Europe*, Amsterdam: Amsterdam University Press, 2009, pp. 30-31.

[76] *Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*. 14 June 1985, Schengen: contracting parties.

[77] See, in particular, artt. 2 and 3 of the Convention.

[78] *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts*, 2 October 1997. Amsterdam: European Union. The contents of the Treaty of Amsterdam are going to be analysed more in detail in chapter 3. Here, the focus is exclusively on its relation

moment of entry into force of the Treaty itself[79]. It is thanks to this milestone that the questions associated to immigration, asylum and borders control (together with the related dimension of people's freedom of movement) took a more communitarian dimension. In simple words, there is a shift from a more intergovernmental form of cooperation (i.e. cooperation between sovereign states) to a supranational dimension[80]. Nevertheless, this transition was not an easy one. Before being ready to cede part of their state sovereignty, Member States required not only the presence of complex and in-depth negotiations, but also the introduction of strict rules capable of ensuring the adequate level of protection for both the countries themselves and their citizens. To put it another way, the protective measures and securities previously guaranteed by national authorities have to be now provided by the European Union. The essence of Schengen *acquis* is simple: eliminate internal borders control to facilitate the movement of people, goods and services, and simultaneously reinforce external borders; at present, external borders cover "approximately 8000km land borders and 43,000km sea borders"[81]. The strengthening of external controls is necessary so as to ensure a minimum level of protection for the Union and its citizens; in order for this objective to be reached, specific norms and provisions concerning not only borders control but also related aspect such as visas, residential permits, readmission agreements, and so forth started to be implemented[82]. It is important to remember that the Schengen *acquis* also represents an inevitable prerequisite for candidate countries. Indeed, they have to demonstrate being able to fulfil some legal and practical demands in terms of borders control and halting of illegal immigration. This is because accession provokes a sort of shifting of the European external borders; so as to keep on providing adequate guarantees to Member States and their citizens, new countries have to deploy all the necessary instruments for bearing the burden deriving from the status of being a European border country.

In essence, the factors analysed so far offer adequate support to the idea that, since the mid-twenty century, European states have undertook a path for the establishment of what Andrew

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with the issue of borders control. Remember that it was in 1992 that the European Union as it is known today came into existence.

[79] This is possible thanks to the *Protocol integrating the Schengen acquis into the Framework of the European Union*.

[80] Rosemary Byrne et al., *New asylum countries? Migration control and refugee protection in an enlarged European Union*, The Hague: Kluwer Law International, 2002, pp. 325-328.

[81] Huub Dijstelbloem et al., "The migration machine" in Huub Dijstelbloem and Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011, p. 1.

[82] See footnote 80.

Geddes has defined as "Fortress Europe"[83]. While Europe is increasingly facilitating internal movements, it is deploying all the measures and strategies allowing the reaching of a specific objective, i.e. limiting the entrance of unwanted immigrants. This dimension is going to be further analysed in chapter 3, when the concept of externalisation is taken into consideration. In short, since the 1990s, the European Union has proven to be interested in conceding to neighbouring non-European countries the power to manage and control European external borders; actually, what is happening is a real form of burden shifting, that is to say, the attribution of more and more responsibilities and costs to the neighbours, sometimes in exchange for false hopes of memberships. But again, this is going to be one of the main topic of debate and discussion of the third chapter.

2.1 The technologisation of borders.

Before concluding, it is useful to understand how the activity of borders controlling and monitoring is now carried out by the European Union. Indeed, in spite of the fact that greater responsibilities are attributed to neighbouring countries, a significant portion of the task remains in the hands of Member States themselves and of European institutions and agencies. According to the numerous contributors to the book *Migration and new technological border of Europe*[84], while in the past border surveillance was exclusively exerted by the state through the use of passports[85], at present it is technology that represents one of the key factors for this kind of activity (and this is the reason why the expression "e-Border" is used more and more frequently). Thus, technology contributes to determine the nature and features of borders. The shift from a 'concrete' to a technological (and digital) form of border surveillance is partially a reflection of the contemporary transformation of the concept of nation-state, a transformation that happened in response to globalising dynamics; indeed, it is because of globalisation that

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[83] The expression "Fortress Europe" has its origin in the Second World War, when it was used to define that part of Europe occupied by Nazi Germany; at that time, the project was to create a fortified Nazi-Europe capable of keeping the Allies outside (i.e. *Festung Europa*). Nowadays, the term refers to the process of creation of a European Fortress aiming at impeding to migrants to enter (or remain in) this territory; this happens thanks to the adoption of a series of measures (such as closure of borders, conclusion of return and readmission agreements, and so forth).

[84] Huub Dijstelbloem and Albert Mejer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011.

[85] David Lyon, *Surveillance studies: An overview*. Cambridge: Polity Press, 2007. Quoted in Dennis Broeders, "A European 'border' surveillance system under construction" (in Huub Dijstelbloem and Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011: 40-67).

borders have started to be considered a recent expression of the newly-born international regime. In other words, borders and their monitoring have adapted to the new reality.

The introduction of technology allows increasing monitoring and control not only of migration patterns, but also of mobility in general. Countries have positively welcomed and even encouraged the use of modern technology since, in an increasingly globalised world, it seemed to represent the only available option allowing some sort of control over borders themselves[86]. When the expression technology is used, the reference is both to its practical applications (like the use of various types of vehicles and instruments – such as video cameras) and to its more subtle innovations, of which biometric scans and virtual registers are the most interesting examples[87]. It may be observed that the latter form contributes to the regulation of migration not only on borders, but also within the European Union itself. As a matter of fact, once personal information is recorded at a point of entrance, it may be recovered and consulted every time it may be necessary; the airport checking procedure provides an easily understandable instance of the application of these new monitoring technologies.

The most important examples of digitalisation and technologisation of border surveillance in the European Union are four[88]. The first one is the Schengen Information System (SIS), a central database recording information on people crossing European borders. While the system was originally devised according to the goal of maintaining security and order within Europe, it was actually used for a migration-tracking scope; more in detail, the SIS contained useful information about either persons who are considered unwanted foreigners, or individuals who claimed having lost or having been deprived of their identification documents. However, this system had a relatively limited scope and range. It was for this reason that, in a first phase, it was compensated by the Supplément d'Information Requis à l'Entrée Nationale (SIRENE), which was equipped with the necessary options allowing both the recording of additional information (such as photographs or biometric data) and the exchange of such information. But this was not sufficient, either. In view of the imminent European enlargement and of the increased flows of people, the decision to substitute the existing dual system with a new one was taken in December 1996. In brief, this new upgraded version (SIS II) was based not only

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[86] Dennis Broeders, "A European 'border' surveillance system under construction" in Huub Dijstelbloem and Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011: 40-67.

[87] Huub Dijstelbloem et al., "The migration machine" in Huub Dijstelbloem Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011: 1-21.

[88] See footnote 86.

on the demands for greater storage capability, but also on the importance of exchanging the available information with other organisations and archives, so as to create a richer data framework offering a better overview of the European migratory situation. The third system worth considering is the European Dactylographic System (Eurodac), which was created so as to provide support to the Dublin Convention[89]. Accordingly, data stored in this database should provide information to Member States on the applications already lodged by asylum seekers; in this way, the problem of asylum shopping (i.e. the lodging of applications in countries in which the probability of acceptance is greater) can be attenuated. What is more, this system also makes it possible to detect irregular migrants for expulsion purposes. The fourth and final digital database is the Visa Information System (VIS). As the name suggests, its aim is to record all the existing information about issued visas and, most importantly, on their expiry date. This is particularly relevant because of the fact that a considerable share of irregular migrants present in the Union territory are irregular because they are overstayers[90]. This database represents an important pillar in the fight against illegal immigration, since it provides a complete set of notions about the migrant, the reasons why he or she has applied for the visa, why the visa is conceded, refused, withdrawn and so forth. What is more, it also includes information about the persons which have lodged a specific application (e.g. relatives or helpers). Finally, it even records biometric data, such as fingerprints.

At this point of the discussion, some doubts about both the efficiency of new instruments and their ethicality may arise[91]. Are new developments really helpful in terms of increased border surveillance? Is the recording of personal (biometric) information immune from mistakes? Due to the topicality of such issue, it is not possible to provide an all-encompassing response; some considerations can be made, anyway. To begin with, the simple fact of recording personal and biometric (intended as fingerprints, saliva, hair, and so on) information of persons can be considered a violation of both their privacy and their physical integrity. This is a matter of contention of relative importance, though; it is very likely that the vast majority of people would be willing to provide these types of information in exchange for greater personal

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[89] The Dublin Convention (or Dublin Regulation) is the European law establishing the criteria according to which it is possible to determine which Member State is responsible for the examination of asylum applications lodged by third country nationals. The first Convention was adopted in 1990, and then it was reformed in 2003 (Dublin II Regulation) and 2013 (Dublin III regulation). For more information, see the European Commission website: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en.

[90] An overstayer is a person who has entered the European territory regularly (e.g. with a visa), and then has remained even if his or her visa has expired.

[91] See footnote 87.

security. The second question is, however, more troubling. In spite of the fact that relevant progresses in the technological fields have been made and continue being made on a daily basis, it is not possible to presume its complete reliability. In simple words, mistakes are possible. They can be caused by a wrong recording of data or by a small human oversight. The problem is not the mistake *per se*, but the consequences deriving from it. Suppose for instance that during the process of scanning, the fingerprints of a migrant are wrongly or incorrectly recorded by the machine, and then transmitted to the central digital archive. Every time this person will undergo some kind of control, he or she may result to have an irregular position, since the personal biometric information at his or her disposal does not correspond to those in the database. A final issue concerns the increased standardisation and depersonalisation of decisions. For the time being, judgements are almost completely based on human assessments; however, in future scenarios, the possibility for a greater technological involvement cannot be underestimated. Suspicions about the quality of such decisions are obvious; if the same evaluation was conducted by a person, would the result be the same? Let's wait to see future developments.

To conclude this chapter, migration has always been a constituent part of European history. Flows of people within and between European (and non-European) countries have always existed; over the centuries, the European populations have periodically found some valid motivations pushing them in movement, motivations which are not really that much different than the ones currently putting non-European migrants on their journey towards the Old Continent. Due to its 'normality', migration was regarded in quite a positive way, and it was only marginally a part of the political discourse. However, this perception began to change during the twentieth century, in particular after the First World War. And it is only after 1945 that Western countries started to change the way in which they perceived themselves; in a sense, it can be said that they became conscious of the fact that they had officially become immigration countries[92]. This new awareness was further observed (in a sense, it is a consequence of such perception shift) in the way in which European leaders modified the mechanisms at the basis of borders protection and control. Borders are instruments that allow

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[92] Leo Lucassen et al., *Paths of integration. Migrants in Western Europe (1880-2004)*, Amsterdam: Amsterdam University Press, 2006, p. 10.

drawing a line between who can enter and who is undesired[93]. A move towards a greater technologisation has been observed in the last decades which, however, has to be supplemented by a certain degree of tact if an adequate protection of people and migrants' rights has to be ensured.

The contents presented in this chapter allow affirming that countries' (political) decisions about the best ways to cope with migration are never exclusively related to migration per se; rather, they are a reflection, the litmus test, of how the European community perceives itself in the present and in the future[94]. Accordingly, the path Europe undertook during the inter-war period was only a signal of a project that European countries were starting to build. This is true also for the present situation; the forms of rejection and protest that characterise the management of migration are not a simple refusal of migrants, but rather "a struggle over the meaning of Europe"[95]. Nowadays, it is the negative perception of immigration and immigrants that seems to prevail over the more positive one, notwithstanding the useful and optimistic progresses made by the European Union since the end of the 1990s. And this is visible in a more concrete form in the way the Union is managing the so-called refugee crisis. The next chapter precisely focuses on this topic, analysing its main determinants and features.

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[93] Dennis Broeders, "A European 'border' surveillance system under construction" in Huub Dijstelbloem and Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011: 40-67.
[94] Ali Bilgic and Michelle Pace, "The European Union and refugees. A struggle over the fate of Europe" in *Global Affairs*, 2017, 3(1): 89-97.
[95] *Ivi*, p. 89.

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Chapter 2. Understanding the current European migration crisis.

Summary. This second chapter focuses on the analysis of the current refugee crisis. Several aspects are taken into consideration. Firstly, the very concept of 'migration crisis' is studied, in order to understand if it is correct to apply it to the present European situation; this is done thanks to an examination of data (both on arrivals and on fatalities), of the characteristics of the flows, and of the effects the crisis has on the political stability of the community. Secondly, the main illegal routes used by migrants to reach Europe are described. Thirdly, push-and-pull factors (including: migrants' networks, policies of sending/receiving countries, and so on) are investigated.

Since the end of 2014, the expression 'migration crisis' has entered common usage, appearing almost daily in European newspapers and being one of the main topics of debate at the political level, both nationally and internationally. This expression, sometimes subjected to abuses or to a strategic terminological choice, usually conveys the idea of an unmanageable and unstoppable flow of African, Middle Eastern and (to a lesser extent) Asian migrants invading the European Union. But what does migration crisis mean? And, is it really possible to speak about a crisis? This second contextual chapter has the objective to describe the phenomenon (also called migrant or refugee crisis) from its origins – dating back to the Arab Spring and the Syrian War – to the present. In order to do so, data on the flows of people are provided, even if there are some remarkable problems regarding the lack of accuracy and the difficulties in obtaining these figures. Moreover, the chapter thoroughly describes the main routes used by migrants to reach Europe (namely the Western Mediterranean route, the Central Mediterranean route, the Eastern Mediterranean route, and the Balkan route), and why migrants choose one route over another so as to reach their destination. Finally, push-and-pull factors are taken into consideration, i.e. those factors able to influence people's decisions as regards the permanence in their country of origin or the possibility to leave in search for a new home, either within the same country (the so-called internal migration) or into a different one. Related to this aspect, firstly, the importance of migrants' networks is delineated; and secondly, the issue of migration policies is analysed. As a matter of fact, it has been theorised that the policies adopted by both sending and receiving countries in the field of migration have a significant impact on the size,

direction and nature of international migration[96]. The chapter ends with a short summary of the main contents dealt with.

1. What is a migration crisis?

As explained in the first chapter, throughout history, people have always found sufficient reasons pushing them to take the decision to migrate. Indeed, it is possible to affirm that migration is a phenomenon as old as mankind and, as such, it is unstoppable. The expression 'migration crisis' captures a specific dimension of this phenomenon[97]. It is used to make reference to a relatively short period of time in which a rapidly increasing and quite unexpected number of migrants decides, because of various reasons (which are described in more detail in the sub-chapter 3), to move from their country of origin to a specific targeted destination. In other words, the expression 'crisis' is associated to 'migration' only when some features are simultaneously present, i.e. high numbers of people in movement, and a migration almost entirely directed towards a single destination. Running the risk of being repetitive, it is of the utmost importance to stress that numbers recorded represent a key determinant for having the justification to speak about a crisis (or not)[98]. In the case of Europe, migration does not represent a new or unprecedented phenomenon; as a matter of fact, people from all over the world have tried for decades to reach the European continent in search for economic security and opportunities, protection, asylum, and so forth[99]. However, the situation has begun to change since the end of 2014 and the beginning of 2015, leading experts of the field, politicians and public opinion to speak about it as a crisis and to define it as "the biggest migratory pressure [the European Union] has experienced since it came together as a union"[100] and the most significant one since the Second World War.

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[96] Hein de Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* – International Migration Institute Working Paper No. 32 (DEMIG project paper No. 2). University of Oxford, April 2011. Available at: https://www.imi.ox.ac.uk/publications/wp-32-11.

[97] Emmanuel Blanchard and Claire Rodier, "Crise migratoire: ce que cachent les mots" in *Plein Droit*, 2016/4(111): 3-6. Available at: https://www.cairn.info/revue-plein-droit-2016-4-page-3.htm.

[98] For a definition of migratory crisis emphasising the relevance of numbers, see 1) *ibidem*; 2) Definizione di crisi migratoria, in *Parlare civile* website. Available at: http://www.parlarecivile.it/argomenti/immigrazione/crisi-migratoria.aspx.

[99] See previous chapter.

[100] Altai Consulting, *Migration trends across the Mediterranean: Connecting the dots*, for IOM Regional MENA Office, June 2015, p. 11.

The concern about the situation is primarily related to a remarkable increase in the number of people arriving in Europe; as recorded by the United Nations High Commissioner for Refugees (UNHCR), more than 487,000 people crossed the Mediterranean and arrived at European shores from January to September 2015, representing a number double than that recorded in the same seven months of 2014[101]. Furthermore, in August 2015 alone, UNHCR registered 130,000 arrivals by sea, which is a number four times higher than the one recorder in the same month of 2014[102]. So as to further understand the dimensions of this dramatic increase, it is sufficient to make a comparison of the figures recorded in 2012 and 2014 as regards the people apprehended on European borders trying to enter the Union irregularly, i.e. 22,500 and 219,000 people respectively[103].

Linked to this increase in arrivals, there is another factor contributing to the struggle of managing the situation. Indeed, a qualitative variation in the features of the migrants arriving in Europe has been noticed; this means that, during the current influx of people, characteristics such as age, gender, sexual orientation, disability, specific needs, vulnerability and so forth[104] are more diversified than in the past, thus increasing the difficulties in addressing the specific needs of each person. Also motivations pushing people on their way to Europe are more heterogeneous, giving origin to the so-called 'mixed migration'[105], i.e. flows of migrants comprising both persons asking for international protection and individuals simply looking for better economic opportunities. As it can easily be understood, the main consequence is a greater difficulty in distinguishing the different 'categories' of migrants and the rights they are to be entitled to.

A final remark on the issue of the numbers has to be made. While in the past Europe was aware of the fact that most migrants could be returned to their country of origin (because they were not in search for protection but only for better economic opportunities), the same cannot be said for the present situation. As a matter of fact, the great majority of people arriving since the

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[101] Natalia Banulescu-Bogdan and Susan Fratzke, "Europe's migration crisis in context: Why now and what next?" in *Migration Policy Institute* website, 24 September 2015. Available at: https://www.migrationpolicy.org/article/europe%E2%80%99s-migration-crisis-context-why-now-and-what-next.
[102] *Ibidem.*
[103] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.
[104] Angeliki Dimitriadi et al., "EU-Turkey relations and irregular migration: Transactional cooperation in the making" in *Feuture – online paper No.16*, March 2018, p. 1. Available at: https://www.feuture.uni-koeln.de/sites/feuture/user_upload/FEUTURE_Online_Paper_No_16_D6.3.pdf.
[105] See footnote 100, p. 13.

end of 2014 are identified as non-returnable[106]; this happens when migrants are asylum seekers and refugees[107].

Nevertheless, data so far presented are not the only reason why it is possible to use the word 'crisis' in order to describe the influx of people reaching the European Union during the last years. As a matter of fact, another factor worth considering is the number of fatalities unfortunately recorded in these years. The International Organisation for Migration (IOM) has estimated that, in the period from January to September 2014, 3,072 people drowned while attempting to reach Europe through the Mediterranean[108]. Similarly, UNHCR has reported that nearly 3,000 people perished crossing the Mediterranean in the first nine months of 2015[109]; even more in detail, if the period from January to May 2015 is considered, then fatalities about which information is available are 1,865, an astonishing escalation if compared to the 425 deaths of the same five months of 2014[110]. These numbers allow two important considerations: firstly, the number of fatalities may be quite surely related to the quality and quantity of legal options available to migrants wanting to reach the European Union; secondly, the accuracy and even the same availability of figures should be defined as problematic. As regards the first aspect, European countries are aware of the fact that legal pathways available for migrants wanting to reach Europe are insufficient; in other words, migrants are increasing quicker than the options for regular movement[111]. As a consequence, people are in a way forced to resort to smugglers, thus multiplying the risks connected to the journey. As far as the second observation is concerned, it is possible to notice that if different organisations are taken into consideration, then the numbers collected are different. For instance, while UNHCR, IOM and Frontex report an uncontrolled increase in the numbers of irregular migrants arriving in Europe

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[106] See footnote 104, p. 1.

[107] It is important to know the difference between asylum seeker and refugee. The former is a person seeking protection from persecution or serious harm into a country different from the one of origin but he or she is still waiting for a decision. The latter instead is defined in art.1 of the 1951 *Convention relating to the Status of Refugee* as a person who "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country". The difference is presented in Altai Consulting, *Migration trends across the Mediterranean: Connecting the dots*, for IOM Regional MENA Office, June 2015, p. 3.

[108] *Ivi*, p. 11.

[109] Natalia Banulescu-Bogdan and Susan Fratzke, "Europe's migration crisis in context: Why now and what next?" in *Migration Policy Institute* website, 24 September 2015. Available at: https://www.migrationpolicy.org/article/europe%E2%80%99s-migration-crisis-context-why-now-and-what-next.

[110] Amnesty International, *The global refugee crisis: A conspiracy of neglect*, AI Index POL 40/1796/2015, 15 June 2015, p. 6. Available at: https://www.amnesty.org/download/Documents/POL4017962015ENGLISH.PDF.

[111] Altai Consulting, *Migration trends across the Mediterranean: Connecting the dots*, for IOM Regional MENA Office, June 2015, p. 11.

by sea, they offer different figures, that is 487,000 arrivals by September 2015 according to UNHCR, 590,000 according to IOM, and 710,000 according to Frontex[112]. This may appear quite surprising; however, the explanation for this discrepancy can be easily understood. Indeed, incongruous figures may be caused by different systems of identification and classification of migrants, by the possibility of counting individual migrants more than once (for example, when a migrant crosses more than one European border so as to reach a specific country of destination), by the use of different indicators, and so forth. What is more, on the one hand, numbers of fatalities are difficult to collect due to the fact that it is not possible to confront data on arrivals with those on departures, together with the fact that fatalities by sea can be brought to attention only if corpses are found; on the other hand, migrants usually try to reach European countries irregularly[113] which means, by definition, without being noticed and registered by authorities. Thus, accurate statistics are very difficult to obtain.

A final reason to describe current situation in terms of crisis is the effect this considerable flow of people has on the political sphere[114], in particular as regards the rising tensions between and within European Union Member States. Indeed, especially during the first phases of the crisis, countries have revealed different visions on how the situation has to be managed; this has led to an initial incoherent response[115], with some countries wanting to introduce drastic measures (such as border controls or closure, refusal to accept migrants, and so on) in order to stop or at least restrict entrance, and others more prone to solutions oriented towards reception and human rights protection. This incompatibility of approaches, together with the rise in many countries of feelings such as nationalism and xenophobia, has started to undermine the stability of the entire Union, to the point that some experts and politicians have even supposed that

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[112] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.

[113] The expression 'irregular migration' (which refers to "the cross-border flow of people who enter a country without that country's legal permission to do so") does not have to be confused with the expression 'irregular migrants' (which means "the stock of migrants in a country who are not entitled to reside there, either because they have never had a legal residence permit or because they have overstayed their time-limited permit"). The distinction between the two expressions and the corresponding definitions can be found in Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015, p. 9. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.

[114] Angeliki Dimitriadi et al., "EU-Turkey relations and irregular migration: Transactional cooperation in the making" in *Feuture – online paper No.16*, March 2018, p. 15. Available at: https://www.feuture.uni-koeln.de/sites/feuture/user_upload/FEUTURE_Online_Paper_No_16_D6.3.pdf.

[115] Pinar Gedikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond" in *European Scientific Journal*, 2016, 12(8): 14-35.

Schengen was coming to an end[116]. Furthermore, the conflicts afflicting the relations between Member States can also be found within the countries themselves, especially if the support to far-right or extremist parties is considered; traditional political parties (which opted for a more moderate approach on the issue of migration) have started to lose ground against far-right parties that have proved to be able to take advantage of people's discontent and fears towards the continuous arrivals of migrants. This is the reason why, in her article, Pinar Gedikkaya Bal wrote that "in a way, the refugee crisis has turned out to be a domestic problem in many of the member states as well as a crisis for the EU as a whole"[117].

To sum up, the flow of migrants arriving in Europe from the end of 2014 until present is described in terms of migration crisis because of some reasons which can be classified into three main groups: first, the huge numbers of people arriving and (regrettably) the numbers of those dying in their attempt to reach the European Union; second, the complexity and heterogeneity of the flux; and third, the effects the flow has on the political stability within individual states and in the European Union as a whole. These elements are definitely indisputable; however, it is worth posing some simple questions in order to avoid the risk of giving an inaccurate description of the situation, i.e. the one of an unmanageable and uncontrollable scenario. These queries may also help in understanding the real extent of the European reaction to the increasing arrivals it is undergoing. Indeed, some of the measures it adopted over the years (which are going to be analysed in chapter 3 and 4) could be understood only if the existence of a real crisis is proved; on the contrary, if it is demonstrated that contemporary inflows are 'normal' and manageable, then the 'excuses' advanced by the European Union so as to exculpate its defensive behaviour will no longer be applicable. So, the first question to which an answer has to be given is: is it really correct to speak about a crisis when numbers are considered? Then, it is important to wonder if the crisis was unexpected, and if the answer is no, whether it may be possible to predict future trends. The last question serves the purpose of putting into the right perspective the experience that the European Union is currently living, and it is: does the refugee crisis affect only Europe?

As far as figures and data are concerned, it has just been said that the recorded rise in arrivals has put European countries under severe pressure; and the management of so many people with different needs and requests seems to be almost impossible. This is the reason why the

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[116] *Ibidem*.
[117] *Ivi*, p.17.

European Union has started to seek help from other non-European countries, in order to find a solution capable of stopping the journey of migrants before they manage to reach European borders. However, the situation has sometimes been depicted in a too drastic way. As reported in a policy brief published in November 2017 by the Centre for European Reform[118], actually numbers are manageable. Indeed, it has been estimated that approximately 1.7 million people have reached the European Union crossing the Mediterranean Sea from 2014 to 2017. This figure, which may seem quite impressive, is *de facto* not so alarming if it is compared to European population; to put it in simple words, 510 million Europeans have all the means and resources to host 1.7 million migrants. Consequently, migrants are not too much to be dealt with. The real problem is twofold: on the one hand, there is a lack of willingness on the side of European countries (some more than others) to find a valid and durable strategy to tackle the problem; on the other, European countries are not ready to commit to a meaningful and equitable burden-sharing[119]. The issue has also been confirmed at the beginning of 2016 by Federica Mogherini – the High Representative of the Union Foreign Affairs and Security Policy – when she affirmed "it is sad to see Europe panicking before 700,000 refugees. This is a sign of weakness"[120]. It can be said that Member States seem to be not aware of the importance of burden-sharing[121], which can have a significant impact on both the migration and the protection system[122]. As a matter of fact, a well-organised and predetermined system offers important advantages, such as greater fairness between countries involved (i.e. this is valid not only in European-third country relations but also with respect to internal dynamics of the European Union), and stronger and better defined protection for asylum seekers and refugees. What is more, it will also support predictability, that is to say the possibility for countries to evaluate the costs they would bear in future situations of crisis.

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[118] Luigi Scazzieri and John Springford, *How the EU and third countries can manage migration*. Centre for European Reform, November 2017. Available at: https://www.cer.eu/publications/archive/policy-brief/2017/how-eu-and-third-countries-can-manage-migration.

[119] *Ivi*, p. 2.

[120] Quoted in: The Guardian, *Is the Schengen dream of Europe without borders becoming a thing of the past?*, 5 January 2016. Available at: https://www.theguardian.com/world/2016/jan/05/is-the-schengen-dream-of-europe-without-borders-becoming-a-thing-of-the-past.

[121] Burden-sharing includes three different dimensions, namely a) the sharing of the burden associated to the prevention, management, and resolution of refugee crisis; b) the sharing of the burden deriving from arrivals; c) the sharing of the burden caused by the costs and responsibilities associated to reception of immigrants. For more information on the issue, see Rosemary Byrne, et al., *New asylum countries? Migration control and refugee protection in an enlarged European Union*, The Hague: Kluwer Law International, 2002, pp. 305-313.

[122] *Ibidem*.

The second question (i.e. was the crisis unexpected?[123]) is more difficult to answer. The refugee crisis has usually been depicted as a sudden and unpredictable event; however, some signals could have been caught in advance. Already in 2003, Kofi Annan – the Secretary-General of the United Nations – stated that "in view of the state of the world, it is Europe that migrants are going to come"[124]. The crisis originated from a series of events to which solutions were not promptly found or even searched; in particular, the two key events identified as the triggers of the migrant crisis are the Arab Spring and the Syrian Civil War. The start of the Arab Spring dates back to the 17 December 2010, with the suicide of a Tunisian citizen – Mohamed Bouazizi – in front of the building of the provincial government[125]. This is only the starting point of a wave of mass protests and demands which quickly spread into the Middle East. The turmoil was violently ended by national governments, even causing numerous casualties[126]. The reaction of national movements, aiming at suppressing uprisings, produced an unexpected counter-effect, i.e. the emergence of armed groups opposing and acting against such governments. The situation further deteriorated because of the divergence existing between the different groups; what is more, all the parties involved in the conflict have been found responsible for the violation of human rights and for tremendous war crimes[127]. It is exactly in this context that the Syrian Civil War began, precisely on 15 March 2011, when some protests erupted in reaction to the detention and torture of fifteen boys accused of having written some graffiti in favour of the Arab Spring[128]. Also in Syria, the government reacted with violence and brutality, staining its hands with the blood of hundreds of innocent protesters. Some months later, the Free Syrian Army (a group composed of defectors from the military) was announced[129]; this is considered the most important event signalling the beginning of the Civil War. So, according to the experts, the refugee crisis may have been, at least partially, predicted if these events had been given the proper attention. As it will be thoroughly explained in the following sub-chapter (3), one of the main factors at the basis of

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[123] Yves Bertoncini and Yves Pascouau, *What migration strategy for the EU?* – Synthesis of the 2015 European Steering Committee of the Jacques Delors Institute. Berlin: Jacques Delors Institute, 1 March 2016.

[124] He was speaking to the European Parliament during the ceremony for the Sakharov Prize for the Freedom of Thought; *Ivi*, p. 4.

[125] Vincent van Grondelle, "The EU-Turkey Statement on refugees" in *Open Cultural Center* website, 2 April 2018. Available at: https://openculturalcenter.org/the-eu-turkey-statement-on-refugees/.

[126] Amnesty International, *The 'Arab Spring': Five years on,* 2015, quoted in *Ibidem*.

[127] *Ibidem*.

[128] Aljazeera, "Syria's civil war explained from the beginning. On March 2015, the war entered its eight year" in *Aljazeera* website, 14 April 2018. Available at: https://www.aljazeera.com/news/2016/05/syria-civil-war-explained-160505084119966.html.

[129] *Ibidem*.

the crisis is precisely the combination of increasing violence, human rights violation and instability in the countries of origin of migrants[130]. Moreover, it has also to be highlighted that migration is never an isolated phenomenon; rather, it is a medium or even long-term process[131]. As a consequence, the use of a terminology conveying the idea of a sudden and abrupt appearance of a new migratory wave may have a more striking effect on people's mind, but it does not represent reality as it actually is. Rather, it would be more appropriate to speak about some latent factors which, because of changes and variations in existing conditions, are 'released', hence provoking the temporary rise in numbers.

Nonetheless, the possibility to foretell the current crisis does not imply that also future trends may be predictable. This is because of the fact that the main factors fomenting migration trends (such as conflicts and wars, political or civic unrests, economic or climate changes, and so forth) are in constant evolution. Despite this, according to Hein de Haas, two are the most probable scenarios for the European Union in the near future in relation to the migration issue[132]. In short, the first one (i.e. "the expanding Euro-Mediterranean core") would see a temporary increase in migration from the South to the North due to a period of economic growth and to the expansion of the European Union itself; however, the trend will quickly turn into a more circular movement of people. Differently, the second scenario (i.e. "decline and nationalism") is based on the idea of growing (economic) inequalities between Northern and Southern countries, together with a rise of feelings such as nationalism and xenophobia; this will indubitably provoke further increases in migratory movements, particularly the irregular ones. It goes without saying that the first scenario is preferable to the second one; nevertheless, the current situation seems to be more in line with the features belonging to the second scenario.

The last question deserving some attention allows putting the European migration crisis into the right perspective; indeed, it is important to have awareness of the fact that the crisis is almost a global one, and, consequently, its dimensions are bigger than expected. The problem is that attention is paid only to that part of the phenomenon which directly affects the Union

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[130] Natalia Banulescu-Bogdan and Susan Fratzke, "Europe's migration crisis in context: Why now and what next?" in *Migration Policy Institute* website, 24 September 2015. Available at: https://www.migrationpolicy.org/article/europe%E2%80%99s-migration-crisis-context-why-now-and-what-next.
[131] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003, p. 98.
[132] Hein de Haas, "Mediterranean migration futures: Patterns, drivers and scenarios" in *Global Environmental Change*, 2011, 21(1): 59-69.

and its citizens. To begin with some key information, in 2013 the United Nations recorded approximately 232 million international migrants in the world, the greatest number ever recorder in absolute terms, an increase of 50% if compared to the figures of 1990[133]. The majority tends to move towards a neighbour country, to a country belonging to the same region, or even to a country with a common language, culture or history. This pattern, however, has become more flexible in recent years, thanks to all the means available to migrants (e.g. easy travel, low-cost companies, social networks, cheaper communication technology, and so on); accordingly, it is possible to say that migration is more diversified than in the past. If data specifically addressing the situation of refugees are taken into consideration, then it can be affirmed that, despite this new trend permitting greater mobility to people, the great majority of refugees (around 86%) is still hosted in developing countries[134]. What is more, looking at the current refugee crisis, almost 95% of Syrian refugees (which constitutes the largest group of refugees in the world) are hosted into five countries, namely Turkey, Jordan, Lebanon, Iraq and Egypt[135]. These figures offer the opportunity to make a relevant consideration: the refugee crisis does not affect only Europe; actually, it would be more correct to say that the refugee crisis affects the European Union only partially. As a matter of fact, the burden is almost borne by developing and poorer countries, i.e. those countries which have less resources and means at their disposal to manage the flows of migrants in comparison to developed countries. Hence, wealthier countries (included the European ones) "are not doing enough to share the burden of the global refugee crisis"[136]; and, the behaviour adopted by European countries is not in line with the principle of responsibility-sharing sanctioned in the 1951 Convention relating to the Status of Refugees[137]. Furthermore, due to the continuous arrivals of people with the right to receive international protection, host countries in the developing world are less and less able to cope with the situation, since they no longer have the capacity to respond to the needs of migrants and to offer them proper solutions. However, the rest of the international community seems incapable (read: not wanting) to provide an adequate and long-term solution to the issue.

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[133] United Nations – Department of Economic and Social Affairs, *International migration report 2013* [ST/ESA/SER.A/346], December 2013. Available at: http://www.un.org/en/development/desa/population/publications/pdf/migration/migrationreport2013/Full_Docum ent_final.pdf.
[134] Amnesty International, *The global refugee crisis: A conspiracy of neglect*, AI Index POL 40/1796/2015, 15 June 2015, p. 31. Available at: https://www.amnesty.org/download/Documents/POL4017962015ENGLISH.PDF.
[135] *Ivi* pp. 9-10.
[136] *Ivi*, p. 31.
[137] United Nations, *Convention relating to the Status of Refugees*, 28 July 1951. Geneva: United Nations. See, in particular, the Preamble.

Consequently, developing countries (feeling, in a way, abandoned by the international community) try to implement on their own some expedients reducing arrivals (e.g. border closure and restrictions on entrance)[138]. So, up to this point, it is correct to say that the refugee crisis is not only affecting the European Union; nevertheless, in order to answer with more precision to the question posed in this paragraph, it may be useful to mention the situation of other areas in the world, namely Sub-Saharan Africa and South-East Asia. As explained in the report of Amnesty International[139], these two regions have been living massive refugee crises for years; in particular, Sub-Saharan Africa includes five out of the top ten countries from which people constantly escape in search for protection. However, both areas have received little or no attention (and consequently help) from the international community; for instance, resources and funds are lacking, and operations aiming at tackling the root causes of migration are ineffective. This brief presentation of the situations in these two areas of the world proves to be considerably helpful in supporting the main idea conveyed in this paragraph, i.e. the European Union is not the only area of the world affected by the refugee crisis, even if many (included journalists, politicians, and so on) are purposely disseminating a falsified representation of reality.

The next sub-chapter aims to describe the main routes used by migrants who want to reach the European Union.

2. The routes to Europe.

This sub-chapter is designed to give a presentation of the main irregular routes used by migrants craving for reaching Europe. Before proceeding, it is necessary to clarify the meaning of the expression 'irregular routes'; it refers to itineraries covered by migrants who try to reach Europe in an irregular way, which means avoiding the legal pathways offered by receiving countries. These routes are usually 'managed' by smugglers and traffickers, who take advantage of the despair and fear of migrants and make business out of it. These itineraries are unfortunately preferred by migrants because: firstly, they believe that legal pathways are insufficient or too slow in processing their claims; and secondly, they think they have more

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[138] See footnote 134.
[139] *Ibidem*.

possibilities to actually reach their destinations and to remain there. This reality deserves an in-depth reflection; indeed, it is alarming to see so many migrants preferring to spend an outrageous amount of money and, above all, risking their lives along illegal routes rather than resorting to the legal options available. As may be inferred, something is not properly working in the reception and asylum systems put in place by the European Union. At any event, the factors influencing people's decision to migrate and, especially, to resort to irregular ways are going to be described in more detail in the following sub-chapter (3). Differently, this section focuses on the description of the main itineraries covered by migrants, on the analysis of some data related to the routes (even if not totally accurate, due to problems on the collection of data already delineated), on the main countries of departure and destination for each route, and on the aspects influencing migrants' decisions in their choice of one route over another.
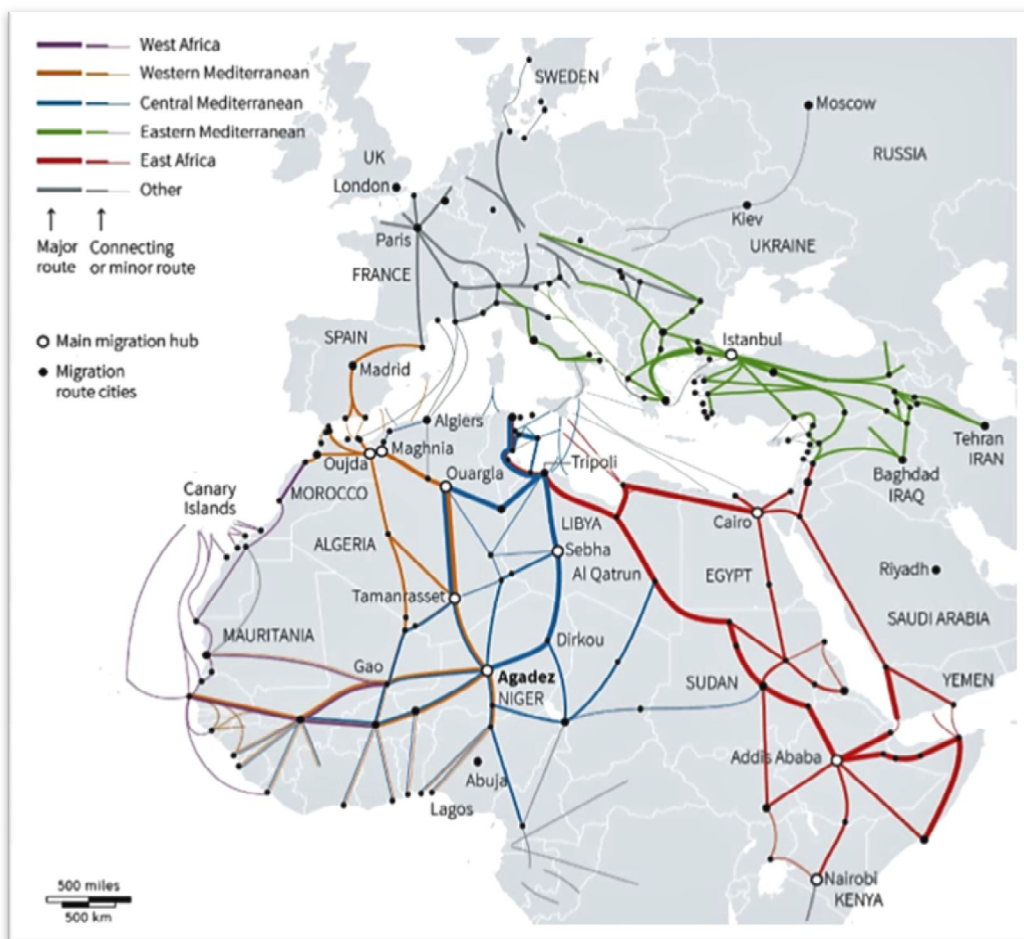
Source: International Centre for Migration/Reuters.[140]

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[140] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.

As it can be seen in the map, there are numerous irregular routes which migrants can use in order to reach Europe. Nevertheless, the most important ones are essentially four: the Western Mediterranean route, the Central Mediterranean route, the Eastern Mediterranean route, and (to a lesser extent) the (Western) Balkan route.

To begin with, the Western Mediterranean route links North Africa to Spain (or, more in general, the Iberian Peninsula). There are two different options open to migrants, which is to say by sea or by land. As regards the first type of itinerary, people may opt either for crossing the Strait of Gibraltar (from Tangier to Tarifa), or for reaching the Canary Islands. Differently, if migrants choose to travel by land, they try to cross the borders of the enclaves of Ceuta and Melilla (i.e. Spanish territories inside Morocco)[141]. In this case, crossings are very difficult because of the presence of six-meter-high fences on the borders and the constant controls of both Spanish and Moroccan police. It is for this reason that large groups of people try to cross the border simultaneously; indeed, they hope that the police will not be able to stop them due to their numbers. Despite this difficulty, it has been estimated that land crossings have increased over the years in comparison to sea crossings, since the reinforcements of the monitoring activity has reduced the feasibility of the latter. At this point, it is necessary to describe which nationalities usually travel on this route; indeed, if a profile of the users has to be compiled, then African persons (in particular migrants coming from Senegal, Nigeria, Cameroon and Guinea with the aim of reaching the European Union through Spain) are predominant. However, since 2013, a change in nationalities composition has been noticed, with an increase of Eritreans and, most importantly, Syrians resorting to this route[142]. As far as the migrants' motivations are concerned, the Western Mediterranean route is characterised by the so-called mixed flows, which means flows of migrants pushed by reasons of various nature. More in detail, some are classified as asylum seekers (in simple words, people fleeing war and persecution); the others as economic migrants (i.e. migrants looking for better economic and educational opportunities, and for the possibility to live a better and stable life). Regrettably, this route is also notorious for the flux of involuntary migrants, that is to say trafficked people (especially women) for the purpose of sexual exploitation[143]. It goes without saying that this type of migrants is extremely difficult to be detected, due to the secrecy of the criminal

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[141] Altai Consulting, *Migration trends across the Mediterranean: Connecting the dots*, for IOM Regional MENA Office, June 2015.
[142] *Ivi*, p. 21.
[143] *Ibidem*.

networks operating in the area. A final important feature of this route is the role of Morocco. As a matter of fact, originally Morocco was mainly a transit country for migrants who wanted to reach Spain; however, with the intensification of controls on Spanish borders (in particular in Ceuta and Melilla) and the consequent increased difficulties in reaching the European country, Morocco has become some sort of a destination country[144]. In this specific circumstance, two are the main trends: in the first case, migrants do not have a clear destination in mind and, consequently (if satisfactory opportunities should arise), they are open to all the options allowing them to live a better life; differently, in the second case, migrants strongly desire to reach Spain but, due to the impossibility of crossing the borders, they are forced to spend some years in Morocco and, eventually, to settle there. Furthermore, as regards the specific presence of asylum seekers in Morocco, the tendency is characterised by the predominance of secondary movements, i.e. by migrants who have been granted asylum in other countries but are still determined to reach Morocco in order to have more possibilities to move to Spain; thus, they see Morocco only as a transit country.

The second itinerary worth considering is the Central Mediterranean route, which is used by migrants to reach Malta and Italy (through the islands of Lampedusa and Linosa); the departure points are located in Northern Africa, particularly in Libya, Tunisia and Egypt[145]. According to Frontex, this route represented "the main area of irregular border crossing to the EU in 2011, 2013 and 2014, accounting for 60% of all border detections"[146]. Numbers are considerable also in 2015; indeed, more than 120,000 migrants used it from January to September[147]. The route is mainly chosen by African migrants coming from the Western and the Sub-Saharan regions (such as Nigeria, Gambia, and Somalia). However, as it happened for the Western Mediterranean route, also Eritreans and Syrians have started to be identified since 2013; in this case, secondary movements are frequent. This means that Eritreans and Syrians do not usually choose Italy as their destination, but only as a transit country enabling them to enter Europe and move towards other countries, mainly Germany, Sweden and the Netherlands[148].

[144] *Ibidem.*
[145] *Ibidem.*
[146] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015, p. 18. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.
[147] Natalia Banulescu-Bogdan and Susan Fratzke, "Europe's migration crisis in context: Why now and what next?" in *Migration Policy Institute* website, 24 September 2015. Available at: https://www.migrationpolicy.org/article/europe%E2%80%99s-migration-crisis-context-why-now-and-what-next.
[148] See footnote 141.

Nonetheless, regardless of the nationalities moving on this route, a common feature can be detected; as a matter of fact, the route is firmly controlled by the activities of smugglers. Their network is solid and well organised, attracting possible 'clients' both through word of mouth and through social media. In simple words, a real marketing of smuggling services has been created, able to offer different proposals and packages to the specific type of migrant which is addressed[149]. In addition to the smugglers, the other main actors operating on the route are traffickers, in particular of women (mostly from Nigeria and Cameroon) sold for sexual purposes. The problem is that traffickers have established well-functioning criminal networks extending from the countries of origin of the victims to the countries of destination, networks which are very difficult to be discovered and dismantled. The final lines of this paragraph have to be dedicated to the role of the already mentioned departure countries; indeed, the situations in these countries do influence migrants' decision to move to Europe. The first one is Egypt, which is mainly considered a transit country by migrants; however, once arrived, some persons realise that the journey to Europe is too difficult and decide to settle there[150]. The second is Tunisia, which no longer represents a significant departure point for Europe; and this is primarily due to the fact that controls on borders and on the coast have been reinforced[151]. The last one is Libya, which is quite a peculiar case due to the Second Libyan Civil War that has been affecting the country since mid-2014. As a matter of fact, the political instability has influenced the asylum regime of the country; the protection granted to migrants (and, more specifically, asylum seekers) arriving there has been seriously undermined, also because of the idea that migrants could have been supporters either of Gaddafi's regime or of some militia groups[152]. Detention became a common way to manage migrants, which were usually released only if they accepted to leave the country by paying their transportation by boat to Europe. This mechanism allows introducing the second element on which instability has impinged, i.e. the increased possibility of departure from Libya[153]. Indeed, outflows from the country have been in a way encouraged by the same authorities, not wanting to bear the burden of managing a migration crisis during a Civil War. Moreover, also smugglers encouraged migrants to choose Libya as point of departure towards Europe; according to their own accounts, the Civil

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[149] *Ibidem.*
[150] *Ibidem.*
[151] *Ibidem.*
[152] *Ibidem.*
[153] *Ibidem.*

War has reduced land and maritime border controls, thus facilitating the entrance in the country but also the departure by boat.

The third route is the Eastern Mediterranean one; particular attention has to be paid to it, since it is the most relevant one for this dissertation. It is used by migrants who want to arrive in Greece either by land (from Turkey to Greece, passing through Bulgaria) or by sea, crossing the Aegean Sea via Cyprus and (most importantly) Turkey[154]. It has become the most important maritime route in terms of numbers in 2015, even surpassing the Central Mediterranean one; indeed, from January to September, more than 350,000 migrants have crossed the Aegean Sea, using Turkey as departing point[155]. Numbers on this route have experienced a constant and substantial increase since 2008, with only a short period in which the trend was inverted (years 2012 and 2013)[156]. The most probable explanation for this change has to be found in the attempt of stopping the flows by building a fence on the border between Greece and Turkey. An important remark that has to be made concerns the lodging of asylum applications in Greece. As reported by Amnesty International in its report *A blueprint for despair. Human rights impact of the EU-Turkey deal*[157], until 2015 Greece was mainly considered a transit country by migrants, who used it as entrance point for the European Union (in a situation that was similar to that of Italy). This was confirmed by the great mismatch existing between the numbers of people arriving in Greece and the numbers of asylum applications actually registered. For instance, in 2015, 13,197 applications were lodged in Greece out of 856,723 migrants recorded to have arrived in the country[158]; the others preferred to continue their journey towards other European countries, passing through the Balkans, being usually supported in their project by the activities of smugglers. This is in stark contrast with the figures recorded in 2016. Indeed, arrivals significantly decreased (i.e. 173,450 arrivals) due to the application of the EU-Turkey Statement concluded on 18 March 2016; however, a simultaneous rise of the applications lodged was recorded (i.e. 51,091)[159]. Anyway, this aspect

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[154] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.
[155] Natalia Banulescu-Bogdan and Susan Fratzke, "Europe's migration crisis in context: Why now and what next?" in *Migration Policy Institute* website, 24 September 2015. Available at: https://www.migrationpolicy.org/article/europe%E2%80%99s-migration-crisis-context-why-now-and-what-next.
[156] See footnote 154.
[157] Amnesty International, *A blueprint for despair. Human rights impact of the EU-Turkey Deal*, 14 February 2017. Available at: https://www.amnesty.org/download/Documents/EUR2556642017ENGLISH.PDF.
[158] *Ivi*, p. 11.
[159] *Ibidem*.

is going to be analysed more carefully in chapter 4 (in which the EU-Turkey Statement is thoroughly presented).

The last route deserving some attention is the (Western) Balkan route. It is chosen by two different groups of migrants[160]. The first one is composed by non-European citizens entering the Union through Greece and crossing the Balkans in order to reach Northern countries. Accordingly, the main nationalities belonging to this group are Syrians (accounting for more than 50% of the non-EU migrants on this route), Eritreans, Iraqis, and Afghans; to them, also persons from Senegal, Gambia and Mali are detected[161]. Differently, the second group is represented by migrants coming from Western Balkan countries not belonging to the European Union; they are mainly Albanians, Serbians and Kosovans[162].

After having analysed these routes, some words have to be spent on the main aspects allowing migrants to decide which itinerary is the best one for them. According to a study already carried out on this matter[163], the main considerations made when choosing one route over another concern first of all the presence and intensity of controls on borders; related to this, there is also the possibility to find an easy passage to Europe. Secondly, migrants may evaluate the journey in terms of costs, duration and risks that may be encountered (in particular with regard to the conditions existing in transit countries). Thirdly, the hope that at some point they might get the possibility to regularise their status strongly affects people's choices. Finally, the prospect of finding some help during the journey (thanks to the presence of networks of friends or other migrants having already lived the same experience) is also influential. However, not all migrants carry out a rational and in-depth analysis before their departure. Indeed, it may happen that individuals choose a route only because they believe it is the best one to reach a specific country of destination, without considering other factors such as costs and risks. Differently, others may not have a clear goal in their mind: they do not know where they want to go, if they want to reach Europe or only find a place offering more possibilities than the country in which they already live, and so forth; in this case, they simply decide to leave and to

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[160] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015, p. 19. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.
[161] Natalia Banulescu-Bogdan and Susan Fratzke, "Europe's migration crisis in context: Why now and what next?" in *Migration Policy Institute* website, 24 September 2015. Available at: https://www.migrationpolicy.org/article/europe%E2%80%99s-migration-crisis-context-why-now-and-what-next.
[162] *Ibidem*.
[163] Altai Consulting, *Migration trends across the Mediterranean: Connecting the dots*, for IOM Regional MENA Office, June 2015, pp. 104-105.

take decisions on the basis of the information received during the journey, either by other migrants or by smugglers and traffickers. Finally, there are also migrants who are not aware of the existence of numerous alternatives for the journey; thus, they simply opt for the only option they think exists.

To conclude this section, this description of routes used by migrants so as to reach the European Union does not presume to be an exhaustive one. Indeed, the main goal was to offer a broad presentation of the main four itineraries bringing people to Europe, so as to give the right framework in which the refugee crisis can be placed. However, as the map shows, other routes are open and are used daily by migrants wishing to satisfy their simplest but deepest desire: find a place where they can live a better life. When analysing the flows, it has always to be kept in mind that routes are in constant evolution. This implies both the opening of new paths different from the ones already known, and a change in the patterns of the routes themselves; in particular, it may happen that one itinerary falls into disuse, while another becomes the most popular one. This reflection is quite important, because it makes it obvious that the simple closure of borders is not a useful or even strategic choice to be made in order to tackle irregular migrants; as a matter of fact, desperate people will always find a new way to reach their dreamed destination, hence circumventing new limitations[164]. What is more, in this phenomenon, the role of smugglers and traffickers does not have to be underestimated, because they are the first ready to find new alternatives to bring migrants to their destination (and, consequently, to make money). Thus, European countries must consider all these aspects when redacting their plan to manage the migrant crisis.

Now, in the following sub-chapter, the main factors influencing people's perception of migration and, consequently, their same desire to migrate are taken into consideration. Indeed, if migration trends have to be understood and addressed with proper solutions, then both the factors pushing people away from their country and those attracting them towards a new one are of the utmost importance.

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[164] Huub Dijstelbloem et al., "The migration machine" in Huub Dijstelbloem and Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011: 1-21.

3. Push-and-pull factors: the reasons why people decide to migrate.

Migration is first and foremost a personal phenomenon. Individuals' decisions to migrate are the result of a series of internal (that is to say, personal) factors which necessarily have to be considered when migration has to be understood and addressed with proper policies by host countries. However, notwithstanding their importance, personal factors are not the only relevant determinant; as a matter of fact, a number of external and uncontrollable factors also exert a noteworthy influence on the process. In this group of external elements, the policies adopted by countries of destination in the field of migration and, more in general, the way in which these countries show themselves to the rest of the world from a political, economic and social viewpoint is crucial during the phase of decision-making of each individual. Now, the conjunction of all these elements determining migration trends can be defined in terms of push-and-pull factors[165]. This sub-chapter precisely intends to present all the main components which may play a role when a person has to decide whether to remain in his or her country of origin or to leave in search for a new home in which to build a better life.

To begin with, two clarifications on the terminology have to be made. The first one concerns the tendency to classify migrants according to the main reason pushing them into movement; for instance, persons leaving their country in search for better economic opportunities are defined as 'economic migrants'; differently, those individuals fleeing from war and persecution are preferably identified as 'asylum seekers'. However, these labels are not mutually exclusive. Besides, while this categorisation could have been accurate and useful in the past, the same does not hold true for the present. As a matter of fact, "with respect to the current refugee crisis, it is difficult to distinguish between the numerous factors influencing migration"[166]; in other words, due to the complexity and heterogeneity of causes and motivations affecting every single person on the move along the numerous itineraries towards Europe (but not only), migrants cannot be included into rigid, specific categories capable of fully reflecting the nature of the experiences lived by those people[167]. This rigidity in terminology appears to be even more obvious when considering the fact that experts on the matter prefer to describe current

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[165] Eurostat, "Migration and migrant population statistics", March 2018. Available at: http://ec. europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics.
[166] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015, p. 24. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.
[167] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003, p. 234.

streams of migrants in terms of 'mixed flows', so as to further accentuate the heterogeneity of the fluxes. The second clarification refers to the opposition between 'voluntary' and 'involuntary migration'. According to Clare Cummings et al.[168], the propensity to categorise migrants on the basis of this binary distinction cannot be perceived as a realistic one; indeed, every single person always has a minimum degree of choice when he or she has to make a decision on whether to leave or to remain, even in the most difficult and compelling situations. Because of this assertion, the need to analyse and understand the specific causes guiding migrants' mobility becomes even more pressing.

After having made this elucidation on the terminology, it is the time to proceed with the listing of the main determinants of (international) migration. Nevertheless, it has to be kept in mind that there is a still limited understanding of this subject; this means that attention has always been paid to the most evident factors (such as the economic and political ones), while the real weight of each element and their possible interaction have not been carefully examined yet[169]. In spite of this drawback, there is much literature describing the so-called push factors, that is to say those elements either encouraging or forcing people to take the difficult decision to migrate. More in detail, the United Nations Population Fund[170] has identified two main types of reasons explaining migration. The first one refers to the search for better economic, educational and social opportunities; in this case, individuals are pushed by the wish to improve their living conditions and are aware of the fact that resources and opportunities are not equally distributed (nationally or internationally). The second type concerns the 'forcing' causes, that is to say all the reasons not allowing people to live in safety and dignity, such as war, conflict, persecution, human rights violation but also natural disasters; in a way, when these conditions arise, people may start fearing for their lives or thinking that no other option is available to them.

However, this initial presentation may appear quite inaccurate. For instance, the mere existence of an ongoing conflict is not *per se* sufficient to justify migratory movements. As far as Susan

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[168] See footnote 166, p. 25.
[169] Hein De Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* – International Migration Institute Working Paper No. 32 (DEMIG project paper No. 2). University of Oxford, April 2011. Available at: https://www.imi.ox.ac.uk/publications/wp-32-11.
[170] United Nations Population Fund (UNFPA), "Overview on the topic of migration", December 2015. Available at: www. unfpa.org/migration.

E. Zimmerman is concerned[171], in order for people to leave, they should have the capability to do so. In other words, while insecurity and conflict are obvious causes of the desire to migrate, they cannot be considered in isolation as the reason explaining migration; other elements have to come into play, such as economic possibilities, personal security, and the type of regime existing in the country[172]. As it can be inferred from this example, the personal dimension (introduced when referring to the economic possibilities and the personal security) is of the utmost importance. Elements such gender, age, level of education, and marital status have an impact on whether or not a person decides to migrate[173]. To give some examples, persons with higher levels of education may have more opportunities to migrate via regular means as compared to individuals with lower education which, instead, resort to irregular options; or, with respect to gender, migration concerns more men than women; and finally, young migrants are proportionally more numerous than older ones. To the characteristics just mentioned, factors such as family and culture have to be added to the equation. More in detail, migration may sometimes be encouraged by the family, since it is perceived as an opportunity to increase the household income (in particular through remittances[174]); similarly, the fact of living in a community in which the culture of migration is common and well-established strongly increases the possibility that the members of that community may be encouraged (or even expected) to migrate.

Now, the previous mentioning of factors such as family and community allows making a connection with the role of social networks in migration[175]. The network theory has demonstrated that family, friendship, ethnic or religious networks exert an influence both during the decision-making phase and at the different stages of the process of migration; as a matter of fact, as reported by Emma Herman[176], these networks function as forms of encouragement for individuals who have to make their decision because, on one hand, they

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[171] Susan E. Zimmermann, "Irregular secondary movements to Europe: Seeking asylum beyond refugee" in *Journal of Refugee Studies*, 2009, 22(1): 71-96.

[172] According to Susan E. Zimmerman, even in case of conflict and war, the existence of a repressive state may prevent individuals from taking the decision to leave; quoted in *Ibidem*.

[173] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.

[174] The importance of remittances as development tools both at the familiar and national level has been emphasised in: Nicholas R. Micinski and Thomas G. Weiss, "The European migration crisis: Can development agencies do better?" (Briefing 37), in *Future United Nations Development System*, January 2016.

[175] See footnote 173.

[176] Emma Herman, "Migration as a family business: The role of personal networks in the mobility phase of migration" in *International Migration*, October 2006, 44(4): 191-230.

provide an example of successful emigration and, on the other, they offer a support contributing to reduce the costs and risks linked to the process. A parenthesis has to be opened here, since it is necessary to emphasise the fact that sometimes networks have the opposite function, that is to say, to discourage further migration. Indeed, already settled migrants may try to reduce the possibility of additional arrivals, in order to keep under control dynamics linked to working opportunities, hostility towards the immigrant community, and so forth. Now, going back to the main topic, it has to be said that networks do not work all the same way, though. The first example in support of this statement is the fact that family networks usually provide more support and assistance as compared to friendship ones. Another example, networks are 'biased' towards male migrants; indeed, men have at their disposal larger and more widespread networks than women.

Before considering a new determinant of migration trends, other two networks have to be introduced. The first one is the smugglers' network[177], already mentioned in section 2 of chapter 1 (when describing the Central Mediterranean route). This type of network is becoming more and more solid, branched and professionalised, due to the increasing demand of irregular means for reaching the European Union. Smugglers have a key influential power on individuals (especially the most desperate ones), particularly as regards the choice of the route and the destination to be reached. The second network is the one created thanks to technology and modern means of communication[178]. This phenomenon is twofold: on one hand, internet and television shape the perception migrants have about migration itself and about the countries of destination, usually offering a description of reality more positive than it actually is; on the other hand, the use of social media (such as Facebook, YouTube, Twitter) and forums are fundamental for real-time sharing of information and news about conditions during the journey, about border controls and so on.

A final aspect worth mentioning is defined in terms of 'pull' factors, i.e. those factors attracting[179] migrants and depending on the country of destination which, by adopting policies that are more or less favourable to migration, may encourage or discourage inflows of

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[177] See footnote 173, p. 27.

[178] *Ibidem.*

[179] The word 'attracting' is the key to understand the difference between push and pull factors. The former drive migrants away from their country or origin; on the contrary, the latter attract migrants towards a country of destination.

people[180]. Pull factors have a quite specific dissimilarity as compared to push factors[181]. As a matter of fact, while migrants are well-aware and informed about the situation in their country of origin (this allowing a rational and cautious judgement), the same is not true for those determinants associated to the country of destination[182]. Inaccuracy, ignorance and false myths may foment an unjustified desire to migrate; hence, once arrived to destination, people's dreams may be broken when confronted with the harsh reality encountered. Now, as far a pull factors are concerned, elements such as the strength of border controls and the processing of asylum applications are considerably important for migrants; indeed, when they have to decide in which country they want to arrive, they may opt for the one having less strict border controls. In addition, the decision of one state to tighten border security in order to reduce inflows usually has a counterproductive effect, i.e. the diversion of flows towards other routes (either already existing or specifically opened in reaction to the measure). Similarly, the introduction of a more restrictive asylum policy (with the aim of decreasing the lodging of asylum applications) actually provokes an unwanted increase of irregular entrances, to the point that "the deflection effect may balance out or even exceed the deterrence effect"[183]. Nonetheless, when considering the role of pull factors, the question is not as easy as it may appear. A distinction has to be made between two different components which are, in a way, the two sides of the same coin[184]. The first side is associated to the nature of the state power; in simple words, a more authoritarian, repressive or centralised state has more power to influence immigration and emigration if compared to a state which is democratic, liberal and decentralised. However, the most interesting side is the second, that is to say the one related to the immigration and emigration policies[185] adopted by each state (together with all the policies not directly related to migration but capable of exerting an influence over it, such as policies concerning the social welfare or the labour market). What is even more fascinating about this is the fact that immigration policies frequently fail (or, at least, are depicted as such) since they

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[180] Hein de Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* – International Migration Institute Working Paper No. 32 (DEMIG project paper No. 2). University of Oxford, April 2011. Available at: https://www.imi.ox.ac.uk/publications/wp-32-11.

[181] Apart from the fact that the former refers to destination countries and the latter to the areas of origin of migrants.

[182] Everett S. Lee, "A theory of migration" in *Demography*, 1966, 3(1): 47-57.

[183] Mathias Czaika and Mogens Hobolth, *Deflection into irregularity? The (un)intended effects of restrictive asylum and visa policies* – International Migration Institute Working Paper No. 84 (DEMIG project paper No. 15). University of Oxford, February 2014, p. 19. Available at: https://www.imi-n.org/publications/wp-84-14.

[184] See footnote 180.

[185] Defined by Hein de Haas as "laws, rules, measures, and practices implemented by national states with the stated objective to influence the volume, origin and internal composition of migration flows", in *ivi,* p. 25.

produce unintended counter-effects, defined with a more technical terminology as 'substitution effects' by Hein de Haas[186]; mainly, they are the diversion towards areas or countries with less restrictive policies, the reorientation towards other available channels (especially the illegal ones) allowing entrance into a country, the reduction of return flows, and the acceleration of the inflow trend due to the fear of possible restrictions in future. In spite of the value of this theory on the effectiveness of migration policies, according to Hein de Haas the conclusion that all policies in this field are a failure has to be avoided[187]. The reason is that this judgement is the result of relevant conceptual limitations and methodological problems, in particular due to the obsolescence, incompleteness and lack of uniformity of the existing models on push-and-pull factors. Thus, this area is still open to further analysis and research.

After the delineation of all the principal push and pull factors having the power to determine international migration, it is possible to go one step further. Indeed, all the determinants presented in the previous paragraphs can be classified into three levels: the macro level, the meso level, and the micro level[188]. The first one comprises all the elements capable of influencing all migrants in a general way (even if not all persons are affected with the same strength), such as the political or economic situation and the migration policies of both sending and receiving countries. The second level includes all the components linking each migrant with the society (e.g. family and societal/community orientation as regards migration, social networks, and so on). The last level encompasses all the personal features making an individual more or less suitable for migration, namely age, gender, ethnicity, the level of education and the socio-economic status. This subdivision in levels is helpful because it allows a greater understanding about the power of influence of each type of factor. However, it has to be kept in mind that they simultaneously exert an influence over migrants; for instance, believing that only personal components actually contribute to a decision to migrate is absolutely misleading. Consequently, if a more in-depth theory on this subject has to be developed, then it is necessary to overcome the current impasse in favour of a more comprehensive and multi-level

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[186] Hein de Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* – International Migration Institute Working Paper No. 32 (DEMIG project paper No. 2). University of Oxford, April 2011. Available at: https://www.imi.ox.ac.uk/publications/wp-32-11.
[187] *Ibidem*.
[188] Clare Cummings et al., "Why people move: Understanding the drivers and trends of migration to Europe" – Working Paper 430, in *Overseas Development Institute* website, December 2015. Available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf.

theoretical framework[189]; in other words, a theory linking all the three levels in a mutual interaction, but allowing the acknowledgement of their relative weight is essential to comprehend current migratory trends. Existing models isolating the different aspects are no longer sufficient to offer a valid explanation of reality.

To give a new order and logic to the contents presented in this chapter, a more general scheme representing the main factors playing a role in the process of migration has to be drawn, based on the analysis conducted by Everett S. Lee[190]. According to his research, the main determining constituents of migration can be grouped into four main categories: first, the determinants related to country of origin of migrants (i.e. the push factors); second, the elements linked to the destination (i.e. the pull factors); third, the obstacles which may be encountered or may emerge during the journey; and fourth, the factors associated to the single individual. Each of these groups (and each factor being part of these groups) exerts a different power and influence on migrants[191], which find themselves involved into a quite complicated analysis of the pros and cons deriving from the decision to migrate (or to remain). In a way, people try to place all the elements which they consider relevant along a positive-negative spectrum, so as to be able to identify which side will, in the end, predominate over the other. Nevertheless, it has to be kept in mind that no decision is entirely rational; hence, emotions and impulses may lead to a decision which is different from the one deriving from a purely rational examination. All in all, migration cannot but be defined as a selective process, which is capable of putting in motion those individuals who attribute greater importance to positive factors, while it deters those who, instead, are overwhelmed by the negative aspects.

To sum up, this section has delineated the principal determinants influencing migration, giving importance not only to the pure factors but also to how they are related to one another. The most significant conclusions that have to be drawn from these lines are, firstly, that migration cannot be really understood if it is continuously treated as an unrelenting phenomenon not dependent on individuals; and secondly, that persons do not make their decision to migrate on the basis of abstract concepts (such as demographic transition, population density, labour

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[189] See footnote 184.
[190] Everett S. Lee, "A theory of migration" in *Demography*, 1966, 3(1): 47-57.
[191] Even though it is possible to identify some classes of migrants reacting in a similar way to some specific factors.

productivity and so on), rather they only migrate if they perceive that it is in their best interest to do so. Thus, human action is the most important migratory determinant. On the whole, the chapter has wanted to offer a thorough contextualisation improving the ability to understand the European migration crisis; indeed, without offering figures on arrivals and fatalities, descriptions of the main routes used to reach Europe, and the factors driving migration, it would have been impossible to comprehend the full extent of the phenomenon. The next chapter focuses on the strategies and instruments implemented by the European Union in recent years to manage the continuous inflow of people. It serves as a sort of timeline for understanding all the steps made by the European Union so as to arrive to the 18 March 2016, day of the conclusion of the EU-Turkey Statement (theme of chapter 4). Nevertheless, despite the good intentions, European behaviour cannot be immune to criticisms; and the reasons are to be presented in the following pages.

Chapter 3. An analysis of the European Union management of migration and asylum: from the 1990s onwards.

Summary. This third chapter examines the European strategies and policies implemented in the field of migration and asylum since the 1990s. First and foremost, the internal and external dimensions of the European migration policy are scrutinised, trying to understand why the development of the former has been (and still is) much more difficult as compared to the latter. It is important to remember that the external dimension has two different sides, namely prevention and externalisation; the predominance of one over the other strongly influences Member States' relations with third countries. After this, attention is paid to the concrete implementation of the external dimension through instruments and programmes (or action plans) accurately and specifically devised.

As illustrated in the first chapter, the European attitude towards migration and immigrants has significantly changed over the decades. Europe of the post-Second World War was animated by the spirit of openness, tolerance, mutual respect and solidarity, which was mainly inspired both by the desire to avoid future repetitions of the atrocities perpetrated during the War, and by the favourable economic condition of those years (i.e. a period of reconstruction, innovation and economic growth). However, this positive stance started to change in the 1970s and continued to fade over the years, leading to quite a hostile environment for immigrants. This intolerance further exacerbated in the 2000s, mainly because of the combination of two factors: the economic crisis and the constant (and apparently unstoppable) inflows of people from southern and the eastern countries.

When attitude towards a hotly debated issue varies, it gradually produces some changes in the policy domain, i.e. countries adapt their internal and external policy to the new reality. In the specific case object to this thesis, both countries and the European Union as a whole have started to implement measures capable of addressing the challenges associated to an environment in which migration has become a top priority. In simple words, due to the increasing numbers of asylum-seekers and economic migrants constantly arriving in the

European territory, the European Union has tried to give adequate answers to the problem, in particular by introducing new policies in the fields of migration, asylum and border control.

This chapter precisely aims to analyse the various attempts the European Union has made in order to regulate migration so that, on the one hand, the protection of European citizens and their rights is ensured and, on the other hand, the rights of those arriving at the European doors pushed by a valid and honest reason are equally defended. In order to do so, the internal and external dimensions of the European migration policy are scrutinised. This also implies a reflection on the nature of the tools and expedients the Union has implemented over the years so as to both manage migration and reach its objectives. Finally, a comment based on the analysis carried out is made. Such a review is necessary in order to better understand the context in which the EU-Turkey Statement has been elaborated and concluded; as a matter of fact, the Statement precisely reflects the attempts of the European Union to reduce the arrivals and to externalise its migration policy. A clarification has to be made, though; the focus is on the period going approximately from the 1990s to some years ago[192], thus concentrating on the period of activity of the European Union (and not of its ancestors).

1. The internal and external dimensions of the European migration policy.

When an analysis of the policies concerning migration and all its related aspects has to be made, it is of the utmost importance to consider the difference between two diverse but closely interdependent dimensions, namely the internal and the external.

The internal dimension refers to all the values, principles and (consequent) policies Member States adopt in order to produce a common approach for dealing with migratory issues inside the European Union; in other words, this dimension corresponds to the development and establishment of an internal and harmonised regulatory framework capable of ensuring to the Member States the ability to respond in a single and coordinate way to the challenges associated to the management of migration.

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[192] As it has been explained in the introduction, due to the topicality of the phenomenon, changes and updates in the legal and policy domain are continuous. Consequently, it has proven to be necessary to choose a specific period on which the analysis is to be focused, without attempting to report more recent facts.

The external dimension is associated to the relations the European Union establishes with third countries (both of origin and transit) in order to manage migration in a cooperative way. More in detail, this expression makes reference to two distinct but closely related natures of this dimension[193]. The first side is associated to the attempts the European Union makes in order to tackle the root causes of migratory flows, thus trying to find solutions capable of offering to migrants the option of remaining in their country of origin (or near countries) without risking their lives or living in unacceptable conditions. Accordingly, the European commitment in this area is concretised through actions related to development assistance and humanitarian aid (and the related tools, e.g. foreign direct investments)[194]. Differently, the second side is characterised by the desire of the Union to externalise migration control, which means firstly to export the "classical migration control instruments to sending or transit countries outside the EU"[195] (such as border control techniques, measures for capacity-building, instruments for tacking illegal migration and the related activities of smugglers and traffickers, and so forth); and secondly, the adoption of rules or provisions aiming at facilitating returns and readmissions of third country nationals[196]. In other words, the first side is based on prevention, the second one on burden-sharing or, better, on control (i.e. actually, the European Union is trying to reduce its burden by attributing the responsibility for migration management to other non-European countries, thus using conditionality in order to 'force' third countries to handle migration on its behalf).

Internal and external dimensions are strongly interrelated. In order for Member States to act as a unitary actor when relating to third countries, a previous internal alignment is necessary. In a sense, the external dimension is a sort of reflexion of the level of internal harmonisation, since Member States have to agree (at least, at a minimum level) with one another before deciding how to come into contact with non-European countries as regards migration management.

This sub-chapter is thought to present these two different dimensions and to describe how they have developed during the years, by also trying to emphasise the fact that Member States have more easily found an agreement as regards the external dimension, while the internal dimension keeps on being an arena for confrontation and disagreement.

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[193] Christina Boswell, "The 'external dimension' of EU immigration and asylum policy" in *International Affairs*, 2003, 79(3): 619-638.
[194] *Ibidem*.
[195] *Ivi*, p. 622.
[196] *Ibidem*.

1.1 The difficult conception of the internal dimension.

"International migration viewed as immigration is typically understood and managed as a domestic concern marked by the responsibility held by interior ministries and associated agencies for the regulation of immigration"[197]. However, in light of the facts that the European Union has always represented a craved destination both for people seeking protection and for those looking for better economic or social opportunities, a fragmented and greatly diversified reception system did not seem to be the most ideal solution. Thus, the need to coordinate European policies in the area of asylum, migration and border management has become inevitable, or better, it has become such if the meaning of the word *Union* ought to be respected. Nevertheless, the simple fact of recognising the urgency to harmonise Member States' policies in this field does not represent a sufficient input for producing this result; to put it in simple words, an agreement on the need for harmonisation[198] cannot be automatically translated into an effectively harmonised policy.

Why are European countries not able to find an agreement for the creation of a common internal framework for the management of migratory issues? In order to answer this complex question, it is worth starting by making two important considerations. First of all, migration control has always been considered as the emblem of national sovereignty[199]. Member States find it difficult to make concessions in terms of decision-making power when it comes to the establishment of the norms and rules determining who can (or cannot) enter the territory of a country. Nevertheless, the same concept of membership to the European Union implies a voluntary acceptance of the limitations imposed on national sovereignty; accordingly, states agree to renounce to portions of their power only if this 'sacrifice' can be translated into a form of gain (for instance, a communitarian enhanced border security capacity)[200]. The issue is even more complicated when a distinction between European and non-European migrants is made; as a matter of fact, it seems that Member States have accepted to "give up their sovereignty

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[197] Andrew Geddes, "Europe's border relationships and international migration relations" in *Journal of Common Market Studies*, 2005, 43(4), p. 788.

[198] The words harmonisation, communitisation and alignment are used as synonyms in this section. Indeed, they all refer to the process according to which European countries try to create a common and well-structured legal framework capable of regulating, thanks to a communitarian approach, the issue of asylum and immigration.

[199] Virginie Guiraudon, "European integration and migration policy: Vertical policy-making as venue shopping" in *Journal of Common Market Studies*, 2000, 38(2): 251-271.

[200] Andrew Geddes and Andrew Taylor, "How EU capacity bargains strengthen states: Migration and border security in South-East Europe" in *West European Politics*, 2013, 36(1): 51-70.

with respect to the movement of their own nationals within the Union"[201], whereas they are not willing to do the same "for the migration on non-EU member state nationals to the Union"[202]. In brief, the desire to maintain the highest degree of national sovereignty as regards the control of migratory movements on the one hand, and the 'duty' to leave this power in the hands of European supranational institutions on the other do enter into conflict with one another; thus, this represents a very complex and thorny matter of contention, which obviously reflects on the possibility to create an internal legal framework for an harmonised and coordinated management of migration.

Secondly, and most importantly, the international negotiation involving Member States and European institutions does constitute only one level of negotiation; indeed, there is a second arena of confrontation, which is represented by the domestic level[203]. Thus, European negotiations for the establishment of a common internal policy for migration management have to be understood as an interaction of interactions, which is to say an interaction between the national (or domestic) interaction and the international interaction. This theory implies that when a country appears on the international stage, it brings with itself the preferences and interests of the domestic constituency[204]; accordingly, States actively try to shape decisions at the European level so as to reach a final outcome which is line with the preferences of national stakeholders. What has just been described represents an aspect of the so-called Europeanisation[205]. The term, which is considered by scholars an essential notion for studying European policy-making, is used to describe distinct features of the process of European integration; indeed, "while most scholars focus on top-down processes involving the 'central penetration of national systems of governance', others employ the term to describe the 'emergence and development at the European level of distinct structures of governance'"[206]. What is more, the concept also includes in its meaning the idea of processes at the European level which intend to have an impact on the preferences of the other governmental actors so as to be able to increase countries' own power to dominate or, at least, influence the emerging

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[201] Rey Koslowski, "European Union migration regimes, established and emergent" in Christian Joppke *Challenge to the Nation-State: Immigration in Western Europe and the United States*, Oxford University Press, 1998, p. 154.
[202] *Ibidem*.
[203] Robert David Putnam, "Diplomacy and domestic politics: The logic of two-level games" in *International Organization*, 1988, 42(3): 427-460.
[204] *Ibidem*.
[205] Georg Menz, "Stopping, shaping and moulding Europe: Two-level games, non-state actors and the Europeanization of migration policies" in *Journal of Common Market Studies*, 2011, 49(2): 437-462.
[206] *Ivi*, p. 437.

procedures, rules, policies and so forth[207]. So, to sum up, the combination of the desire to maintain sovereignty over such a salient issue and the attempts by each Member State to influence the process of policy-making with interests of predominantly national nature has created a situation in which the formulation of a shared internal immigration policy can be described in terms of a "political tug-of-war"[208].

Again, why is it so difficult for the European Union to find an internal compromise? According to Georg Menz and Anthony Messina[209], this is simply because national governments do have the interest in maintaining a European internal poorly-developed regulatory framework in the field of migration (or, at least, in some specific areas of action). In order to better understand this assertion, a comparison between three important directives in the field of immigration can be made (namely the Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, the Council Directive 2003/86/EC on the right to family reunification, and the Proposal COM/2001/0386 for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities). The research carried out by Adam Luedtke[210] has demonstrated that the possibility to reach an agreement (or not) is determined by two main factors, which are: firstly, the desire to preserve national control over a specific issue[211]; and secondly, the saliency the issue has at the domestic level[212]. These two elements are strongly interrelated; the higher the public interest for an issue, the greater a government's desire to demonstrate to its citizens and stakeholders that it actually can control the issue by imposing national preferences on the communitarian negotiating table. A positive outcome (corresponding to the effective adoption of the proposal advanced by the Council) was reached only in the first two cases, that is to say, in the fields of family reunification and of third-country nationals' status; conversely, Member States did not manage to adopt the proposal concerning labour migration, even if

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[207] *Ivi*, p. 440.

[208] Adam Luedtke, "Uncovering European Union immigration legislation: Policy dynamics and outcomes" in *International Migration*, 2009, p. 1.

[209] 1) Georg Menz, *The political economy of managed migration*, Oxford: Oxford University Press, 2008; 2) Anthony Messina, *The logics and politics of Post-WWII migration to Western Europe*, Cambridge: Cambridge University Press, 2007. Both books are quoted in Georg Menz, "Stopping, shaping and moulding Europe: Two-level games, non-state actors and the Europeanization of migration policies". See footnote n. 205.

[210] See footnote 208.

[211] As already explained, in general migration represents a field on which countries prefer to maintain the highest degree of national sovereignty; this is because of the fact that they want to keep the control on the power to decide who can enter (and reside in) the national territory and who cannot. This feeling is even stronger when some specific aspects related to migration are concerned; the most interesting case is the one of labour migration.

[212] A question is defined as salient when it is especially important for the constituency.

further attempts have been made in the subsequent years (in particular with the Blue Card initiative). The different outcome can be easily explained. Successful directives are possible if they either are associated to low saliency issues, or they lead to the introduction of more restrictive measured as compared to the national ones. As a matter of fact, in the first case (i.e. low saliency), the interest of the public opinion is not stimulated to a level which may limit the margins of manoeuvre of negotiators; in other words, a limited interest corresponds to a little concern for the developments associated to it. In the second case, the introduction of restrictive measures can be accepted by the constituency (even in the event of high saliency), because of the fact that the rights and privileges of national citizens are not 'threatened' by the adoption of a new regulation concerning migrants' rights. Differently, the failure of the proposal on labour is to be attributed to the high saliency of the issue; indeed, when the saliency is high, national demands are stronger and constituency's position firmer. Hence, the higher the saliency, the higher the tendency to maximise national sovereignty and, consequently, to reduce European interference. However, as it has just been mentioned, some progress was made with the adoption of the Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (the so-called Blue Directive). This change in attitude was caused by the legalisation on the part of the Spanish authorities of almost one million illegal immigrants, which entered the Spanish (and consequently European) labour market. Thus, European countries started to believe that a common policy for controlling the system of labour migration should be preferred to a sort of 'invasion' caused by the unilateral act of one Member State[213].

Notwithstanding the relevance of the difficulties Member States have faced (and keep on dealing with) as regards the creation of an all-encompassing internal European policy in the field of migration, some important steps (or at least attempts) in the direction of a stronger and more distinct harmonisation have been made. This process has been supported and encouraged during the conclusion of the various treaties which represent the mainstays of the European Union. To begin with, the *Treaty on European Union or Maastricht Treaty*[214] (which was signed on 7 February 1992, and entered into force on 1 November 1993) can be mentioned as

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[213] For the analysis of these directives, look at: 1) Adam Luedtke, "Uncovering European Union immigration legislation: Policy dynamics and outcomes" in *International Migration*, 2009: 1-27. 2) Georg Menz, "Stopping, shaping and moulding Europe: Two-level games, non-state actors and the Europeanization of migration policies" in *Journal of Common Market Studies*, 2011, 49(2): 437-462.
[214] *Treaty on European Union*, 7 February 1992. Maastricht: European Union.

the first meaningful effort the Union engaged in so as to address the need for a policy harmonisation (and the consequent transfer of competences in the field of migration at the European level)[215], even if it has been criticised for its superficiality and restrictiveness by advocates of refugees' rights[216]. Article K.1 states that

> For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:
> 1) asylum policy;
> 2) rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;
> 3) immigration policy and policy regarding nationals of third countries:
>   a) conditions of entry and movement by nationals of third countries on the territory of Member States;
>   b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
>   c) combating unauthorised immigration, residence and work by nationals of third countries on the territory of Member States; [...][217]

Moreover, the Declaration on Asylum[218] also emphasises the fact that the Council urged Member States to carry out (by the beginning of 1993) all the necessary measures for harmonising asylum policies or, at least, some aspects of them. The need to align countries' policies and to increase cooperation in the field was mainly motivated by the conclusion of the Schengen Agreement on 14 June 1985[219] which, however, entered into force only 10 years later, on 26 March 1995. With this Treaty, the five contracting parties (and all the countries which desired to join it in the future) committed themselves to gradually abolish internal borders between them. The goals were firstly to increase the freedom of movement of people, goods and services; and secondly, to strengthen cooperation and solidarity between signatories, objective that was possible only by abolishing internal limitations. Nevertheless, these outcomes were conceivable only if some counter-measures were taken; as a matter of fact, the elimination of internal borders implied a sort of diminution of the protection measures granted to each state. Accordingly, in order to maintain an unvaried level of security, external borders

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[215] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003.

[216] Christina Boswell, "European values and the asylum crisis" in *International Affairs*, 2000, 76(3), p. 542.

[217] See footnote 214. Remember that the cooperation in the fields of justice and home affairs (which includes the aspects related to immigration and asylum policy) is also known as the third pillar of the Maastricht Treaty.

[218] *Ibidem*, in the section "final act".

[219] *Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*. 14 June 1985, Schengen: contracting parties.

had to be strengthened. But this was not sufficient. The Parties should also make the effort to approximate their visa policies so as to prevent any regrettable by-product or drawback in terms of security and illegal immigration deriving from the lifting of border checks[220]. This also implied increased cooperation and information exchange, which was better sanctioned with the establishment of the Schengen Information System[221]. So, to sum up, the abolition of internal borders carried with it the risk of uncontrolled migratory movements between the countries signing the agreement; as a consequence, the Parties tried to introduce all the necessary measures for harmonising their policies, laws and provisions so as to both safeguard internal security and prevent undesired effects linked to internal illegal migration.

A further decisive step towards communitisation and alignment was made with the *Treaty of Amsterdam*[222], signed on 2 October 1997 and entered into force on 1 May 1999; as a matter of fact, thanks to it, cooperation in the area of asylum and immigration were moved from the third pillar (i.e. the one concerning intergovernmental areas of action) to the first, that is to say the supranational level[223]. In short, migration and asylum were moved away from the national stage, and associated to a more European (i.e. communitarian or collective) dimension. This new treaty geared at establishing an area in which justice, freedom and security were the key words. In order to do so, Member States should undertake the introduction of more rigorous policies capable of protecting "the EU area from an influx of unwanted immigrants"[224], specifically with respect to asylum, immigration, and control of external borders. More in detail, Title IIIa concretely addresses visa, asylum, immigration and other policies related to people's freedom of movement, highlighting the importance of introducing (in a period no longer than five years after the entry into force of the Treaty concerned) two complementary measures, namely the abolition of controls on every person[225] who crosses internal borders and the strengthening of external border checks. This means that Member States have to find a point of agreement with regards to, firstly, the standards and procedures necessary for carrying out the activity of control at the external borders; and secondly, the essential rules for

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[220] *Ibidem*.

[221] The specific reference to the SIS appeared for the first time in the Convention signed on 19 June 1990 which aimed to concretely implement the Schengen Agreement. See the Schengen Visa Info website, available at: https://www.schengenvisainfo.com/schengen-agreement/. For more information on SIS, see section 2.1 (of ch. 1).

[222] *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts*, 2 October 1997. Amsterdam: European Union.

[223] Heinz Fassmann et al., *Statistics and reality. Concepts and measurements of migration in Europe*, Amsterdam: Amsterdam University Press, 2009, pp. 30-31.

[224] Christina Boswell, "European values and the asylum crisis" in *International Affairs*, 2000, 76(3), p. 542.

[225] Understood as either European Union's citizens or third country nationals.

harmonising the visa policy in the European Union (focusing, in particular, on the compilation of a list of all countries whose citizens need or need not a visa permit for entering the territory of the European Union, on the standardisation of the visa format, and on the issuance of long-term visas for various purposes including also family reunification)[226]. A third area in which greater uniformity is required is the one of asylum, whose policies and measures have to respect the key principles of the 1951 Refugee Convention and the 1967 Protocol. The article 73k of the Amsterdam Treaty calls for attention to the need to develop common minimum standards for the reception of asylum seekers, the determination of the refugee status (together with the circumstances under which this status could be the granted or withdrawn), and the attribution of temporary protection to displaced persons. Other factors deserving the consideration of Member States concerns the problem of illegal immigration or residence, the conditions under which third country nationals legally residing in one Member State can move or reside into another European country, and the determination of the criteria necessary for establishing which country has the responsibility to scrutinise asylum applications. In any case, all the proposals and measures considered in these lines do not have to affect national security, and have to promote the maintenance of law and order. Finally, the Treaty of Amsterdam can be considered an important step as regards harmonisation also because it incorporated the Schengen Agreement in the Union's legal skeleton, as it can be seen in the *Protocol integrating the Schengen acquis into the framework of the European Union*[227]. Therefore, the gradual abolition of internal borders is made a European priority (not only of some countries) nonetheless compliant with the right of a sufficient level of security and protection for the single Member States and their citizens.

Some months after the Treaty of Amsterdam's entry into force, the Tampere European Council was held[228]. In this occasion, firstly the European Union succeeded in obtaining shared competence in the field of migration and asylum (thus making a significant step towards the institution a common European policy in this domain)[229]; secondly, Member States made it clear that they should take advantage of all the possibilities which were offered by the Treaty just signed. In particular, the creation of an area based on freedom, security, justice, and human

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[226] See article 73j of the Treaty.
[227] *Protocol integrating the Schengen* acquis *into the framework of the European Union* – Annexed to the Treaty of Amsterdam. 2 October 1997, Amsterdam: European Union.
[228] Tampere, 15-16 October 1999.
[229] Rosemary Byrne et al., *New asylum countries? Migration control and refugee protection in an enlarged European Union*, The Hague: Kluwer Law International, 2002, pp. 399-402.

rights protection was depicted as a priority[230]. As regards the specific issue of migration and asylum, Member States underlined once again the importance of developing a common policy which has to respond both to the needs of those people seeking access to the territory of the Union (thus respecting the commitment to the Refugee Convention and its related Protocol) and to the urgency of granting efficient external border controls in order to arrest illegal immigration flows and tackling its causes (mainly the activities of traffickers and smugglers). A concrete step towards harmonisation is made with the agreement reached by Member States on the need to establish a Common European Asylum System (CEAS), which aims at applying in a full and inclusive way the key norms and values of the Convention on the Status of Refugee, paying particular attention to the principle of non-refoulement[231]. The System has to establish a clear and fair mechanism for determining which country is responsible for the examination of the asylum applications, together with the establishment of common standards as regards the processing of these applications and the reception apparatus; moreover, it should encourage the speeding up of the process which has to lead to a common position of Member States in relation to the temporary or subsidiary protection for displaced people. Nevertheless, the System does not have to be implemented in a naive way, since abuses on the part of those trying to remain in Europe may be possible. As already mentioned, a fundamental question dealt with in the Tampere meeting is the management of the fluxes of migrants. With a view to effectively managing every type of migratory flow, be it legal or illegal, the cooperation with countries of origin or transit is of the utmost importance; this implies not only the conclusion of agreements for returning or readmitting third country nationals, but also the development of a comprehensive approach focused on the needs of the most vulnerable regions of the world (such as the improvement of living conditions, the respect of human rights, the end of conflicts and civil wars, and so forth). What is more, also the campaigns informing migrants about the existing legal possibilities and about the risks associated to the choice of illegal or irregular pathways play a key role. To sum up, the meeting held in Tampere in 1999 constitutes a pivotal moment in the process of creation of a common European asylum and immigration system; indeed, ad far as Andrew Geddes is concerned, it was during that meeting that Member States

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[230] The main subjects dealt with during the meeting and the conclusions reached are reported in: European Council, *Tampere European Council 15 and 16 October 1999 – Presidency conclusions*, 15-16 October 1999. The document is available at: https://www.cvce.eu/en/obj/conclusions_of_the_tampere_european_council_15_and_16_october_1999-en-32135242-b375-47fe-adb4-e02ab2432945.html.

[231] *Ibidem*.

succeeded in setting up the four pillars at the basis of the European approach in this field, namely: first, the identification of minimum standards concerning asylum procedures; second, the formulation of the real meaning of the status of refugee and of subsidiary protection; third, the determination of the criteria deciding which country is competent to examine the applications held by asylum seekers; and fourth, the establishment of minimum conditions of reception[232].

Now it is the time to consider the main provisions in the fields of asylum, immigration and border control contained in the *Treaty establishing a Constitution for Europe*[233], signed in Rome on 29 October 2004 but never entered into force[234] due to the fact that it has not been ratified by all the 27 countries of the European Union. Thus, because of the rejections of France and the Netherlands, Member States decided to begin working on the Lisbon Treaty. Nevertheless, despite the fact that the Constitutional Treaty has not entered into force, some words have to be spent for it, since it encompasses some interesting elements related to the topic dealt with in this dissertation[235]. As regards asylum and immigration, the importance of respecting the core rules and values of the Geneva Convention and the related Protocol is once again confirmed[236], together with the need to develop a common European policy concerning asylum and temporary or subsidiary protection; this implies the establishment of a common European asylum system, whose main features should be

a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
c) a common system of temporary protection for displaced persons in the event of a massive inflow;
d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

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[232] Andrew Geddes, "Europe's border relationships and international migration relations" in *Journal of Common Market Studies*, 2005, 43(4), p. 795.

[233] European Parliament, "Draft Treaty establishing a Constitution for Europe (not ratified)" in *Official Journal of the European Union*. Rome: 29 October 2004. Available at: http://publications.europa.eu/resource/cellar/7ae3fd7e-8820-413e-8350-b85f9daaab0c.0005.02/DOC_1. At this point, an important remark has to be made concerning the *Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts* (which was signed on 26 February 2001 and entered into force on 1 February 2003). Despite the fact that it represents a pillar of the European Union, it is not taken into consideration in the analysis because it does not introduce any relevant change in the area of asylum and immigration.

[234] The author believed it adequate to pay attention to this non-applied Constitution because, in any case, it represents a step Member States made in their process of internal harmonisation as regards migration.

[235] See footnote 233.

[236] Treaty establishing a Constitution for Europe, art. II-78.

e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.[237]

As it can be noticed, the points just reported are simply a reproduction of the key guidelines and objectives that European countries were trying to put into practice and implement since the beginning of the 1990s. The same can be said for articles III-267 and III-268, which focus on chief priorities such as the fight against illegal immigration and human trafficking or smuggling, the conditions for legal entrance and residence in the territory of the Union (with the related problem of the issuance of visas or residence permits), the determination of the rights persons from third countries are entitled to and their integration in hosting societies, the conclusion of readmission agreements with third countries (and more in general stronger cooperation with them), and the respect of the principles of burden sharing and solidarity between Member States. As far as border controls are concerned, the Constitution confirms the precepts included in the Schengen Agreement about the usefulness of removing internal controls while increasing security and checks at the external borders. In order to do so, coordination between Member States and cooperation with third countries are fundamental; in addition, common policies concerning conditions for free travel, short-term visas, and the system for the integrated management of external borders have to be promoted[238].

Now, before analysing the main contents of the Lisbon Treaty, another milestone in the process of creation of a European asylum and immigration system has to be considered, namely the Hague Programme[239], which was approved by Member States during the meeting of the European Council held on 5 November 2004. The objectives of the Programme are complex and heterogeneous, including the guarantee of fundamental rights both for European citizens and for third-country nationals looking for protection and asylum, the regulation of migratory flows (together with the fight against the activities of criminal networks responsible for the smuggling and trafficking of human beings), the strengthening of external borders and the consequent enhancement of internal security, and the creation of a Common European Asylum

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[237] *Ivi*, art. III-266.
[238] *Ivi*, art, III-265.
[239] Council of the European Union, *The Hague Programme: Strengthening freedom, security and justice in the European Union* (16054/04), 13 December 2004. Brussels: Council of the European Union.

System (which was already planned in the 1999 Tampere meeting)[240]; in simple words, Member States' primary goal during this meeting was to jointly work so as to conceive a functioning "comprehensive approach, involving all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return policies"[241]. Of course, information collection and exchange play an important role in this process. By analysing the Programme more in detail, it is possible to affirm that, in this occasion, Member States worked on both the internal and the external dimensions of the EU policy in the field of migration and asylum. With respect to the internal dimension, the two components deserving some observation are legal migration and integration. Indeed, they are normally paid not sufficient attention by European countries, since they usually focus on border control, reduction of fluxes in entrance and so forth. As regards the first element, Member States agreed on the fact that legal migration should be regulated and supervised at the European level, since this will allow firstly to combat exploitation and illegal employment (the latter being considered one of the factors attracting migrants into the Union), and secondly to enhance and improve European economy. In other words, a regulated migratory flux may produce interesting positive outcomes for the Union itself. Differently, the second element highlights the importance of a well-managed integration of third country nationals, which is possible only by avoiding isolation or discrimination and by creating valid opportunities of participation in the host society. However, the fact that integration is a never-ending process which may be successful only through the mutual understanding between migrants and host communities should not be neglected or underestimated. To conclude this paragraph on the Hague Programme, a final remark has to be made; indeed, it can be affirmed that it represents "a significant and surprising victory for the EU's governing organisations"[242]. This is because, after its approval, this Programme started to be considered the new framework under which the common European immigration policy could be negotiated and concluded. Furthermore, it is described as a turning point because it changed the apparatus governing the proposing and voting of new laws in the field of migration and asylum (later confirmed with the Treaty of Lisbon). Accordingly, from that moment, new laws were proposed only by the European Commission, and then voted by qualified majority by the European Council; and the European

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[240] *Ibidem.*
[241] *Ivi*, p. 7.
[242] Adam Luedtke, "Uncovering European Union immigration legislation: Policy dynamics and outcomes" in *International Migration*, 2009, p. 3.

Parliament obtained the co-decisional power of proposing amendments or to veto some legislation[243]. Notwithstanding the progress made with this Programme, the victory of the supranational spirit over national tendencies is associated only to the areas of illegal migration and asylum policies; to put it another way, legal migration keeps on being strongly dependent on national preferences[244].

Another step towards harmonisation in the domain of asylum and immigration is sanctioned by the *Treaty of Lisbon*[245] (signed on 13 December 2007 and entered into force on 1 December 2009), which was thought to be a replacement for the rejected Constitutional Treaty of Rome. Once again, its contents offer relatively limited innovation, and this may be interpreted as a sign that, despite the Member States' willingness to create a common European policy in the area of migration and asylum, in practice little progress was made in the direction of communitisation and alignment; hence, the need to constantly reaffirm the same principles and objectives. The Treaty begins by proclaiming that the European Union has to be an area in which security, justice and freedom are promoted, and in which internal borders no longer exist (in this way granting the freedom of movement for all individuals inside the territory of the Union, in line with the Schengen *acquis*) while external ones have been strengthened thanks to the adoption of measures connected not only to border management itself, but also to the domain of asylum and immigration[246]. In order for this area to be instituted and safeguarded, solidarity between Member States and cooperation with third countries are necessary. More precisely, chapter 2 deals with policies on border checks, asylum and immigration[247]. Harmonisation, adaptation and conformity are a key priority if the target wants to be reached, and they should always be kept in mind when dealing with questions related to the issuance of short or long-term visas or residence permits, the conditions allowing the freedom of movement for people inside the European territory, the establishment of a communitarian system aiming at managing external borders, the development of a well-functioning and all-encompassing policy about the granting (or withdrawing) of the asylum status or of the temporary or subsidiary protection (with all the related aspects, such as rights protection, integration, the risks of abuses, and so forth), and the partnership with third countries geared at

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[243] *Ibidem.*
[244] *Ibidem.*
[245] *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* (2007/C 306/01), 13 December 2007. Lisbon: European Union.
[246] *Ibidem*, art. 2.
[247] From article 62 to article 63b.

jointly managing migratory flows and fighting illegal immigration. Nevertheless, despite the first accusation of lacking in originality, the importance of this Treaty should not be underestimated. Indeed, its real contribution (with reference to the area of asylum and immigration) concerns the attempt to increase both the coherence and the consistency of the external actions of the European Union. As a consequence, firstly the figure of the High Representative of the Union for Foreign Affairs and Security Policy responsible for the European foreign policy is instituted; and secondly, greater emphasis is put on humanitarian aid and development cooperation in favour of third countries so as to reduce poverty and increasing the well-being, the security, and the protection of the rights of the people living in those countries. Obviously, one might say that a successful aid in the improvement of the living conditions in third countries would produce, as its main consequence, the reduction of people trying to arrive or settle into the European Union. In reality, this assertion has proven to be not completely true; but this is going to be explained more in detail in the following sub-chapter.

The last stage (linked to the internal dimension) deserving consideration is the Stockholm Programme, which was approved on 2 December 2009 (and was in force until the end of 2014)[248]. This represents the last five-year long programme adopted by the European Union for organising its agenda in the area of freedom, security and justice[249]. After reporting the significant progress the European Union has achieved over the years thanks to the previous Programmes and other adopted policies, Member States recognised that their attempts have not been sufficient; indeed, Europe still has to face crucial challenges which may be overcome only if coherence within the Union and partnership with third countries are reinforced. The European Union has to offer an image of itself as an area in which fundamental rights and diversity are promoted and protection is always granted for those persons who are most vulnerable; at the same time, its asylum and immigration system should appear credible and sustainable in the eyes not only of migrants but also of those trying to take advantage of the despair of poor people (i.e. smugglers and traffickers)[250]. In this way, illegal migration can be discouraged while the legal and controlled one is fostered. However this is not sufficient. An effective and coordinated action between Member States is essential if illegal migration has to

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[248] Council of the European Union, *The Stockholm Programme: An open and secure Europe serving and protecting the citizens* (17024/09), 2 December 2009. Brussels: Council of the European Union.
[249] The former being the Tampere Programme (1999-2004) and the Hague Programme (2004-2009).
[250] See footnote 248.

be tackled; this implies a valid return and readmission policy (which can be effective only thanks to the cooperation with countries of origin and transit) and the development of a common visa policy based on the principles of reciprocity, internal security and solidarity[251]. Indeed, the Union recognises that a well regulated migratory flow can be beneficial not only for the persons wanting to settle in the European territory but also for the Union itself, since migrants can give considerable contributions to host societies from a working, social, and demographic point of view; again, the importance of integration is made evident. Nevertheless, reception and integration have to be combined with the effort to minimise the negative impact that migration may have on sending countries. Thus, the Union has to work in a resolute way so as to both promote development (and, consequently, better living and working conditions) in third countries and avoid brain drain or other similar phenomena[252]. A final and crucial aspect is the one of the integrated borders management, which has to be further strengthened as compared to the previous attempt already made over the years. A firm control of external borders allows on the one hand the possibility to move freely inside the territory of the Union, on the other to ensure protection to those who rightfully try to enter the Union (in the meanwhile halting illegal immigrants or criminals). For this reason, during the meeting, the European Council suggested taking advantage of the knowledge and competences of Frontex and the European Asylum Support Office, whose roles and involvement in various operation related to border control should be enhanced and promoted[253].

1.2 The external dimension: two rather different sides of the same coin.

If European countries appear to be quite divided on the best ways in which migration can be managed internally (in particular when the issue of labour migration is considered), they actually converge on the so-called external dimension, in particular when cooperation with countries of origin and transit is taken into consideration[254]. As it has been explained in the introduction of this chapter, the external dimension is organised around two distinct but closely

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[251] *Ibidem.*
[252] *Ibidem.*
[253] *Ibidem.*
[254] Nicole Koenig, "The EU's external migration policy: Towards win-win-win partnerships" in *Policy Paper.* Berlin: Jacques Delors Institut, 6 April 2017, 190: 1-21.

interrelated 'sides'[255]. To briefly recap this difference, the first side is based on prevention, that is to say, on the attempts made by the European Union to both tackle the causes at the origin of migratory flows and find durable and valid solutions to the problem; the second side, instead, corresponds to a strategy of burden-sharing, i.e. the endeavour to externalise European tools for migration control.

Now that the meaning of the expression 'external dimension' has been reiterated, it is intriguing to understand when this concept and way of acting and relating to third countries started to be conceptualised. According to Sandra Lavenex and Rahel Kunz[256], the early elements which may be associated to an attempt of externalisation appeared for the first time during the 1990s and took concrete form only with the Tampere European Council meeting of October 1999. The birth of this new way of managing migration was associated to the inability of the already existing policies to effectively control migration, which experienced a significant increase during the 1990s mainly because of the dissolution of the Soviet Union and the conflicts in former Yugoslavia[257]. Additionally, it is in those years that the migration-security nexus acquired particular relevance in the European external migration dimension[258] (even if the first manifestations can be dated back to the 1970s, when more restrictive migration policies were adopted in response to the economic challenges of those years)[259]; this is because of the fact that, since the 1990s, migration started to be considered an economic, social and criminal threat for receiving countries, idea that was further fomented by the political discourse (which tended to use migration as the scapegoat for the existing social and economic problems)[260]. Nevertheless, it is also important to remember that until the end of the 1980s, migration was predominantly managed at the domestic level[261], i.e. it did not have a real European status. This can be explained by referring to the old way of understanding migration as a phenomenon which was "made visible by the territorial, organisational and conceptual

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[255] Christina Boswell, "The 'external dimension' of EU immigration and asylum policy" in *International Affairs*, 2003, 79(3): 619-638.
[256] Sandra Lavenex and Rahel Kunz, "The migration-development nexus in EU external relations" in *Journal of European Integration*, 2008, 30(3): 439-457.
[257] See footnote 255.
[258] See footnote 256.
[259] Georgios Karyotis, "European migration policy in the aftermath of September 11" in *The European Journal of Science Research*, 17 February 2007, 20(1), p.3.
[260] *Ibidem*.
[261] Andrew Geddes, "Europe's border relationships and international migration relations" in *Journal of Common Market Studies*, 2005, 43(4): 787-806.

borders"[262]. In brief, territorial borders represent the limits within which a state can exercise its sovereignty and, consequently, decide who can (or cannot) enter its territory; organisational borders are the sites at which conditions related to migrants' possibility to acquire citizenship and welfare or working rights are indicated; and, finally, conceptual borders refer to notions of identity and community. In a way, borders of such kind allow the recognition of international migration; and it is the desire to maintain such borders (in particular the organisational ones) that has given birth to the desire of using the European Union as an institutional venue allowing Member States to implement external actions in relation to the asylum and migration policy[263]. This has two important implications: firstly, the external dimension of the European policy in this field has domestic origins, since it is the result of many countries' attempt to influence the European perception of migration (for instance, as regards labour, Member States succeeded in projecting and maintaining territorial and organisational borders onto those countries which are perceived as sources of unwanted labour force, while they lifted these borders for those offering highly skilled workers); and secondly, changes in the perception of borders produce variations in the ways in which migration is perceived and dealt with[264].

At this point, it is necessary to analyse more in detail the features of the two natures of the European external dimension in the field of migration, asylum, and border control. As far as the preventive approach is concerned, unfortunately there is not much to say. Indeed, while European institutions have made numerous references[265] over the years calling for greater attention on the importance to analyse the root causes of migration, to tackle them, to find durable solutions to the problems forcing people to leave their countries in search for protection or, at least, assistance in Europe, it seems that Member States have preferred to use their energies for externalising migration management, thus reinforcing what Andrew Geddes has defined "Fortress Europe". This choice cannot but be criticised, because of two main reasons. Firstly, addressing the root causes allows combating illegal or uncontrolled migration

[262] *Ivi*, p 788.
[263] *Ivi*, p. 790.
[264] *Ibidem*.
[265] See for instance: 1) Commission of the European Communities, *Integrating migration issues in the European Union's relations with third countries*, COM(2002) 703, 3 December 2002. 2) Council of the European Union, *The Hague Programme: Strengthening freedom, security and justice in the European Union* (16054/04), 13 December 2004. Brussels: Council of the European Union. 3) European Commission, *A European Agenda on Migration*, COM(2015) 240 final, 13 May 2015. Brussels: European Commission.

on the long term[266]; in other words, this approach may help reducing the incentives which encourage migration. Secondly, spending so much energy and resources on the introduction of measures aimed at reducing entrances, in particular by making borders more secure, have proved to be an inadequate strategy since strongly motivated migrants will always find new ways (usually more dangerous) to enter the European Union[267].

However, if the analysis of the first side of the external dimension is stopped here, then the result would be an inaccurate and mostly negative presentation of the work of the European Union. Consequently, it is important to also remark the positive attempts the Union has made in order to help third countries of origin and transit to alleviate their internal problems and to curb the fluxes of people departing from or transiting through them. Two are the most meaningful ways in which Member States gave their contributions. The first one is through the use of funds which, however, are going to be described more in detail in the following sub-chapter (2.1). The second is the implementation of the so-called migration-development nexus. The migration-development nexus is the result of a change that happened in the late 1990s concerning the way in which migration was perceived, a change that started in global institutions such as the International Organisation for Migration and the World Bank and then was also assimilated at the European level. As a matter of fact, while previously migration was "either a completely distinct area of concern from development, or the outcome of lacking or failed development"[268], then many started to realise that it could be instead considered a tool for development (rather than as a problem). What is more, at the beginning of the 1990s, the European Union used to cooperate with third countries only by focusing on a different perspective, i.e. the migration-security nexus[269]; in simple words, communitarian policies in the field of migration were characterised by the willingness of European countries to reduce entrances, improve control capacities, and increase the rejections and return ratios of migrants.

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[266] Luigi Scazzieri and John Springford, *How the EU and third countries can manage migration*. Centre for European Reform, November 2017. Available at: https://www.cer.eu/publications/archive/policy-brief/2017/how-eu-and-third-countries-can-manage-migration.

[267] See: 1) Hein de Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* – International Migration Institute Working Paper No. 32 (DEMIG project paper No. 2. University of Oxford, April 2011. Available at: https://www.imi.ox.ac.uk/publications/wp-32-11. 2) Nicholas R. Micinski and Thomas G. Weiss, "The European migration crisis: Can development agencies do better?" (Briefing 37), in *Future United Nations Development System*, January 2016. 3) Huub Dijstelbloem et al., "The migration machine" in Huub Dijstelbloem and Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011: 1-21.

[268] Sandra Lavenex and Rahel Kunz, "The migration-development nexus in EU external relations" in *Journal of European Integration*, 2008, 30(3), p. 441.

[269] *Ibidem*.

So, starting from the 2000s, the Union has tried to effectively link its policies on migration to development. In this way the Union strived to kill two birds with one stone: on the one hand, it hoped to reduce the number of people arriving in the European territory; on the other hand, it engaged itself to contribute to the improvement of economic and social conditions of third countries in difficulty. In order to do so, in 2005 the Commission[270] defined four main areas of activity, namely the encouragement and facilitation of circular migration, the limitations of the negative impacts caused by the problem of brain drain, the commitment in diaspora projects (i.e. projects aiming at reinforcing cultural and social ties with countries of origin), and the promotion of remittances (i.e. the money that migrants send back to home). In practice, remittances have captured the interest of both Member States and third countries, due to the fact that their amount exceeds even the total volume of official development aid, and almost the same happens when foreign direct investments are considered[271]. With the objective to further encourage the use of remittances and to increase their effect on the development of migrants' countries of origin, the 2009 Stockholm Programme[272] contains proposals for making them more secure, efficient, and low-cost; moreover, migrants have to be informed about the expenses associated to it and about the existing instruments in this sector.

Notwithstanding the significance of this change in mentality or the importance development aid has both on the quality of life in third countries and on the management of migration at the European level, the actual impact of these policies has proved to be extremely limited. This is mainly due to the fact that development aid and, more in general, all the instruments aiming at helping third countries are subjected to conditionality or, in other words, they can be defined as migration-sensitive tools. This means that the European Union is willing to offer its aid to third countries provided that they are ready to meet the conditions imposed. To give an example, the ultimatum the Union wanted to impose to Afghanistan at the end of 2016 can be mentioned[273]. Another significant example worth considering is the EU Emergency Trust Fund for Africa[274].

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[270] Commission of the European Communities, *Communication on migration and development: Some concrete orientations*, COM(2005) 390 final, 1 September 2005.

[271] See footnote 268.

[272] Council of the European Union, *The Stockholm Programme: An open and secure Europe serving and protecting the citizens* (17024/09), 2 December 2009. Brussels: Council of the European Union.

[273] The Guardian, *EU's secret ultimatum to Afghanistan: Accept 80,000 deportees or lose aid*, 28 September 2016. Available at: https://www.theguardian.com/global-development/2016/sep/28/eu-secret-ultimatum-afghanistan-accept-80000-deportees-lose-aid-brussels-summit-migration-sensitive.

[274] For information, see: 1) European Commission, "EU Emergency Trust Fund for Africa". Available at: https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa_en; 2) European Commission, "EU Emergency Trust Fund for Africa". Available at: https://ec.europa.eu/trustfundforafrica/content/homepage_en.

In brief, this instrument was created in September 2015 so as to respond to a situation of emergency caused by the unstoppable flows of migrants arriving on a daily basis in the territories of the European Union; at the same time, it should support African countries in difficulty in order to increase their ability in addressing the causes of migration and in managing the migrants present in their territories. However, the Fund has been strongly criticised because, according to some organisations and scholars, in redacting the document giving birth to the aid project, the European Union lost "sight of aid's original purpose"[275]. In the report made by Global Health Advocated[276] (based on interviews made to 45 experts of the field), the political nature of the project emerges as the dominant feature; and this is in stark contrast with the original aim of the Fund, i.e. helping African countries in managing the flows of people departing from and transiting through their territories. Furthermore, other critical aspects have quickly become visible during the implementation of the project. Firstly, the allocation of aid is determined according to migration patterns rather than the effective need of countries[277]; this means that those countries which may have a more salient role in the control of migratory fluxes can receive more aids as compared to those countries facing greater difficulties but which are less involved in the phenomenon. Secondly, this way of behaving threatens some key principles of the European policies in the field of migration and asylum, namely transparency and accountability[278]. Finally, partner countries are only marginally involved in the processes of planning and implementation of aid programmes, thus scaling down the possible outcomes[279]. Before concluding, it is worth remarking that there are at least two other factors undermining the positive effect of development policies. One is the conviction that the main root cause of migration is poverty and, accordingly, by reducing poverty it is possible to decrease also emigration from sending countries. However, this theory has proved to be incorrect[280]. As a matter of fact, numerous studies have discovered that the lower the income per capita of a country, the lower the rate of emigration. Consequently, economic growth driven by development aid actually foments emigration, since poor people now have at their disposal the money to afford a journey towards new countries; furthermore,

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[275] Global Health Advocates, *Misplaced trust: Diverting EU aid to stop migration. The EU Emergency Trust Fund for Africa*. September 2017, p. 4.
[276] *Ibidem.*
[277] *Ibidem.*
[278] *Ibidem.*
[279] *Ibidem.*
[280] Nicholas R. Micinski and Thomas G. Weiss, "The European migration crisis: Can development agencies do better?" (Briefing 37), in *Future United Nations Development System*, January 2016.

the fact that European countries give proof of their economic well-being through economic aid policies increases their appeal in the eyes of migrants. The other factor is the "gap between support provided to institutions and concrete positive outcomes for the migrants themselves"[281]; in simple words, in evaluating the development and aid projects put in place by the European Union, the Commission has observed the presence of a discrepancy between the way in which funds are used (i.e. for increasing institutional and controlling capacities of beneficiaries countries) and the effective benefits for migrants.

To sum up what has been said so far, the approach that the European Union has adopted until recent years in relation to the migration-development nexus can be judged inefficient from both a developmental and a political point of view; the former because positive outcomes for third countries (in particular in the fight against poverty) are not reached, the latter due to failure in stopping the flows of migrants[282]. The Union keeps on acting in favour of its own interests and by giving more emphasis to securitarian concerns; nevertheless, the firm imposition of conditionality and the instrumentalisation of aid policies are in opposition to the founding principles of the European Union, in particular the protection of fundamental rights and the global involvement in the fight against poverty. In any case, if development assistance has to be conditional, then it has to be absolutely associated with policies paying serious attention to the respect of the human rights of those migrants which live in those countries receiving aids[283], detail that seems to exert little attractiveness to Member States.

Now it is high time to analyse the main characteristics of the second side of the European external dimension, namely externalisation. As already affirmed, the European Union does not limit its intervention in the external sphere to the implementation of projects aiming at helping other countries facing some difficulties in relation to the phenomenon of migration; rather, it also tries to influence third countries by either imposing its models and principles, or by convincing (or maybe forcing?) them to act as its 'gendarmes'. In simple words, externalisation implies a shift of burden from the European Union to third countries, since the latter became responsible for the task of controlling borders and halting the entrance of migrants into Europe; moreover, they also have to keep within their borders those migrants who have no right to enter

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[281] European Parliament – Policy department C: Citizens' rights and constitutional affairs, *EU cooperation with third countries in the field of migration.* Brussels, October 2015.
[282] See footnote 280.
[283] *Ibidem.*

the Union or who have tried to do so in an illegal way by passing through their territories. In order to reach these objectives, externalisation relies on two different strategies[284]: firstly, the conclusion of agreements aimed at increasing the rate of return of third country nationals (i.e. return and readmission agreements, which are going to be presented more in detail in sub-chapter 2.1); secondly, the diffusion of European migration control instruments to countries outside its borders. This essentially means that the Union seeks to enhance capacity-building, to promote better border management through the training of personnel and the diffusion of the best practices in this field (together with reinforced cooperation between judicial and police authorities of different countries), to introduce legislation and measures for the fight against illegal immigration and in particular human trafficking, to increase document security, and to achieve better coordination thanks to the introduction of reliable systems allowing the compilation of common registers of migrants.

After having said that, the concept of external governance has to be introduced, since it is very helpful for understanding the process of externalisation. External governance is the result of the complex and interdependent relations that the Union has established with its neighbouring countries, and with those that are more distant but with which it shares some interests[285]. External governance is a process directed towards the transfer and diffusion of (European) values, policies, norms and institutions to the outside; it happens in particular in those "areas which have become securitized inside and where vulnerability is attributed to developments in the third countr[ies]"[286]. And this is exactly what has been happening with immigration. The European Union does not feel able to cope with the continuous arrivals of migrants, which started to rise significantly in 1990s and reached a terrifying peak in 2015, during the so-called migratory crisis. Member States are scared by the possibility of being 'invaded' by foreigners whose right of permanence in the European territory is not always so clear, and who represent a difficultly manageable burden for hosting societies; what is more, besides the economic burden, a palpable fear of terrorist attacks dominates public opinion which, accordingly, exerts pressures on governments so as to reduce arrivals. The sum of economic difficulties, fear of terrorist attacks, fear of being unable to control European Union's external borders, and so

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[284] Christina Boswell, "The 'external dimension' of EU immigration and asylum policy" in *International Affairs*, 2003, 79(3): 619-638.
[285] Sandra Lavenex and Frank Schimmelfennig, "EU rules beyond EU borders: Theorizing external governance in European Politics" in *Journal of European Public Policy*, 2009, 16(6): 791-812.
[286] Sandra Lavenex, "EU external governance in 'wider Europe'" in *Journal of European Public Policy*, 2004, 11(4), p. 686.

forth have led to a securitisation[287] of migration. But this is nothing new; as previously explained, the migration-security nexus have always dominated Member States' rhetoric in the field of migration. To put it in another way, recent events have only strengthened securitarian concerns in relation to migration, and this has led to a desire of extending European influence and control on the migratory policies of those third countries which play a key role in the evolution of immigration/emigration trends. Thus, it can be said that external governance can be described as the attempt to pursue a foreign policy strategy intended to both reach stabilisation and to "bind third countries to the pursuit of internal policy goals"[288]; by implementing this strategy, the European Union can take advantage from the political and material resources of partner countries[289].

What emerges from the analysis of the two types of external dimension (and is made even more evident by the concept of external governance) is the fact that cooperation and partnership with third countries have played a fundamental role in the European Union. It is not a coincidence that this sub-chapter (1.2) has begun by highlighting the readiness with which Member States have found an agreement on the importance of involving third countries in their projects tackling uncontrolled migration. Nevertheless, the simple fact of providing guidelines on how to manage migration and the imposition of requirements on non-European countries (particularly the neighbouring one) is not sufficient for speaking about *partnership* in the true sense of the term. Indeed, what has been noticed is a tendency of the European Union to try to alleviate its burden by increasing the responsibilities attributed to third countries; this attitude is in stark contrast with the Union commitment to burden-sharing and equally distributed responsibility as regards both the handling of operations and the hosting of migrants (in particular refugees)[290]. What provokes even a more serious concern is the fact that Member States seem to be ready to offer their help to third countries only by using conditionality, i.e. help is granted only if the other countries do what the European Union wants. This is not a good image to be exported. Nevertheless, this fact should not be surprising. Indeed, how can

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[287] The meaning of the word securitisation is perfectly clarified in: Georgios Karyotis, "European migration policy in the aftermath of September 11" in *The European Journal of Science Research*, 17 February 2007, 20(1), p. 3. By citing his words, securitisation happens when an issue usually considered part of the "normal politics" realm is moved into the security one so as to support the decision of introducing emergency policies (otherwise unjustifiable or incomprehensible).

[288] See footnote 286, p. 694.

[289] *Ibidem*.

[290] European Council on Refugees and Exiles, *Debunking the 'safe third country' myth. ECRE's concerns about EU proposals for expanded use of the safe third country concept* – Policy note 8, 2017. Available at: https://www.ecre.org/wp-content/uploads/2017/11/Policy-Note-08.pdf.

the European Union be expected to share the burden with third countries when its Member States are not even ready to share the burden among themselves?[291] Furthermore, the shifting of burden represents only a temporary solution to the problem, a solution that is doomed to fail[292].

What is more, an important feature of the external dimension of the European migration policy (i.e. its nature as a three-level game[293]) seems in a way to have been bypassed by the European Union thanks to the instrument of conditionality. Let's explain better this fundamental concept. The three-level game model is the result of an evolution of Putnam's theory of negotiation known as the two-level game[294]. In this new upgraded version, the first level is the international one, and represents the arena in which the European Union (deputising for the Member States) negotiates with third countries. The second level is the European one, that is to say the level in which Member States and European institutions try to find an agreement (which will represent the European position to the outside world). Finally, the third one is the level of Member States and their domestic preferences. In order to reach a significant outcome during a negotiation, harmonisation of interests and positions is necessary both in the European sphere (that is to say between European countries and institutions) and in the international one (i.e. the interaction between the European Union and third countries). In a normal framework of negotiation, the European Union, after having found an internal agreement, advances some proposals to third countries. In turn, these countries conduct some cost-benefit calculations based essentially on three factors, which are: firstly, the costs of adapting the domestic policy to the European one; secondly, the impact the European policy may have on national objectives; and thirdly, an analysis of the internal administrative capacity[295]. Thus, the possibility of concluding an agreement is strongly dependent on these variables. However, if the European Union approach to cooperation and partnership with third countries in the field of

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[291] See for instance: 1) European Parliament, "Resolution on the EU common immigration policy" in *Official Journal of the European Union* [P6_TA(2006)0386], 28 September 2006. 2) BBC News, *How is the migrant crisis dividing EU countries?*, 4 March 2016. Available at: https://www.bbc.com/news/world-europe-34278886. 3) Luigi Scazzieri and John Springford, *How the EU and third countries can manage migration*. Centre for European Reform, November 2017. Available at: https://www.cer.eu/publications/archive/policy-brief/2017/how-eu-and-third-countries-can-manage-migration.
[292] Christina Boswell, "European values and the asylum crisis" in *International Affairs*, 2000, 76(3): 537-557.
[293] Natasja Reslow and Maarten Vink, "Three-level games in EU external migration policy: Negotiating mobility partnership in West Africa" in *Journal of Common Market Studies*, 2015, 53(4): 857-874.
[294] Robert David Putnam, "Diplomacy and domestic politics: The logic of two-level games" in *International Organization*, 1988, 42(3): 427-460.
[295] See footnote 293, pp. 859-860.

migration and asylum is observed with attention, then this pattern of choice of third countries seems to be disappearing. As a matter of fact, as it has been explained in the previous lines, the European Union's tendency is to impose its will and necessities to third countries through conditionality; consequently, only those countries compliant to European requests seem to be capable of entering into a 'partnership' with the Union. And again, this is not a good image to be exported. Stronger attention and sensitivity have thus to be demonstrated by this European organisation if it wants to take a leading role in the international arena when issues concerning migration and asylum are to be dealt with; however, the path it has decided to follow is not the one leading into the direction of an effective and sustainable strategy for migration management.

2. The evolution of the European toolbox.

This second part of the chapter is devoted to the analysis of the instruments that the European Union has deployed over the years so as to succeed in managing and regulating migration. The result has not always been in line with the expectations due to either the nature of the tool itself or because of its limitedness. This section is divided into parts so as that the first one may offer a description of the main tools and funds implemented, and the second one may help understanding in which projects and programmes such instruments have been concretely inserted.

2.1 What is in the box? An investigation of the main instruments deployed by the European Union.

The discovery of the European toolbox begins with the examination of return and readmission agreements. This type of instrument (being a pillar of the European external dimension in the area of migration policy[296]) has been conceived for reaching a specific goal, i.e. increasing the

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[296] European Parliament – Policy department C: Citizens' rights and constitutional affairs, *EU cooperation with third countries in the field of migration*. Brussels, October 2015.

number of illegal[297] third country nationals leaving the European Union and returning to their countries of origin or to those of transit. More specifically, according to the European law, there are only two circumstances under which returns are possible. The first one is when an individual does not submit an application or does not have the necessary characteristics to be considered an asylum seeker. The second one applies to those migrants who actually have applied for asylum but have arrived in the European territory by transiting through countries which could have satisfied their claim (the so-called "safe third countries"[298])[299]. Furthermore, some prerequisites have to be met in order to ensure the legality of a practice which is, in principle, legitimate. These prerequisites can be essentially summarised by saying that return procedures have to be fair and transparent, fundamental rights of all individuals must be respected, and the decisions on return have to be taken according to a case-by-case mechanism (i.e. each individual has the right to receive an independent and personal decision)[300].

This initial presentation of some of the legal features of return and readmission agreements cannot be considered an exhaustive one. Much more has to be said in order to have a thorough understanding of the legislation behind this tool. Four are the legal guidelines deserving attention, in particular because they offer an overview of the trending in such field. These are: the *Council of the European Union recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements*[301], the *Directive 2008/115/EC of the European Parliament and the Council of the 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*[302], the European Commission communication of 9 September 2015 on

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[297] This word is fundamental. Indeed, only illegal or irregularly staying migrants can be returned to countries of origin and transit; thus, the returning of other 'types' of migrants will represent a serious violation of international and European law (see, in particular, the non-refoulement principle).

[298] The "safe third country" concept is going to be examined more in detail in chapter 4.

[299] Elizabeth Collett, "The paradox of the EU-Turkey refugee deal" in *Migration Policy Institute* website, March 2016. Available at: http://www.migrationpolicy.org/news/paradox-euturkey-refugee-deal.

[300] European Council on Refugees and Exiles, *Return: No safety in numbers. ECRE's analysis of recent developments in EU policy return of migrants* – Policy note 9, 2017. Available at: https://www.ecre.org/wp-content/uploads/2017/11/Policy-Note-09.pdf.

[301] Council of the European Union, "Council recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements" in *Official Journal of the European Communities*, 19 September 1996. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996Y0919%2808%29.

[302] European Parliament and Council, "Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals" in *Official Journal of the European Union*, 24 December 2008. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF.

the *EU Action Plan on Return*[303] and the annexed *Return Handbook*[304]. So, the first one to be considered is the Council Recommendation of 1995. It is an interesting device because it laid down the basis for a uniformisation of the procedure Member States should follow when desiring to conclude a readmission agreement. Indeed, this document contains guidelines about the common forms of readmission procedures (together with the difference between a normal or simplified procedure), the conditions of applicability, the rules concerning data protection and those related to the transit of third country nationals which have to be returned, and the means allowing the recognition and identification of persons to be readmitted. This final point is based on two principles, namely the effect of proof or presumption of the nationality of the migrant (i.e. when a nationality is attributed to a migrant, it has to be accepted by all Parties) and the proof or presumption of nationality or of entry via an external frontier (i.e. the instruments and documents allowing the attribution of a nationality). The second fundamental document is the 2008 Return Directive; it is a sort of evolution of 1995 guiding principles, since it relaunches almost the same contents but, this time, in a binding form. Indeed, the key principles according to which return is allowed are reiterated even if in a more accurate way, together with information regarding the imposition (or removal) of entry bans, the possibilities of detention, and the procedural safeguards. What is more, the voluntary departure option is strongly encouraged in comparison to forced return[305]. At this point an obvious question comes to mind: why had it been necessary to draft an Action Plan (and an annexed Return Handbook) in 2015 if a binding document on the issue already existed? It is simply because the European "system to return irregular migrants is not sufficiently effective"[306]. Consequently, in order to improve the functioning of an already existing and all-encompassing directive, it has been necessary to further highlight the importance of the system based on readmissions and returns. Indeed, according to the European Commission[307], the irregular migrants are incentivised to continue opting for irregular options allowing the arrival in Europe because firstly, the system is too slow in judging their case, and secondly when a negative decision is eventually taken it

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[303] European Commission, *EU Action Plan on Return*, COM(2015) 453 final, 9 September 2015. Brussels: European Commission.
[304] European Commission, *Return Handbook* – Annex 1 of "EU Action Plan on Return". Brussels: European Commission.
[305] Art. 7 of the Directive.
[306] See footnote 303; *ivi* p. 2.
[307] European Commission, *A European Agenda on Migration*, COM(2015) 240 final, 13 May 2015. Brussels: European Commission.

is often not enforced[308]. What is more, other factors contribute in making the system less efficient than it could be, namely the (fairly comprehensible) insufficient cooperation of migrants who have to be returned together with the usual lack of documents allowing the identification (and, consequently, the return) of individuals, the indifference or non-compliance of third countries, and the fact that judgements on return can be executed only if migrants have exhausted the legal remedies at their disposal[309]. So, these are the reasons why the Action Plan on Return and the Return Handbook were drafted. While the Action Plan is a communication in which the Commission strongly emphasises the importance of having a well-functioning return and readmission mechanism, the Return Handbook proposes non-legally binding standards and procedures that Member States should follow in order to efficiently and effectively implement such procedures. Since they are two related documents, their contents can be jointly presented. In brief, it is believed that, firstly, the existing system and its rules have to be better enforced; secondly, cooperation with third countries (both of origin and transit) as regards readmission is essential if the efficiency of the system has to be ensured; thirdly, the voluntary return procedure has to be always preferred to the one based on imposition; and finally, the role and powers of the European Border and Coast Guard Agency have to be reinforced.

Now, a second interesting characteristic concerns the power of conclusion of such agreements. The European Union started to sign the readmission agreements in 1994[310]. At the beginning, the conclusion was mainly in the hands of Member States, giving to this type of instrument only a limited scope. However, after the conclusion of the Treaty of Amsterdam, powers in the field of readmission and return were conferred to the Commission, which started to conclude such agreements on behalf of Member States[311]. Going into detail, it is possible to see that agreements of this type are characterised by a common structure (with some slight

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[308] The Commission reported that the rate of enforcement of return decisions in 2013 was 39.2%. *Ivi* p. 9.

[309] European Council on Refugees and Exiles, *Return: No safety in numbers. ECRE's analysis of recent developments in EU policy return of migrants* – Policy note 9, 2017. Available at: https://www.ecre.org/wp-content/uploads/2017/11/Policy-Note-09.pdf.

[310] Pinar Gedikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond" in *European Scientific Journal*, 2016, 12(8): 14-35.

[311] See: 1) *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts*, 2 October 1997. Amsterdam: European Union. 2) European Council, *Tampere European Council 15 and 16 October 1999 – Presidency conclusions*, 15-16 October 1999. Available at: https://www.cvce.eu/en/obj/conclusions_of_the_tampere_european_council_15_and_16_october_1999-en-32135242-b375-47fe-adb4-e02ab2432945.html.

variations)[312]. Indeed, they all include: first, the obligation (and the possible exceptions) for both sides of the agreement to readmit on their territories their citizens and all third-country nationals who have transited through their nation so as to reach the territory of the counterpart; second, well-established rules and practices concerning the readmission procedures (included the deadlines, the possibility of accelerated procedure, how migrants have to be transported to the other country's territory and the associated costs of these operations, norms concerning the protection of migrants' data, and so forth); third, the possibility of establishing a Joint Readmission Committee composed of both European and third country experts appointed to supervise the effective implementation; and fourth, the so-called "compatibility clauses" which remind the duty to respect international law[313]. This necessity of adopting a common format for readmission agreements was suggested with the Council of the European Union Recommendation of 24 July 1995 (already mentioned)[314].

Another important element to be taken into consideration is the fact that readmission agreements are known to be incentive-based policy instruments[315]; this means that, in order to be concluded, the European Union offers to third countries some incentives whose nature varies depending on the priorities (both the strategic and geographical ones) the Union has[316]. Essentially, two are the main kinds of incentives proposed, namely financial assistance and various types of visa proposals. However, before describing them more in detail, it is important to remember that sometimes these incentives (in particular the ones concerning visa options) can become agreements on their own. In other words, economic help and proposals concerning the lifting or facilitation of visas can be used either in the form of a clause inside another type of agreement (so as to enable its conclusion) or as specific agreements not related to other questions. This is the reason why they are going to be individually analysed in the following paragraphs. But before doing so, a brief evaluation of return and readmission agreements has to be made. Such agreements, despite the positive opinion of the Commission, have had only a

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[312] European Parliament – Policy department C: Citizens' rights and constitutional affairs, *EU cooperation with third countries in the field of migration*. Brussels, October 2015.
[313] All these features are described in: *ibidem*.
[314] Council of the European Union, "Council recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements" in *Official Journal of the European Communities*, 19 September 1996. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996Y0919%2808%29.
[315] Sarah Wolff, "The politics of negotiating EU readmission agreements: Insights from Morocco and Turkey" in *European Journal of Migration and Law*, 2014, 16(1): 69-95.
[316] *Ibidem*.

limited impact on the set objective[317]. This is mainly due to both the factors already mentioned (i.e. difficulties in enforcing return decisions, lack of compliance of individuals, and so forth) and to the choice, on the part of the European Union, of the wrong strategy. Indeed, the Union prefers concluding such agreements with those countries whose nationals are significantly present in terms of numbers in the European territory but whose applications are usually rejected; however, it does not take into consideration the fact that third countries may not desire to take back their own nationals since they represent a source of income (through remittances)[318]. What is more, even if international customary law obliges countries to readmit their own citizens, this is not true for third country nationals. Accordingly, third countries are ready to accept back third country nationals who have passed through their territories only if valid incentives are offered, otherwise the fear of becoming a buffer zone will predominate. However, the Union is not very concessive, in particular when visa options are taken into consideration; and this reluctance obviously undermines third countries' trust on European intentions (i.e. the Union is seen as an actor only wanting to reach its objectives without caring for partners' situations and necessities).

The second instrument that can be found inside the European toolbox is known as mobility partnership. It has been proposed by the European Commission in 2007 in an attempt to create a "comprehensive and long-term bilateral framework for facilitating policy dialogue and operational cooperation on migration management with third countries"[319]. In simple words, mobility partnerships are concluded only with those countries that are ready to commit themselves to work in partnership with the European Union so as to hinder illegal migration; in exchange for their cooperation, these countries may obtain more favourable conditions in the areas of legal migration and short-term movements through visas[320]. Thus, mobility partnerships include a series of commitments expected both on the European and on the non-European side; as it may be quickly noticed, this type of tool reiterates once again those ingredients which are at the basis of the Union strategy to the fight against irregular migration.

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[317] European Council on Refugees and Exiles, *Return: No safety in numbers. ECRE's analysis of recent developments in EU policy return of migrants* – Policy note 9, 2017. Available at: https://www.ecre.org/wp-content/uploads/2017/11/Policy-Note-09.pdf.

[318] *Ibidem*.

[319] European Parliament – Policy department C: Citizens' rights and constitutional affairs, *EU cooperation with third countries in the field of migration*, p. 30. Brussels, October 2015.

[320] See: 1) Commission of the European Communities, *On circular migration and mobility partnerships between the European Union and third countries*, COM(2007) 248, 16 May 2007. 2) Commission of the European Communities, *Mobility partnerships as a tool of the Global Approach to Migration*, SEC(2009) 1240 final, 18 September 2009.

As a matter of fact, third countries concluding such agreements have to engage in the fight against illegal migration by reinforcing their borders, improving the security of documents so as to avoid the risk of counterfeiting, introducing all the necessary measures both to disincentivise irregular movements and to eradicate the plagues of smuggling and trafficking of human beings, and committing to readmit their own nationals[321]. Differently, on the European side, the focus is on the need to increase the possibilities given to the nationals of the partner country as regards legal migration (together with the option of concluding visa facilitation agreements for certain categories of people) and circular migration (which pays more attention to the problem of brain drain), and on the importance of increasing third countries' capacity in the domain of border management and asylum procedures[322].

As it happens for readmission agreements, mobility partnerships tend to have all the same structure, and are concluded according to the same procedure. With regards to the structure, it is possible to identify four main parts[323]: first, a preamble presenting the relationship between the European Union and the third country concerned; second, a description of the priorities and objectives that should be reached; third, the clauses referring to how the partnership has to be implemented; and finally various types of annexes. As regards the negotiation and conclusion, mobility partnerships are negotiated by the Commission (together with the representatives of Member States) which follows the guidelines redacted by the Council; the Commission relates to the representatives of both the third country and of European agencies[324]. Generally, mobility partnerships have non-legally binding nature, and this is confirmed by the inclusion of a clause emphasising this aspect. However, what has just been stated does not have to be understood as a lack of legal value, since the parties commit themselves to not acting in contradiction with what they have established in the partnership[325]. At this point, some considerations have to be made. Indeed, the legal nature of the document may represent either an advantage or a disadvantage, the former because it encourages even more reluctant states to try to find a compromise and enter such partnerships, the latter because it does not oblige countries to effectively implement their initiatives. Unfortunately, this may be translated into a

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[321] *Ibidem* 1.
[322] *Ibidem* 1.
[323] European Parliament – Policy department C: Citizens' rights and constitutional affairs, *EU cooperation with third countries in the field of migration*. Brussels, October 2015.
[324] *Ibidem*.
[325] *Ibidem*.

lack of concrete results. What is more, in 2015 the European Parliament[326] has criticised mobility partnerships because they tend to focus on only one side of the instrument (i.e. the reduction of migrants in the European territory thanks to the commitment of third countries), while they neglect the importance of increasing the opportunities for legal migration (labour migration included). This appears to be in stark contrast with the conclusions drawn in 2009 by the Commission, which presented mobility partnerships as "promising, innovative and comprehensive tools"[327] capable of "increasing transparency, enhancing synergies, triggering cooperation and ensuring cost-efficient operations"[328].

And now the time has come to speak about the visa facilitation agreements, visa exemption agreements, and visa liberalisation dialogues, which may be grouped together to form the third instrument to be considered in this analysis. Some clarification of the terminology is needed. Visa liberalisation dialogues make reference to all the processes of negotiation, communication, and information exchange regarding the possibility of finding an agreement as regards visa. These dialogues, which are suited to the specific characteristics and conditions of the third country concerned, take place according to some benchmarks (regarding the security of documents and borders, the protection of fundamental rights of migrants, and public order issues) the Commission collects into a visa liberalisation action plan[329]. The outcome of this process is twofold because, on the one hand, there are the visa facilitation agreements and on the other the visa exemption (or waiver) agreements. What is the difference? The former is a type of agreement which aims at facilitating the procedure for granting visas[330]; therefore, it may include provisions regarding the duration of the application procedure, the costs, the documents necessary in order to obtain such visas and so forth. Differently, the latter wants to eliminate the necessity of visas for citizens of certain specific countries travelling into the territory of the European Union for a short period of time[331]. In simple words, visa facilitation agreements have the objective to ease the visa procedure for some countries, while visa exemption agreements want to entirely remove the need of a visa if some specific conditions are met.

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[326] *Ibidem.*
[327] Commission of the European Communities, *Mobility partnerships as a tool of the Global Approach to Migration*, SEC(2009) 1240 final, 18 September 2009, p. 8.
[328] *Ibidem.*
[329] European Parliament – Policy department C: Citizens' rights and constitutional affairs, *EU cooperation with third countries in the field of migration*. Brussels, October 2015.
[330] *Ibidem.*
[331] *Ibidem.*

Again, some problems come to light, since the proclaimed attempt to ease the procedure does not seem to have been reached[332]. Anyway, this can be considered a marginal issue if the right functioning of the procedure and concrete opportunities for third country nationals are effectively granted by the European Union. The real matter emerges when the way in which this instrument is actually used by Member States is taken into consideration. As a matter of fact, it is evident that visa policies are used by the Union not only to simply manage the flows of people in movement from one country to another, but also to shape its relations with third countries[333]. Thus, if the European Union is ready to conclude a visa agreement with one country and not with another one, this sends a clear message on the opinion the organisation has on these countries and on the objectives it wants to reach (for instance, a change in the domestic policies in the field of asylum and immigration). This assertion is not per se unacceptable; indeed, it is completely understandable (and also sharable) that the European Union wants that some minimum standards in the areas of border management, asylum and human rights protection are met by third countries before lifting visas obligations[334]. However, it acquires a negative connotation when the European Union uses visa agreements as a 'consolation prize' given to those countries that have succumbed to its requirements. And this is what happens in most cases; agreements concerning visa opportunities are achieved (or, even worse, start to be negotiated) only if a readmission agreement is already concluded[335], since the management of irregular migration remains the European priority.

The final instrument belonging to the European toolbox is funding. However, before going into more detail on this peculiar subject (which may be associated to the first side of the European external dimension), it is important to make a partial digression so as to spend some words on Regional Protection Programmes and their updated version, i.e. the Regional Protection and Development Programmes. As the names suggest, they are connected to the instrument of funding; so, it is for this reason that it has been decided to analyse them at this precise point of the work. The original version of this programme has been devised as a series of projects aiming to promote capacity-building opportunities in the field of migration and asylum in those

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[332] *Ibidem*.

[333] Franck Düvell, "International relations and migration management: The case of Turkey" in *Insight Turkey*, 2014, 16(1): 35-44.

[334] European Commission, *The Global Approach to Migration and Mobility*, COM(2011) 743 final, 18 November 2011. Brussels: European Commission.

[335] See footnote 329.

countries needing European support[336]. In particular, regional protection programmes sought to improve protection of migrants, enhance the conditions of reception, help in developing well-established and clear procedures for status determination, and alleviate the pressure countries feel when hosting high numbers of migrants[337]. After the outbreak of the Syrian crisis in 2012, the European Union decided to update this tool by integrating to the already set objectives the need to promote a form of regional protection and assistance which has to be in line with development demands[338]. As a matter of fact, development initiatives may have a positive impact not only for third countries participating into these programmes but also for the migrants who are hosted there. Therefore, in order to act according to the new development criteria, some initiatives examining either the impact the refugee communities have on host society or the possibilities allowing the improvement of labour and education opportunities have been annexed to the structure of the original type of programme[339]. Nonetheless, both types of programmes (even if commendable in principle) are not immune from criticisms. This is because they are too general in their formulation, thus impeding both planning and result assessment; moreover, they do not pay sufficient attention to the importance of involving as many participants as possible (Member States, local representatives, European agencies personnel), factor that does not even allow a satisfactory level of coordinated management[340].

The digression being over, attention is now paid to the financial instrument part of the toolbox, funding, which is one of the pillars of European cooperation with third countries in the fields of asylum, migration and border management. In order to describe it, the paper *Money talks: Mapping the funding for EU external migration policy*[341] and the already considered report on *EU cooperation with third countries in the field of migration*[342] have been carefully examined, since they represent a thorough collection of the funds used by the European Union over the years. However, due to the fact that it is a very broad and technical topic on which much could

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[336] European Council on Refugee and Exiles, *EU external cooperation and global responsibility sharing: Towards an EU agenda for refugee protection. ECRE's vision of Europe's role in the global refugee protection regime –* Policy Paper 3, February 2017. Available at: https://www.ecre.org/wp-content/uploads/2017/04/Policy-Papers-03.pdf.
[337] European Parliament – Policy department C: Citizens' rights and constitutional affairs, *EU cooperation with third countries in the field of migration*. Brussels, October 2015.
[338] See footnote 336.
[339] See footnote 337.
[340] *Ibidem*.
[341] Leonhard den Hertog, *Money talks: Mapping the funding for EU external migration policy*, CEPS Paper, 2016, 95.
[342] See footnote 337.

be said, a more concise presentation is to be done, while giving the proper consideration to the effectiveness and the drawbacks of such tool. In general terms, funding sources tend to be mostly used for financing projects either in neighbouring countries (particularly those that are supposed to become future Members of the Union), or in Africa, since it is the area from which the majority of migrants come from[343]. Funds can be classified according to their goal or to the countries to which they are directed; moreover, they are differentiated on the basis of the budget available, the actors responsible for the disbursement of this budget, and the duration.

A list (even if it does not aspire to be exhaustive) of the main funds deployed by the European Union has to mention the European Neighbourhood Instrument; the Partnership Instrument; the European Development Fund; the Development Cooperation Instrument; the European Instrument for Democracy and Human Rights; the Instrument contributing to Stability and Peace; the Asylum, Migration and Integration Fund; the Internal Security Fund; and the Instrument for Pre-Accession Assistance (I and II). To them, European agencies funds (i.e. the funds promoted by agencies involved in the domain, such as Frontex or the European Asylum Support Office) and those instruments specifically created to face the more recent refugee crisis (such as the EU Regional Trust Fund in response to the Syrian crisis, the Facility for Refugees in Turkey, and the EU Emergency Trust Fund for Africa) have to be added. So, the list can continue with many more entries, but this is not the point of this work. As said, what really matters is the results such instruments produce and if there are margins for improvement.

What has emerged from the investigations of experts of the field is the fact that fragmentation is the key word[344]. There are too many funds which, essentially, tend to reach all the same objectives; and it is exactly this pronounced heterogeneity that undermines the effectiveness of the same funds. What is more, multiplicity reduces transparency, accountability and overview capacity, thus provoking a mismanagement of available resources[345]; therefore, it may happen that some countries or some topic areas receive great amounts of money, while others equally important are almost forgotten. Moreover, there is always the problem of conditionality, that is to say that the European Union may sometimes opt for using funding as an incentive for convincing other countries to abide what it desires; however, this may cause a wrong placement of sources (i.e. funds may be given to countries that do not need it but who are ready

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[343] *Ibidem.*
[344] See footnote 341.
[345] *Ibidem.*

to comply with European requirements). Finally, while it is true that funds are rapidly selected and agreed, the same cannot be said for the actual disbursement of such resources[346]. A solution to these numerous problems may be found thanks to the introduction of more efficient mechanisms of monitoring and evaluation, so that it may be possible to both keep note of all existing projects and to decide which deserve more funding and which, in contrast, should be dismantled because of the unsatisfactory results. Furthermore, the European Union has to keep in mind that an effective, intelligent, and well-planned use of funds can produce a crucial outcome, i.e. reducing migratory flows; nevertheless, a stronger commitment is necessary on the part of Member States.

2.2 The concrete implementation of European tools: agendas and approaches.

The instruments presented so far (in brief: return and readmission agreements, mobility partnerships, different types of visa agreements, and the funds in their diverse forms) cannot be fully understood without a context. Or better, without an analysis of the approaches and strategies the European Union has designed and put into practice over the years. However, before beginning this presentation, a remark has to be made. As the section 1.1 has thoroughly explained, the existence of a European Union does not imply the automatic formation of a European (i.e. communitarian) approach for the management migration and asylum-related issues. Rather, a difficult process of exchange of views and opinions and, most importantly, of harmonisation has taken place and is still in progress. It is exactly for this reason that it could not be expected to see a European approach or framework for action already in the 1990s.

As a consequence, the analysis starts from the Global Approach to Migration (GAM). It was adopted in 2005 by the European Council and confirmed by the same institution in the following year[347]. Its origin is simple: creating a harmonious framework in which solidarity and cooperation with third countries in the fight against irregular migration was possible[348]. The Global Approach is the result of a change of perception on migration, which has

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[346] Global Health Advocates, *Misplaced trust: Diverting EU aid to stop migration. The EU Emergency Trust Fund for Africa*. September 2017.
[347] European Commission, *The Global Approach to Migration*, MEMO/07/549, 5 December 2007. Brussels: European Commission.
[348] *Ibidem*.

definitively become part of the external relations both of Member States and of the European Union[349]. So, it is with this new Approach that the European Union made a first serious attempt to address the various issues concerning migration by developing "comprehensive and coherent policies"[350] in the field. Accordingly, three areas of action have been identified, which respectively focus on the fight against illegal migration, the promotion and improvement of the options for legal migration, and the exploration of the opportunities deriving from a reinforced connection between migration and development[351]. It goes without saying that an effective and well managed system has to be based on a balanced relation between these three aspects. As the name suggests, this approach is supposed to have a global scope. In practice, however, the focus of the European Union was on two main regions of the world, namely Africa and Eastern and South-Eastern Europe; this is mainly because the former represented the main area of origin of migrants wanting to reach Europe, the latter not only was a source of migrants but also it could have constituted a sort of safety belt for the Union itself. Nevertheless, also other areas of the world deserved greater attention (in particular Asia and Latin America), and this need for greater openness was encouraged by the Council of the European Union during the meetings held in the final months of 2009[352]. The Global Approach to Migration has had only a limited impact regarding the European actions in the field of migration, if it is compared to its successor, the Global Approach to Migration and Mobility; nevertheless, it has to be recognised that it gave an important contribution in terms of components of the European toolbox. Indeed, it is in the framework of this Approach that the European Union developed one of its most sophisticated instruments, namely mobility partnerships[353]. This tool is so innovative because it is the first one (at least at the European level) that tried to harmonise and manage in a single way all the key concerns of the Union.

Due to a combination of the limited sphere of action of the Global Approach to Migration and the events occurred in 2011, the need for a more efficient approach, capable of responding not only to migratory issues themselves but also to the importance of creating a greater connection between the internal and external dimensions of the European policies in this field, became

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[349] Council of the European Union, *European Pact on Immigration and Asylum* (13440/08), 24 September 2008. Brussels: Council of the European Union.
[350] See footnote 347.
[351] Council of the European Union, *The Stockholm Programme: An open and secure Europe serving and protecting the citizens* (17024/09), 2 December 2009. Brussels: Council of the European Union.
[352] *Ibidem*.
[353] Commission of the European Communities, *Mobility partnerships as a tool of the Global Approach to Migration*, SEC(2009) 1240 final, 18 September 2009.

manifest[354]. Accordingly, on 18 November 2011, the European Commission agreed on the adoption of a renewed Global Approach to Migration and Mobility (GAMM). A first difference that can immediately be noticed concerns the name; as a matter of fact, in comparison to the predecessor, the new Approach includes the word 'mobility'. This change reflects the increased importance that third country nationals' mobility (be it for tourist, business, familiar or educational reasons) has for the European Union[355]. The second modification regards the geographical extension; as a matter of fact, while the Approach is conceived to be geographically unrestricted, it all the same reserves to the Union the right to adapt its strategy according to its interests[356]. In other words, the principle of differentiation allows preferring the cooperation of those countries that are willing to commit themselves in working side by side with the European Union to reach its objectives. This is translated into a prioritisation of the dynamics in the European neighbourhood (namely, the Western Balkans, Eastern Europe and the Caucasus[357]) and in Africa (in particular, those countries belonging to the Southern Mediterranean region). A third relevant difference can be found when implementation mechanisms are analysed. Despite the approximately three hundred projects it successfully carried out, the Global Approach to Migration had an overall limited impact on the way in which migration was managed, and this was mainly caused by the limited tools available (essentially, mobility partnerships, migration missions and profiles, and cooperation platforms)[358]. Differently, the new version can rely on a broader and more sophisticated equipment, which includes political and legal instruments, and support, operational and capacity-building projects or programmes. The final difference is associated to the pillars on which the Global Approach to Migration and Mobility is based. In essence, the main four areas of priority for the European Union are: the management of legal migration and mobility thanks to a better organisation of the opportunities available for migrants; the fight against irregular migration which is coupled with importance of finding valid solutions to the problem of human trafficking and smuggling; the development of the external dimension of asylum policy which can increase the Union's role as promoter of international protection and as defender of human

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[354] European Commission, *The Global Approach to Migration and Mobility*, COM(2011) 743 final, 18 November 2011. Brussels: European Commission.
[355] *Ibidem*.
[356] *Ibidem*.
[357] European Parliament – Policy department C: Citizens' rights and constitutional affairs, *EU cooperation with third countries in the field of migration*. Brussels, October 2015.
[358] See footnote 354.

rights; and the maximisation of the impact migration may have on the development of both hosting communities and countries of origin[359].

The criticisms advanced against the Global Approach to Migration and Mobility are numerous. Firstly, the Approach is defined as global, but in practice its scope is limited to the areas which rise some concerns for the European Union; this is translated into an almost total indifference of the European Union for those regions with serious difficulties but which do not directly affect the European well-being[360]. What is more, the adjective may also be a reference to the importance of third countries' participation in the development and implementation of the instruments aimed at reaching the objectives of the Approach; however, in reality, third countries tend to be left on the margins as if their contributions, knowledge and proposals are not sufficiently interesting for the Union (even if they should, at least in theory, be an integral part of such projects). Secondly, while the announced priorities are associated to both sides of the European external dimension in the field of asylum and immigration (namely prevention and externalisation), in actual practice it seems that externalisation and securitarian concerns have prevailed over legal migration and cooperation matters. Accordingly, the four pillars have not received the same level of support over the years; more concretely, the second pillar on irregular immigration (and the related questions of border strengthening, encouraging the conclusion of return and readmission agreements, the attempt to leave the problem in the hands of other non-European countries, and so forth) have received the most attention, whereas the first pillar on the introduction of new channels for regular migration seems to have been consigned to the oblivion[361]. Thirdly, the heterogeneity of the instruments and programmes created under the auspices of the Global Approach, together with the multiplicity of actors involved in their development and implementation, have seriously undermined the effectiveness of the entire Approach[362]. What is more, this plurality is also considered responsible for overlap problems and financial fragmentation, with a consequent waste of resources[363]. Finally, the same nature of the Approach can be considered problematic; indeed, it constitutes a "broad and flexible policy framework with tools that allow the development of

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[359] *Ibidem.*
[360] See footnote 357.
[361] Nicole Koenig, "The EU's external migration policy: Towards win-win-win partnerships" in *Policy Paper.* Berlin: Jacques Delors Institut, 6 April 2017, 190: 1-21.
[362] *Ibidem.*
[363] *Ibidem.*

actions and financing in external action with relatively little political commitment"[364]. So, once again, the Union has demonstrated its preference for the easier option, which can be summarised by saying: the more the responsibilities and costs for third countries, the less the burden on the European Union.

A new attempt for establishing a common action plan for managing migration thanks to the use of all the instruments pertaining to the European toolbox was made in 2015 with the European Agenda on Migration[365], which represents a collection of all "the different steps the European Union should take now, and in the coming years, to build up a coherent and comprehensive approach to reap the benefits and address the challenges deriving from migration"[366]. For the first time, it is hypothesised that the European migratory policy has somehow contributed in incentivising the choice for illegal pathways on the part of migrants[367]. The Agenda proposes a series of measures and actions that have to be undertaken in the short term so as to ensure protection for migrants (not only from the causes forcing them to leave their countries of origin but also from smugglers and traffickers' criminal networks), to respond to the high-volume arrivals, and to increase cooperation with third countries, in particular thanks to the new partnership framework established under the auspices of such agenda[368]. These actions, which have to be carried out through the mobilisation of all the necessary instruments and resources, are in line with the four pillars at the basis of such Agenda, namely, the reduction of the incentives for irregular migration, better border management, guarantees of migrants' protection, and the introduction of new channels for legal migration[369]; in turn, these pillars are a partial reflection of those supporting the Global Approach to Migration and Mobility. Fortunately, a small shift towards a more humanitarian and open-minded perception of migration can be noticed when the Agenda in compared to the Global Approach.

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[364] European Council on Refugee and Exiles, *EU external cooperation and global responsibility sharing: Towards an EU agenda for refugee protection. ECRE's vision of Europe's role in the global refugee protection regime – Policy Paper 3*, February 2017. Available at: https://www.ecre.org/wp-content/uploads/2017/04/Policy-Papers-03.pdf.

[365] European Commission, *A European Agenda on Migration*, COM(2015) 240 final, 13 May 2015. Brussels: European Commission.

[366] *Ivi*, p. 2.

[367] *Ibidem*.

[368] European Commission, *Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration*, COM(2016) 385 final, 7 June 2016. Strasbourg: European Commission.

[369] See footnote 365.

The European Agenda on Migration is moving into the right direction, and this is confirmed with the introduction in June 2016 of Migration Partnership Framework. The combination of these two documents sends a very specific message to both European citizens and to the outside world. As a matter of fact, on the one hand, Member States have recognised the need for internal harmonisation (since individual actions cannot be expected to produce universally valid results), in view of the fact that a well-developed and established internal dimension is the key for a successful policy in the external sphere[370]. On the other hand, they seem to have become more aware of the importance of an effective and efficient cooperation with third countries so as to find a definitive solution to irregular migratory flows. As a consequence, all relevant actors (such as Member States, the European institutions, third countries, and civil society) have to be involved in the process of making "a common European migration policy a reality"[371], since international cooperation can actually deliver successful and satisfying results[372]. In brief, the partnership framework has the merit to strengthen cooperation and coordination both within the Union and with non-European partners[373], which are essential ingredients for designing and implementing an effective strategy.

The progresses made from the first version of the Global Approach to the more recent solutions are undeniable. However, even more has to be done if the European Union wants to reach its objectives, due to the fact that even the more innovative combination of Agenda plus Partnership Framework is still risking of repeating the same mistakes of their predecessors. More in detail, while they are searching for a win-win-win solution (satisfying the interests of migrants, of the European Union, and of third countries), it actually tends to keep on relying on conditionality, thus risking once again to subordinate long-term objectives (such as tackling the root causes of migration, the strengthening of the migration-development, and so forth) to the short-sighted fight against irregular migration[374]. Furthermore, non-European countries are being instilled with a wrong image of how migratory issues have to be addressed; as a matter of fact, what emerges from European actions is that the best way to deal with migration is to externalise the management of the most problematic matters while giving in exchange some

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[370] See footnote 368.
[371] See footnote 365.
[372] See footnote 368.
[373] Stefan Lehne, "Upgrading the EU's migration partnerships" in *Carnegie Europe* website, 21 November 2016. Available at: http://carnegieeurope.eu/2016/11/21/upgrading-eu-s-migration-partnerships-pub-66209.
[374] Nicole Koenig, "The EU's external migration policy: Towards win-win-win partnerships" in *Policy Paper*. Berlin: Jacques Delors Institut, 6 April 2017, 190: 1-21.

rewards (mainly money)[375]. Finally, the way in which the European Union is implementing partnership does not perfectly fit with the meaning of the same word, i.e. interests sharing and balanced relation between the parties[376]. This causes some collateral problems, such as the hierarchisation of the objectives of the partners, the difference between what the parties expect to be originated from the partnership and the actual outcomes, and a steered use of the incentives.

3. Summary of the drawbacks characterising the European Union approach to migration.

In this final and succinct sub-chapter, some considerations on the work made by the European Union in the management of migration are proposed; indeed, the presentation of the main features of the internal and external dimensions of the European migration and asylum polices already gives the chance to express a provisional judgement of the conduct of the Union. It has to be kept in mind that the objective of this investigation is both to explain the main drawbacks and criticisms and to highlight that there are also the positive aspects and (even) possibilities for improvement. What is more, the assertions here made (in combination with all the information provided in the chapter) deserve the utmost attention, since they may serve as the theoretical framework leading to an in-depth understanding of the processes and dynamics that have led to the conclusion of the EU-Turkey Statement of 18 March 2016.

To begin with, the internal dimension of the European migration and asylum policy has appeared to be underdeveloped. While numerous attempts towards harmonisation have been made since the beginning of the 1990s, Member States' preference for keeping sovereignty in the field has prevailed over the prospect of a functioning and uniform European system. This difficulty has further been accentuated during the recent refugee crisis, when political parties have gained even more power in influencing public opinion perception of migration and migrants. Consequently, while European institutions are struggling for creating a common way to manage the issue, Member States are constantly withdrawing from the communitarian

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[375] European Council on Refugee and Exiles, *EU external cooperation and global responsibility sharing: Towards an EU agenda for refugee protection. ECRE's vision of Europe's role in the global refugee protection regime – Policy Paper 3*, February 2017. Available at: https://www.ecre.org/wp-content/uploads/2017/04/Policy-Papers-03.pdf.
[376] See footnote 373.

sphere, acting through impulsive and rash decisions (such as border closure, building of divisionary walls, refoulement of migrants, 'abandonment' of the countries at the border of the European Union, and so forth).

The lack of internal cohesion produces some negative effects in particular in those areas which represent particularly sensitive aspects in the long path towards the fight against irregular migration. Legal migration is one of the most debated topic, and this is partially associable to a wrong perception of the issue. Indeed, the introduction of options allowing a legal and safe journey to Europe for migrants does not have to be understood as an incentive attracting even more migrants to Europe; rather, thanks to it, it will be possible to redirect migrants towards controlled pathways granting both the security of individuals and an orderly management of fluxes. What is more, the creation of new and more advanced options for legal migration will facilitate migrants' integration into receiving countries, thus reducing the perceived economic and social burden borne by hosting communities.

Greater coherence and integration between the internal and external dimensions of the European migration policy are necessary, since the former cannot produce valid results without a proper coordination with the latter (and vice versa). However, this interrelation cannot be possible as long as the European Union does not find the right way of relating to third countries. The external dimension is currently characterised by the desire to externalise the most problematic issues (e.g. hosting of migrants, borders control, and so forth). Consequently, cooperation with countries of origin and transit is essentially perceived as a solution for deterring migrants' arrival to Europe, rather than an opportunity for creating a framework allowing the discovery of durable alternatives. This pattern of cooperation has to be changed, so as to both give serious consideration to the necessities of third countries which are ready to enter into a partnership with the Union (thus, avoiding to constantly resort to conditionality as the best strategy for 'convincing' third countries to bear part of the European burden), and to increase the Member States' disposal to real commitment in the fight against the root causes of migration and the criminal networks taking advantage from the despair of vulnerable individuals. What is more, the bias for the rapid showcase of results (incentivised by public opinion requests and producing only a sort of temporary shifting away of the problem) has to be substituted with an in-depth understanding of the real value of long-term strategies. The European toolbox (and the various approaches and strategies in which they have been used)

reflects this tendency. At the same time, it is also a symbolic example of the inefficiency of such system; indeed, the multiplicity of instruments, their overlapping and not coordinated nature, and their short-term orientation seriously undermine the impact and the effectiveness they may have.

All the elements discovered during the process of analysis, and in particular those associated to the external dimension of the European migration policy, are going to be further examined with the case-study presented in the following chapter (4). As a matter of fact, the EU-Turkey Statement concluded on 18 March 2016 can be considered as a very interesting opportunity to investigate from a more concrete perspective how the European Union has decided to work in a highly pressing and delicate context.

Chapter 4. Case study: the EU-Turkey Statement.

Summary. This final chapter is devoted to the study of the 2016 EU-Turkey Statement. To begin with, the contents of the Statement are presented. The work proceeds with the analysis of the process of negotiation; in order to do so, the context (including the difficult historical relationship between the parties), the main actors involved in the negotiation, and the way in which the media have described the ongoing negotiations have been paid adequate attention. In addition, two interesting debates are here reported: one concerning the legal nature of the document, the other questioning its ethicality. Finally, an evaluation of the main consequences and results deriving from the implementation of the Statement is proposed.

The 18 March 2016 represents a momentous day in the European Union's fight against illegal migration. It is the day in which a meeting between the Members of the European Council and the Turkish representatives confirmed their commitments for mutual help and support so as to jointly manage the huge flows of people trying to enter the Union through Turkey, a confirmation which has arrived after years of intensive work and delicate negotiations. In brief, it is the day of the conclusion of the EU-Turkey Statement. This Statement has been selected among other interesting case-studies because of various reasons, among which the complexity of the relationship between the parties and the importance of the debates it fomented. Furthermore, it can be considered one of the most emblematic examples of the path the European Union has decided to follow so as to provide a solution for the migratory crisis; it has to be emphasised the fact that the main European institutions (the European Commission *in primis*) showed their satisfaction with the results reached thanks to this initiative, to the point that they started to consider the EU-Turkey Statement as a model to be implemented also in the future in similar contexts and with other countries. A final element contributing to the choice is the topicality of such a deal, since it is exactly over the recent years that the main consequences of such a mechanism revealed themselves. However, it is this same topicality that represents an obstacle for the analysis carried out in these pages; as a matter of fact, information about the most technical aspects (in particular, the negotiation dynamics) keeps on being not completely

available. It is for this reason that the reaction of most important newspapers of the main European countries have been taken into consideration, especially for understanding if the public opinion was aware of the negotiation of this Statement and how it has perceived the outcome once the document came into effect.

The chapter is developed following four main thematic areas. The first one is devoted to the presentation of the Statement itself. The second one focuses on the negotiation, giving special emphasis to the difficult relationship between the parties. The third subject matter is the one of the debates; here two main questions are considered, namely the legal nature of the Statement (and the consequences associated to it) and the ethical concerns (mainly linked to the protection of migrants' rights) it has raised. Finally, an evaluation of the Statement and its main consequences is produced.

1. The contents of the Statement.

The EU-Turkey Statement[377] is a very simple two-page-long press release in which the fundamental principles concerning the European-Turkish relation in the field of immigration are listed and described. The document begins with a brief recalling of the main commitments made in previous occasions by both parties, namely, the effective implementation of the Joint Action Plan concluded on 15 October 2015 (which is going to be dealt with in the dedicated section), the disbursement on the part of the European Union of €3 billion for financing the Facility for Refugees in Turkey, and the decision taken by Turkey on 7 March 2016 to take back in its territory those migrants presenting two specific features, which are: firstly, the reaching of Europe by transiting from Turkey to Greece; and secondly, the non-entitlement for international protection.

After this short introduction, the very features of the document (called "action points") are presented. The European Union and Turkey agreed to introduce a mechanism according to which the irregular migrants, who would reach Europe by moving from Turkey to Greece from 20 March 2016 onwards, have to be returned to Turkey. For the scope of the Statement,

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[377] Council of the European Union, *EU-Turkey Statement*, Press release (144/16) 18 March 2016. Available at: http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/.   The   following paragraphs describing the contents of Statement are based on the press-release itself.

irregular migrants are all those people who either do not lodge at all their asylum application in Greece, or have received an impartial and personal[378] judgement establishing the groundlessness or inadmissibility of their application. The whole procedure of examination of asylum applications and of rejection of the same (which is carried out according to the Asylum Procedure Directive[379]) has to be based on the respect of both the international and the European law, and it can under no circumstances violate the principle of non-refoulement. In exchange, the European Union is ready to welcome some Syrian refugees living in the Turkish territory. This resettlement operation will privilege both the most vulnerable refugees and the persons whose 'migratory background' is 'cleaner' (i.e. if a person has already tried or managed to enter the European territory following irregular pathways and options, he or she is less favourably judged as compared to a person who has always followed the legal asylum procedures). In a way, the parties have established a swapping system in which an irregular migrant present into the European territory is exchanged for a Syrian refugee living in Turkey; here the origin of the expression "one-for-one scheme"[380]. Nevertheless, the two parties are not equally engaged in this operation. As a matter of fact, Turkey is ready to take back *all* new irregular migrants, whereas the European Union has established a limit of *72.000* persons (of which 18.000 deriving from a previous commitment taken on 20 July 2015[381], and 54.000 based on additional voluntary contributions on the part of Member States).

The reduction (if not the cessation) of irregular arrivals is given the utmost importance. Indeed, it is only after the achievement of this objective that the possibility of introducing a Voluntary Humanitarian Admission Scheme would be taken into consideration; thus, it is probably for this reason that this opportunity is only mentioned, without giving further guidelines or suggestions on the subject. It appears that the arrivals reduction task predominantly weighs down on Turkey, which is charged with the responsibility of adopting all the measures it

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[378] The adjective 'personal' refers to a judgement which is solely based on the elements provided by the person whose application is considered. In other words, the decision does not have to be based on general elements (e.g. nationality, country of origin, working position), and does not have to be the same for all the migrants who are in similar conditions.

[379] European Parliament and Council, "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 (recast)" in *Official Journal of the European Union*, 26 June 2013. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN.

[380] This expression is used, for instance, in: European Commission, *First report on the progress made in the implementation of the EU-Turkey Statement*, COM(2016) 231 final, 20 April 2016. Brussels: European Commission.

[381] Conclusions of the meeting between the representatives of the Governments of Member States and the Council.

believes necessary in order to both reduce flows and hinder the emergence of new irregular pathways covered by migrants in their journey from Turkey to Greece. On the other side, the European Union should continue, but at a faster pace, with the disbursement of the promised €3 billion[382] devoted to the Facility for Refugees in Turkey. However, this is an already existing commitment. The novelty is represented by the fact that once all the money is allocated to specific projects, additional €3 billion[383] are to be provided before the end of 2018.

In general, both parties expressed their willingness to cooperate for improving humanitarian conditions in Syria. Nevertheless, this issue is not paid much attention. The same is true for the project focused on the enhancement of the Customs Union between the European Union and Turkey. As a matter of fact, it can quickly be noticed that only some lines were written for these topics, while many more words were spent for speaking about two questions which are attributed a fundamental importance by Turkey. These are the accession process and the visa liberalisation roadmap. With respect to the former, the parties confirmed their desire to stimulate and revitalise Turkish accession process, in particular by opening new chapters of the *acquis* to negotiation. As regard the latter, the Statement establishes that visa requirements for Turkish citizens have to be removed before the end of June 2016; however, in order for the European Union to fulfil this duty, Turkey has to meet all the seventy-two benchmarks listed in the document *Roadmap: towards a visa-free regime with Turkey*[384]. These benchmarks are classified into five main categories (i.e. document security, migration and border management, public order and security, fundamental rights, and readmission of illegal migrants[385]). When

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[382] The former €3 billion come from two different sources: 1/3 from the EU budget, and 2/3 directly from Member States, whose contribution is determined by considering the national income. See Marie Walter-Franke, *Two years into the EU-Turkey 'deal': Impact and challenges of a turbulent partnership*. Berlin: Jacques Delors Institut, 15 March 2018 – Blog post available at: https://www.delorsinstitut.de/en/all-publications/two-years-into-the-eu-turkey-deal-taking-stock/.

[383] The new financial commitment was announced by the European Commission on 14 March 2016. The idea was to duplicate the same conditions and bases of the previous financial aid; however, Member States showed themselves to be more reticent than in the past. Consequently, further negotiations took place within the European Union, so as to evaluate other options, like an inversion of the proportions (i.e. 2/3 from the EU budget and 1/3 directly from Member States). See: *ibidem*.

[384] European Commission, *Roadmap: towards a visa-free regime with Turkey*, 16 December 2013. Brussels: European Commission. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/docs/20131216-roadmap_towards_the_visa-free_regime_with_turkey_en.pdf. For more information on the roadmap, see: European Commission, *Cecilia Malmström signs the Readmission Agreement and launches the Visa Liberalisation Dialogue with Turkey*, Press release, 16 December 2013. Brussels: European Commission. Available at: http://europa.eu/rapid/press-release_IP-13-1259_en.htm.

[385] *Ibidem*.

the EU-Turkey Statement was concluded, seven requirements[386] out of seventy-two had still not been met by Turkey; this is confirmed also in the seven reports on the progress made in the implementation of the EU-Turkey Statement, which were issued by the European Commission in the period going from April 2016 to September 2017[387].

All the goals set into this Statement can be reached only thanks to a constant and stable joint work between the parties; in order to do so, mutual trust and confidence have to be promoted. Therefore, the European Union and Turkey decided to retain the right to periodically meet in the future, in line with what the parties already concluded with the Joint Action Plan.

2. The negotiation.

How did Turkey and the European Union manage to reach this 'agreement'[388]? This sub-chapter considers all the elements which played a role in determining the outcome of the 18 March 2016. Firstly, the relationship between the two parties is described, a relationship which is mostly influenced by Turkey's ambition of becoming a member of the European Union. Secondly, the main steps commonly taken in the field of migration are analysed, since they paved the way for the Statement object of this case-study. Finally, the more technical dimension of the negotiation is presented; as a consequence, the actors involved in the negotiation, the main phases, the balance of power between the actors, the way in which the negotiations are described by national newspapers, and so forth are going to be discussed.

2.1 Background: the EU-Turkey relations.

The relationship between Turkey and the European Union is a complex and multifaceted one. It began some centuries ago, even before the birth of Turkey and the Union as they are today

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[386] These requirements are: the full implementation on the EU-Turkey Readmission Agreement of 2013, the issuance of biometric travel documents compliant with European standards, the revision (and alignment with the Union) of the laws on terrorism, the conclusion of an operational cooperation agreement with Europol, the adoption of measures discouraging and punishing corruption, an effective protection of personal data, and the establishment of a strong judicial cooperation with European countries as regards criminal matters.

[387] For more information, see: European Commission, *First/Second/Third/Fourth/Fifth/Sixth/Seventh report on the progress made in the implementation of the EU-Turkey Statement.*

[388] The word 'agreement' is put in inverted commas because it is doubtful whether the Statement can be considered an agreement or not. This issue is going to be thoroughly discussed in section 3.

known; as a matter of fact, these two actors started to establish their first contacts when a European Union did not even exist, and Turkey was what at those times was called Ottoman Empire[389]. If on one hand they have moved for centuries towards one another because of some common interests (in particular, economic and political ones), on the other they have constantly repelled one another, motivated by their cultural (historical, religious and linguistic) differences. In a sense, this irresolvable ambivalence has been defined as a "hedgehog's dilemma"[390] by Andrea Ott; according to this Professor, "as the parties move closer together, they increasingly become uncomfortable in each other's presence and this, in turn, acts to force them apart again. For this reason, concrete progress in alignment has historically been slow, unpredictable and cumbersome"[391]. This first element is of the utmost importance for understanding their relation, and it has to be always kept in mind in the following lines.

The leitmotif, the red thread characterising European-Turkish relations since 1959 is membership. It was in that year that Turkey applied for the first time for membership to the European Economic Community[392]. Numerous are the steps taken since that moment; nonetheless, the concrete results are limited. The membership issue is one of extreme difficulty and intricacy; pages and pages should be dedicated to this topic if an overall picture of the situation had to be given. However, membership is not the scope of this thesis; rather, the goal is to understand how the membership problem influenced the negotiation of the EU-Turkey Statement. Consequently, only a brief presentation of the main stages is going to be offered.

As already said, the process started in 1959; but it is only four years later (in 1963) with the signing of the Treaty of Ankara that the association with the European Economic Community is formalised, followed by the formulation of a full-membership request in 1987[393]. However, it is only in December 1999, at the Helsinki European Council, that Turkey is recognised to be

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[389] Juliette Tolay, "Turkey's 'critical Europeanization': Evidence from Turkey's immigration policies" in Seçil Paçai Elitok and Thomas Straubhaar *Turkey, migration and the EU: Potentials, challenges and opportunities*, Hamburg: Hamburg University Press, 2002: 39-62.
[390] Andrea Ott, *EU-Turkey cooperation in migration matters: A game changer in a multi-layered relationship?*, Cleer papers 2017/4. The Hague: Centre for the law of EU external relations, 2017.
[391] *Ivi*, p. 7.
[392] Pinar Geddikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond" in *European Scientific Journal*, 2016, 12(8): 14-35.
[393] Unal Cevikoz, "EU-Turkey relations: The beginning of the end?" in *European Council on Foreign Relations* website, 19 September 2017. Available at: https://www.ecfr.eu/article/essay_eu_turkey_relations_the_beginning_of_the_end_7226.

a candidate country of the European Union[394]. Most importantly, five years later (more precisely in October 2004), the European Commission decided that Turkey had demonstrated its willingness to adjust itself to European benchmarks by undergoing a significant and intense process of reform and modernisation, and that it managed to sufficiently fulfil the Copenhagen criteria; consequently, it suggested the beginning of the accession talks[395]. Despite the doubts and opposition of many European countries, in October 2005 the European Council decided to officially begin the negotiations; this can also be explained by invoking the so-called "entrapment theory"[396], according to which the European Union is legally and normatively 'forced' to take into serious consideration the applications of candidate countries when both they meet the criteria and there is no reason justifying an opposition or even a refusal of such application. Turkey could not desire anything better; the beginning of accession talks represented the fulfilment of a decades-long dream, and it believed to be moving on the gentle slope towards definitive membership. No hope could have been more wrong; indeed, eleven years later, when the EU-Turkey Statement was released (but also nowadays), only fifteen out of thirty-five chapters of the accession *acquis* have been opened to negotiation, of which barely one was provisionally closed[397].

Why is it so difficult for Turkey to become a full member of the European Union? The simple fact that Turkey was granted the status of candidate country in 1999 and the beginning of the accession negotiation in 2005 do not imply that all European Union countries are favourable to Turkish membership. In general terms, it is possible to divide the main European countries into three different groups: the supporters, the opponents and the undecided. The first group includes all those countries[398] who perceive Turkey's accession as an opportunity both for enriching the European Union economic and cultural patrimony, and for reinforcing some

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[394] Kemal Kirişçi, *Border management and EU-Turkish relations: Convergence or deadlock* – Research Report, CARIM-RR- 2007/03. San Domenico di Fiesole (Florence): Robert Schuman Centre for Advanced Studies – European University Institute, 2007.
[395] *Ibidem*.
[396] For more information on this theory see: 1) Frank Schimmelfennig, *Entrapped again: The way to EU membership negotiations with Turkey* – Working Paper 08-8, July 2008. Dublin: UCD Dublin European Institute. 2) Sarah Wolff, "The politics of negotiating EU readmission agreements: Insights from Morocco and Turkey" in *European Journal of Migration and Law*, 2014, 16(1): 69-95.
[397] See footnote 392. It is important to remember that actually, after the conclusion of the EU-Turkey Statement, another chapter has been opened to negotiation, increasing the total to sixteen out of thirty-five.
[398] According to 2017 Euro-barometer polls, the main countries favourable to Turkey's membership are: Ireland, Italy, Malta, Spain, Portugal, Finland, Sweden, Estonia, Latvia, Lithuania, Poland, the Czech republic, Slovakia, Hungary, Romania, Bulgaria, Croatia and Slovenia. See Kathleen Schuster, "Turkey-EU relations: Which countries are for or against Turkish accession?" in *DW* website, 6 September 2017. Available at: https://www.dw.com/en/turkey-eu-relations-which-countries-are-for-or-against-turkish-accession/a-40381533.

national interests. These countries are not naive, though; indeed, they strongly believe that Turkish accession should be based on a fair process following the same rules applied in any other negotiation for membership. This also implies that Turkey does not even have to be favoured as compared to other candidates; thus, it has to demonstrate that it is capable of meeting the benchmarks imposed by the Union. The second group is characterised by all more radical and conservative countries (whose main representatives are Austria and Cyprus) which have shown a remarkably strong aversion to Turkey over the years. They believe that the religious, cultural, political and historical differences (to mention some) between the European Union and Turkey are so relevant to be underestimated; most importantly, the respect and promotion of "liberal-democratic values, such as human rights, including women's rights and minority rights"[399] are not present in the candidate country to a satisfactory degree. In other words, Turkey does not have a sufficient degree of what has been defined in terms of "Europeanness"[400]. As it is not enough, other problems are associated to Turkish accession, namely its poor economy (mainly based on the primary sector, that is to say, on a low qualified or unskilled workforce)[401] and the size of its population (approximately seventy-million people); as a matter of fact, if Turkey became a Member of the Union, it would be the second largest country in terms of population, thus its power during the voting procedures in the Parliament and in the Council would be almost unlimited[402]. The undecided countries stand between these two blocks; they neither openly support accession nor oppose it. This is partially associable to the idea that the issue is not perceived as something imminent (see, for instance, France), and partially to a real form of indecision; this is the case of the Netherlands which, on the one hand, believes that Turkey has to be granted the same opportunities as any other country wishing to become part of the European Union and, on the other hand, it thinks that the possibility of reintroducing the death penalty as well as the attempted coup happened on 15 July 2016 cannot be tolerated by the Union[403].

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[399] Thomas Diez, "Expanding Europe: The ethics of EU–Turkey relations" in *Ethics & International Affairs*, 2007, 21(4), p. 416. Cambridge University Press: Carnegie Council.
[400] European Council on Foreign Relations, "Views from the capitals: What to do about Turkey?", in *ECRF.EU* website, 22 May 2017. Available at: https://www.ecfr.eu/publications/summary/vfc_views_from_the_capitals_what_to_do_about_turkey.
[401] Frank Schimmelfennig, *Entrapped again: The way to EU membership negotiations with Turkey* – Working Paper 08-8, July 2008. Dublin: UCD Dublin European Institute.
[402] *Ibidem*.
[403] *Ibidem*.

It is important to remind that countries' perception is not static, rather it changes over the years according to the circumstances; for instance, in the past Germany privileged the option of a special form of partnership, whereas after Angela Merkel's election the possibility for full membership became more concrete[404], in particular during the period of negotiation of the EU-Turkey Statement. What is more, by analysing Member States' viewpoints more in detail, the role played by the public opinion distinctly emerges. People's vision of Turkey, however, is not an impartial one; rather it is dependant both on the media (which spreads and reinforces existing prejudices and stereotypes) and on political manipulation, that is to say that politicians use their influence and power to condition their people in order to spread a specific perception of Turkey[405]. Politicians and leaders "try to cultivate public opinion"[406] so as to push their people to make precise requests; in turn, politicians are bound to people's willingness, which they bring to the negotiation table. This is what Thomas Schelling described in his paper in terms of self-binding[407]; European politicians participate to the negotiations by affirming that they are bound to national requests, but in reality it is these same politicians who have instilled a specific perception of Turkey in their people so as to have the means to justify their rigid stance and their limited margin of manoeuvre during the negotiation rounds.

The negotiation of membership is not a unilateral process, since it involves two parties defending their interests. On the one hand, there is the European Union, which imposes on candidate countries some benchmarks and requirements that they are to fulfil if they want to become full members of the organisation; on the other hand, there is the candidate country (Turkey) which aspires to membership and is willing to submit to European demands so as to reach its objectives. However, it may be highly misleading to believe that Turkey would behave for an indefinite period of time as an obedient and docile candidate looking forward to receiving the prize of membership as a consequence of its good actions. Indeed, in spite of the fact that Turkey has craved for some sort of membership since the late 1950s, Turkey's attitude has been influenced by the acts and gestures made by the European Union towards itself and its

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[404] See footnote 398. As it is going to be described more in detail in the following sections, Germany played a key role in the negotiation, believing that the conclusion of this 'agreement' with Turkey was essential.
[405] Katinka Barysch, "What Europeans think about Turkey and why" in *Centre for European Reform* website, September 2007. Available at: https://www.cer.eu/sites/default/files/publications/attachments/pdf/2011/essay_turkey_barysch_25sept07-1392.pdf.
[406] Thomas C. Schelling, "An Essay on Bargaining" in *The strategy of conflict*, 1980, p. 28. London: Harvard University Press.
[407] *Ibidem*.

citizens. It is not a coincidence that before gaining the candidate status in 1999, Turkey neither had a well-developed and detailed migration and asylum law[408], nor it attempted to reform and modernise it[409]. Therefore, it was only when Turkey saw a good development for itself that it decided to react in order to demonstrate its 'gratitude' towards the European Union.

European Union-Turkey relationship is not a linear or simple one; rather, it is characterised by moments of tension and contrast, together with significant slowdowns or even impasse. Notwithstanding the importance of the first positive signals immediately following the official beginning of accession negotiations (e.g. the opening to negotiation of numerous chapters of the *acquis* in a few years), the lack of concrete results has significantly undermined Turkish perception of the Union. Numerous Member States (in particular Cyprus, with which Turkey has a stormy relationship) have opposed over the years to any act of openness and relaxation; on its side, Turkey does not seem to be ready to cooperate, missing to meet the requests made by the Union. Furthermore, the increasing uncertainty which characterises Turkish condition produces three important drawbacks, namely greater costs concerning the political and legal reforms, losses in terms of regional partnerships, and (in consequence of the previous elements) a decreasing interest in membership itself[410]. More in detail, the implementation and execution of a process of reform aimed at adjusting the political and legal Turkish system to the European one implies significant bureaucratic and administrative costs, which Turkey is ready to bear (but only if a realistic chance of membership is present). Additionally, the European Union's requests put Turkey in a difficult position as far as the relations with other partners are concerned; as a matter of fact, the implementation of the Schengen negative list and the ending of the practice of the sticker visa[411] contributed to reduce the contacts and movements of people with neighbouring countries, in this way also undermining the economic transactions between them. In other words, Turkey has "attractive economic and strategic options aside from the European Union"[412], and it is not willing to lose them in the name of a

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[408] Janja Vukašinović, "Illegal migration in Turkey-EU relations: An issue of political bargaining or political cooperation?" in *European Perspectives: Journal on European Perspectives of the Western Balkans*, October 2011, 3(2): 147-166.

[409] Nedime Ash Şirin, *The issue of irregular migration in the light of Turkey-EU relations and its effect on the negotiations*. T.C.Marmara University: EU institute - EU politics and international relations, 2013.

[410] Alexander Bürgin, "European Commission's agency meets Ankara's agenda: Why Turkey is ready for a readmission agreement" in *Journal of European Public Policy*, 2012, 19(6): 883-899.

[411] Kemal Kirişçi, *Border management and EU-Turkish relations: Convergence or deadlock* – Research Report, CARIM-RR- 2007/03. San Domenico di Fiesole (Florence): Robert Schuman Centre for Advanced Studies – European University Institute, 2007.

[412] See footnote 410, pp. 886-887.

seemingly uncatchable membership. The combination of these two aspects is slowly and inexorably pushing Turkey away from the Union; lack of sympathy, mistrust and bitterness prevail in the relations between the parties, leading even the most enthusiastic supporters of European membership to reassess the balance between the pros and cons. This negative feeling is further intensified by proposals envisaging the option for a privileged partnership, which seem to be a confirmation of Turkey's fear of the impossibility of obtaining a full membership[413].

2.2 The impact of the migration crisis on EU-Turkey relations.

Before proceeding with the assessment of the impact the migration crisis had on the relationship between these two partners, it is useful to examine the Turkish legal framework in the field of asylum and immigration, in particular by paying attention to the role the European Union may have played in its development; in brief, we should answer to a simple question: is it solely the European Union that influenced the development of the current Turkish immigration and asylum law, or are there other factors to be considered?

Recalling what has been previously anticipated, it was with the official recognition of the candidate status in December 1999 that Turkey committed itself to reform its legal system in the field of migration and asylum. Before this date, migration was regulated by two main pieces of legislation, one national and the other international. The former is the 1934 Turkish Law No. 2510 on Settlement[414], according to which only those migrants who had "Turkish culture or origin" would be accepted in the national territory[415] (in brief, the migration law contributed to reinforce the concept of "Turkishness"[416]). The latter is the 1951 Geneva Convention, of which Turkey is one of the original signatories. This may seem to be quite a positive element, if it were not for the geographical limitation imposed by Turkey and reducing the extent and the scope of the Convention itself. In other words, the problem lays on the fact that Turkey recognised the refugee status only to those migrants coming from Europe, whereas

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[413] *Ibidem*.
[414] Amended in 2006 – the New Settlement law.
[415] Juliette Tolay, "Turkey's 'critical Europeanization': Evidence from Turkey's immigration policies" in Seçil Paçai Elitok and Thomas Straubhaar *Turkey, migration and the EU: Potentials, challenges and opportunities*, Hamburg: Hamburg University Press, 2002, p. 42.
[416] See footnote 411, p. 17.

all the others had to be resettled[417]. The reason to explain the poverty and scarcity of rules and norms in the field is unusually simple: Turkey did not recognise itself as a country of immigration (rather, it was a country of emigration)[418], hence the absolute lack of interest for this issue. As said, the recognition of the candidate status lent a significant impetus to the process of reform and modernisation of the legal framework in the field of migration; in particular, the insistent demands on the part of the European Union were willingly accepted by what was a candidate country whose desire for membership was ardent. Consequently, Turkey committed itself to contribute to stem illegal immigration thanks to a modernisation of admission, readmission and expulsion procedures[419].

The process according to which one country is directly (e.g. through conditionality) or indirectly (e.g. thanks to the involvement of a third more 'neutral' actor, like an NGO) influenced by the European Union[420] in the process of reform of its national policies is defined as Europeanisation[421]. A quite exhaustive definition of this phenomenon is provided by Claudio M. Radaelli, who affirms that it is a process of

> (a) construction, (b) diffusion, and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies.[422]

Third countries tend to react to both the European influence and the domestic preferences when they have to decide if adaptation to European standards and procedures really deserves consideration or not[423]. Additionally, they follow two different logics of actions[424]: the former

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[417] Janja Vukašinović, "Illegal migration in Turkey-EU relations: An issue of political bargaining or political cooperation?" in *European Perspectives: Journal on European Perspectives of the Western Balkans*, October 2011, 3(2): 147-166.

[418] *Ibidem*.

[419] *Ibidem*.

[420] It wants to obtain a certain degree of alignment between the country and the European standards and norms.

[421] Juliette Tolay, "Turkey's 'critical Europeanization': Evidence from Turkey's immigration policies" in Seçil Paçaı Elitok and Thomas Straubhaar *Turkey, migration and the EU: Potentials, challenges and opportunities*, Hamburg: Hamburg University Press, 2002, p. 40.

[422] Claudio M. Radaelli, "The Europeanization of public policy" in Kevin Featherstone and Claudio M. Radaelli *The politics of Europeanization*, London: Oxford University Press, 2003, p. 30.

[423] Alexander Bürgin, "European Commission's agency meets Ankara's agenda: Why Turkey is ready for a readmission agreement" in *Journal of European Public Policy*, 2012, 19(6): 883-899.

[424] Frank Schimmelfenning and Ulrich Sedelmeier, "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe" in *Journal of European Public Policy*, 2004, 11(4): 669-687. This article is quoted in: Alexander Bürgin, "European Commission's agency meets Ankara's agenda: Why Turkey is ready for a readmission agreement" in *Journal of European Public Policy*, 2012, 19(6): 883-899.

is the logic of consequences, which establishes that reformation happens only if the benefits deriving from the change itself are perceived to be greater than the costs; the latter is the logic of appropriateness[425], which is based on the idea that there are some internal/national values, rules and principles which determine what is appropriate (and has to be done) and what is not. The combination of these four determinants just presented gives birth to three different models of external governance or Europeanisation[426]: the external incentive model (European influence + logic of consequences), according to which assimilation and adaptation happens in exchange for a reward, which has to both be credible and compensate the costs deriving from the process of reform; the social learning model (European influence + logic of appropriateness), which establishes that rules adoption happens only if it is perceived as fair and legitimate by domestic stakeholders; and finally the lesson-drawing model (domestic preferences + either of the two logics), which presents adaptation as a consequence of the disappointment generated by the present situation.

The brief presentation of the importance of an event like the recognition of the candidate status in 1999 may lead to a premature and too positive judgement of the role played and the influence exerted by the Union in the process of reform of the Turkish legal skeleton, a process which seems to have followed the features of the first of the three patterns of external governance (namely, the external incentive model). In this respect, it may be suggested that Turkish process of reform is the direct result of a rational calculation which predicts a growth in the chances of gaining membership if Turkey shows itself ready and willing to adapt to European standards. In simple words, the reformation plan may be only a "tactical move"[427] for convincing the Union to concede membership. This may be further confirmed by the fact that Turkey is one of the few countries who has ever tried to meet European benchmarks and demands without even having the certainty of obtaining, sooner or later, the coveted

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[425] James G. March and Johan P. Olsen, *The logic of appropriateness* – Working Paper WP 04/09, January 2004. Centre for European Studies: University of Oslo. Available at: https://www.researchgate.net/publication/5014575_The_Logic_of_Appropriateness.

[426] Frank Schimmelfenning and Ulrich Sedelmeier, "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe" in *Journal of European Public Policy*, 2004, 11(4): 669-687. This article is quoted in: 1) Alexander Bürgin, "European Commission's agency meets Ankara's agenda: Why Turkey is ready for a readmission agreement" (see footnote 423); 2) Janja Vukašinović, "Illegal migration in Turkey-EU relations: An issue of political bargaining or political cooperation?" in *European Perspectives: Journal on European Perspectives of the Western Balkans*, October 2011, 3(2): 147-166.

[427] Juliette Tolay, "Turkey's 'critical Europeanization': Evidence from Turkey's immigration policies" in Seçil Paçai Elitok and Thomas Straubhaar *Turkey, migration and the EU: Potentials, challenges and opportunities*, Hamburg: Hamburg University Press, 2002, p. 49.

membership. What is more, as far as the specific situation of Turkey is concerned, describing the entire process from the perspective of Europeanisation does not seem to be correct; as a matter of fact, Juliette Tolay has presented an interesting theory according to which it should be better to speak about a "critical Europeanisation"[428], consisting of a deliberate and circumspect selection of the norms and values which Turkey has to assimilate in its national legal apparatus. Additionally, once the choice is made, the principles and standards are transformed into something which is more 'Turkish', thus demonstrating both a desire to maintain a sort of detachment and separation from the European tradition and an attempt to demonstrate that Turkey can do better than Europe in the field of asylum and immigration. Hence, it can be concluded that Turkey is not a docile actor ready to implement unhesitatingly the European policies and standards for the European Union[429].

After having said that, other elements (additionally reducing the extent of the role played by Union) have to be considered in order to produce a complete overview of the situation. Firstly, as Kemal Kirişçi explained in his article[430], important improvements were implemented by Turkey even before 1999, being especially encouraged by the United Nations High Commissioner for Refugees (UNHCR). For instance, with the 1994 Asylum Regulation, Turkey admitted the right of non-European migrants to lodge their asylum application in Turkey[431]. The influence the Agency could exert is attributed to its ability in establishing a strong and cooperative relationship with the government, thus gaining the respect and the power to have a voice in the issue. In particular, extension of the time limits for lodging applications and the possibility to access judicial appeal processes (in case of unfair decisions of deportation or expulsion) have to be mentioned among the main victories[432]. The United Nations Agency role is even more praiseworthy when the adequate attention is paid to the fact

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[428] *Ivi*, p. 40.

[429] Ahmet O. Evin and Emre Hatipoğlu, "Convergence or divergence: EU and Turkish Foreign Policy over the last decade" in *A European Union with 36 Members? Perspectives and risks*, Balazs, Peter (ed.), Budapest, Hungary: Center for EU Enlargement Studies, 2014: 185-198.

[430] Kemal Kirişçi, "Turkey's new draft law on asylum: What to make of it?" in S. Paçacı Elitok and T. Straubhaar (eds), *Turkey, migration and the EU: Potentials, challenges and opportunities*. Hamburg: Hamburg University Press, 2012: 63-84.

[431] If the application was successful, migrants had to be resettled to other countries; despite the maintenance of the resettlement dynamic, it is important to recognise the value of this 'small' concession anyway. See Juliette Tolay, "Turkey's 'critical Europeanization': Evidence from Turkey's immigration policies" in Seçil Paçai Elitok and Thomas Straubhaar *Turkey, migration and the EU: Potentials, challenges and opportunities*, Hamburg: Hamburg University Press, 2002: 39-62.

[432] Kemal Kirişçi, *Border management and EU-Turkish relations: Convergence or deadlock* – Research Report, CARIM-RR- 2007/03. San Domenico di Fiesole (Florence): Robert Schuman Centre for Advanced Studies – European University Institute, 2007.

that it managed to produce a real "paradigmatic shift"[433] in Turkish mentality, moving migration and asylum from the realm of national security to the one of human rights and international protection. Thus, it becomes even more difficult to evaluate the real degree of influence exerted by the European Union. But this is not sufficient, either; the involvement of the UNHCR is important, but it is only one of the factors that contributed to this evolution. Indeed, a second element emerges. With the changes in migratory patterns and dynamics happened in the second half of the twenty-century and the reinforcement of the fluxes towards Europe since the 1980s, Turkey started to understand that it could not continue ignoring the problem of immigration management, since it was gradually transforming from a country of emigration to a country of immigration, passing through the stage of transit country. Turkey has always represented an interesting option for migrants, in particular because of its geographical position which gave to this country the 'status' of bridge connecting Asia and Africa to Europe[434]. What is more, the fortification of the so-called "Fortress Europe" as a response to both the proliferation of asylum applications and, most importantly, the escalation in the number of irregular migrants contributed to worsen Turkey's position. Indeed, the reinforcement of border controls and the introduction of more and more restrictive norms and rules in the field of immigration and asylum caused an increase in the number of migrants actually hosted in the Turkish territory[435], migrants which actually only wanted to continue their journey towards Europe. It is not a coincidence, then, that during the current refugee crisis Turkey has been recognised as the first country in terms of both transit and reception of migrants and refugees, hosting in 2016 approximately three millions of Syrian refugees[436].

In sum, it is the combination of European influence, UNHCR concrete work in the field, and the changing migratory dynamics that encouraged Turkey's stimulus to legal reform and innovation in the field of asylum and immigration. During this long process of innovation marked by both the adoption and the amendment of fundamental laws (such as the 2003 adoption of the Law on Work Permits for Foreign Nationals, the adoption of the United Nations Protocols against migrants smuggling and trafficking, the 2005 enforcement of the

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[433] *Ivi*, p. 73.

[434] Nedime Ash Şirin, *The issue of irregular migration in the light of Turkey-EU relations and its effect on the negotiations*. T.C.Marmara University: EU institute - EU politics and international relations, 2013.

[435] *Ibidem*.

[436] European Commission, *Fact sheet – The Facility for Refugees in Turkey*. Brussels, 7 December 2016. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20161208/factsheet_frit_factsheet_en.pdf.

National Action Plan for the adoption of the European Acquis in the field of asylum and immigration, and the 2006 amendment of the Settlement Law – only to cite some)[437], the most important step Turkey undertook was the adoption on 4 April 2013 of the *Law No. 6548 on Foreigners and International Protection*[438]. The law puts into place a new dual system for the protection of non-European migrants, since it established that, on the one hand, refugees coming from Syria (included stateless Palestinians) are entitled with the right to temporary protection; on the other, all the remaining asylum seekers may obtain an international protection status which depends on the specific conditions of each individual applying for protection[439]. In other words, after 2014, the asylum system in Turkey is characterised by a three-tier structure: the first one includes refugees from Europe, which are recognised the refugee status according to the 1951 Geneva Convention[440]; the second is the level of Syrian refugees, which are granted the refugee status only on a temporary basis; and the third one concerns all other migrants who may be recognised the refugee status according to their personal situation and conditions. Despite the positive improvement, much more has to be done. Firstly, the Law entered into force in April 2014[441] but it has been rarely implemented over the years[442]. Secondly, as just explained, it does not guarantee the same level of protection to all migrants, in this way leaving open the option for abuses and mismanagement of the asylum procedure.

The presentation made so far is part of a larger analysis concerning the impact the migratory crisis had (and keeps on having) on the relationship between Turkey and the European Union. Being it both a neighbouring and a transit country (with the potential of being also a

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[437] Juliette Tolay, "Turkey's 'critical Europeanization': Evidence from Turkey's immigration policies" in Seçil Paçai Elitok and Thomas Straubhaar *Turkey, migration and the EU: Potentials, challenges and opportunities*, Hamburg: Hamburg University Press, 2002, pp. 43-44.

[438] Turkey, *Law No. 6458 of 2013 on Foreigners and International Protection*, 4 April 2013 [unofficial translation by UNHCR Turkey]. Available at: http://www.refworld.org/docid/5167fbb20.html. The law was further amended in October 2016, see: Turkey, *Law No. 6458 of 2013 on Foreigners and International Protection (as amended of 29 October 2016)*, 29 October 2016 [unofficial translation by UNHCR Turkey]. Available at: http://www.refworld.org/docid/5a1d828f4.html.

[439] According to the specific conditions, migrants can be either recognised as conditional refugees or being entitled to receive subsidiary protection. For the definitions of these two categories see artt. 62 and 63 of the Law No. 6458 on Foreigners and International Protection.

[440] Remember that Turkey keeps on maintaining the geographical limitation.

[441] Amnesty International, *No safe refuge: Asylum seekers and refugees denied effective protection in Turkey – report*, 3 June 2016. Available at: https://www.amnesty.org/download/Documents/EUR4438252016ENGLISH.pdf.

[442] Amnesty International, *Europe's gatekeeper: Unlawful detention and deportation of refugees from Turkey – report*, 16 December 2015. Available at: https://www.amnesty.org/download/Documents/EUR4430222015ENGLISH.pdf.

'capacious' host country), Turkey is quickly recognised to be a key determinant for the successful management of migratory flows. While up until the beginning of the 2000s Turkey was considered only as an interesting but not crucial partner[443], this perception started to be questioned with the beginning of the Arab Spring and the consequent escalation of the number of people trying to reach Europe through different (and often illegal) options. Hence, because of the fact that the crisis entered the European political agenda as a top priority and because of the pressures mainly coming from the public opinion for a durable solution, the Union started to pay more attention to the need to reenergise and reinvigorate the contacts with its Turkish counterpart, in order to produce a rapprochement capable of overcoming the tensions and uncertainties that have always characterised this partnership[444]. In spite of the commitments to cooperation made by both sides and notwithstanding the importance of the results concretely reached, from the very beginning it has been evident that Turkey and the European Union do not perceive the issue in the same way[445]. On the one hand, Turkey sees the crisis (and the European requests for help) as an opportunity to gain some concessions that in the past have always been refused, namely visa liberalisation and membership. On the other hand, the Union is predominantly focused on the need to stem irregular flows by blocking its borders and by increasing burden-sharing with neighbouring countries; this is particularly reinforced by the idea that migration can no longer be dealt with as a simple bureaucratic and numerical issue, but rather as a "hard core security" concern[446]. It is therefore obvious that negotiations on this issue cannot be an easy task; however, before understanding how the two parties have confronted each other in a debate leading to the adoption of the EU-Turkey Statement, it is necessary to briefly consider the two main outcomes (namely, the Readmission Agreement and the Joint Action Plan) that paved the way for the Statement itself. Indeed, once their contents are presented, their importance for the Statement will be even more evident.

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[443] Angeliki Dimitriadi et al., "EU-Turkey relations and irregular migration: Transactional cooperation in the making" in *Feuture – online paper No.16*, March 2018. Available at: https://www.feuture.uni-koeln.de/sites/feuture/user_upload/FEUTURE_Online_Paper_No_16_D6.3.pdf.
[444] Pinar Gedikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond" in *European Scientific Journal*, 2016, 12(8): 14-35.
[445] See footnote 443.
[446] Kemal Kirişçi, *Border management and EU-Turkish relations: Convergence or deadlock* – Research Report, CARIM-RR- 2007/03. San Domenico di Fiesole (Florence): Robert Schuman Centre for Advanced Studies – European University Institute, 2007, p. 1.

2.2.1 The Readmission Agreement.

The EU-Turkey Readmission Agreement is the first important step jointly taken by the two actors in the field of asylum and migration. Considered as an upgraded version of the previous Greece-Turkey Readmission Agreement of 2001, it was concluded on 16 December 2013 by the Turkish Minister of Interior and the European Union Commissioner for Home Affairs[447], and it entered into force on 1 October 2014[448]. This agreement is the result of an approximately ten-year-long difficult negotiation involving two actors with different interests in their minds. The negotiations officially began in 2004, but after the first round (ended in December 2006) they were interrupted until November 2009, when the Turkish government declared to be ready to resume the process[449]; what is more, even after the Commission announcement of a compromise on a common text in 2011 and the following admission on the part of Turkey to be ready to initial the agreement already in June 2012, the official signing took place only in 2013[450].

As seen in chapter 3, readmission agreements aim at reaching a specific objective, i.e. increasing the number of third country nationals returned to their country of origin; this commitment obviously involves both parties in a reciprocal way, that is to say that both Turkey and the European Union have to readmit their own nationals irregularly staying into the territory of the counterpart. When two actors negotiate such an agreement, they tend to bring to the negotiating table also other preferences and interests; therefore, these types of agreement do not limit themselves to the 'simple' issue of return. In this particular case, on the one hand the European Union wanted to increase as much as possible the number of people returned to Turkey; on the other hand, Turkey desired to take advantage from the situation and obtain the long-awaited visa liberalisation. On paper, it may seem that the conclusion of a readmission agreement is quite an easy task, since the European Union tends to usually resort to various

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[447] Ipek Demirsu and Meltem Muftuler-Bac, *The Turkish-EU cooperation on the refugee crisis: The Turkish perceptions in the parliamentary debates* – Working Paper No. 07, Jean Monnet Network PACO, August 2017. Available at: https://ghum.kuleuven.be/ggs/research/paco/working-papers/pacowp07.pdf.
[448] In reality, the actual implementation started only some years later, according to a provision specifying a three-year-long period of 'waiting'. See: Pelin Sonmez and Hikmet Kirik, "Turkey-EU readmission agreement: A critique of EU-Turkey migration dialogue" in *Security Strategies Journal*, April 2007, 13(25): 1-26.
[449] Alexander Bürgin, "European Commission's agency meets Ankara's agenda: Why Turkey is ready for a readmission agreement" in *Journal of European Public Policy*, 2012, 19(6): 883-899.
[450] Sarah Wolff, "The politics of negotiating EU readmission agreements: Insights from Morocco and Turkey" in *European Journal of Migration and Law*, 2014, 16(1): 69-95.

types of visa options as incentives[451]; what is more, Turkey is favourable to the readmission of its own nationals, as it has been demonstrated with the previous readmission agreement with Greece. However, the reality is a different one. To begin with, European Member States were not ready to concede visa liberalisation before the actual signing of the Agreement[452]; this is due to the fact that Member States feared that the concession of the lifting of visa obligation (and the consequent travel facilitation) to Turkey would cause a rise in the number of people trying to illegally enter the Union[453]. This hypothesis has been refuted by the same Commission, which declared that visa liberalisation does not mean complete removal of visas (i.e. it is still possible to control and determine who has the right to enter and who has not); moreover, it also encourages the process of adaption and incorporation of European standards into third countries' legal and administrative system. Differently, Turkey has to deal with a series of doubts and uncertainties. Firstly, it did not look favourably on the third country national clause, according to which *all* irregular migrants transiting through Turkey in order to reach the European Union (i.e. not only Turkish citizens) have to be resettled to Turkey; thus, the country was worried by the possibility of becoming a dumping ground or buffer zone, a development which would bring significant costs for the country[454]. Secondly, the incentive offered (visa liberalisation) did not seem to be credible because of both the divergent positions of Member States and the feeling of having been subjected to an unfair and discriminatory treatment as compared to other third countries which already had negotiated the same type of agreement[455]. Thirdly, the evolution of previous agreement with Greece did not seem to provide a positive example[456]. The different goals of the parties together with the lack of trust made the negotiations extremely difficult, leading to a three-year-long suspension of the negotiations.

How did the two actors manage to reach an agreement despite their different interests and positions? The answer is simple: the role of the European Commission[457]. The executive of the

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[451] Pelin Sonmez and Hikmet Kirik, "Turkey-EU readmission agreement: A critique of EU-Turkey migration dialogue" in *Security Strategies Journal*, April 2007, 13(25): 1-26.

[452] See footnote 450.

[453] See footnote 444.

[454] See footnote 451.

[455] See footnote 450.

[456] *Ibidem*.

[457] Alexander Bürgin, "European Commission's agency meets Ankara's agenda: Why Turkey is ready for a readmission agreement" in *Journal of European Public Policy*, 2012, 19(6): 883-899.

Union managed to create a package deal[458] combining readmission to visa liberalisation (in this way convincing the Council of the importance of offering credible and attractive incentives to Turkey), in spite of the opposition of some Member States. The Commission suggested that the maintenance of a restrictive attitude towards Turkey (which was in stark contrast with the more liberal behaviour towards other Eastern countries) would only cause negative consequences for the Union[459]. With this manoeuvre, the Commission demonstrated its independence from European countries, thus both gaining the confidence of Turkish negotiators and influencing their cost-benefit considerations; as a matter of fact, its discourse succeeded in convincing Turkey that the costs associated to the agreement implementation were not as high as they were perceived since the agreement (with its deterrent power) could have reduced the number of illegal migrants entering Turkey. Hence, not only did the Commission give the proper importance to the visa issue, but it also made other promises to Turkey[460], among which the most relevant are the commitment on the part of European countries to try to resettle third country nationals to their country of origin before returning them to Turkey, and a three-year postponement of the implementation of the agreement. To sum up, in the words of Alexander Bürgin, "the fact that the Commission has embraced the Turkish position was crucial to finalising the deal"[461]; or, to rephrase this sentence, in spite of its being European, the Commission acted as an ally of Turkey.

Now, the importance of this Readmission Agreement is twofold. On the one hand, it demonstrated that from the very beginning the relationship between Turkey and the European Union was complex and tension-filled, with both parties emphasising their interests and paying only limited attention to the needs and the security of the migrants which they were moving around. On the other, it is a demonstration of the European strategy of securitisation of borders and externalisation of migration management; the European approach creates a disparity in terms of burden sharing, with Turkey becoming increasingly responsible for the administration and handling of massive numbers of people in need of protection. In brief, it is a concrete example of what has been described in chapter 3.

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[458] Thomas C. Schelling, "An essay on bargaining" in *The strategy of conflict*, 1980: 21-52. London: Harvard University Press.
[459] See footnote 457.
[460] *Ibidem*.
[461] *Ivi*, p. 884.

2.2.2 The Joint Action Plan.

The Joint Action Plan[462] is the second significant development in the European-Turkey relationship in the field of asylum and migration. It was agreed on 15 October 2015 (day in which the European Commission presented the document to the Council)[463], and activated with the meeting on 29 November 2015 (chaired by the President of the European Council Donald Tusk, with the Prime Minister Ahmet Davutoğlu in representation of Turkey), following other gatherings between the main representatives on 16 and 19 November[464]. After recalling the challenges faced by the international community for managing the sizeable flows of people in constant movement, the Joint Action Plan sets out the main areas of action in which urgent measures are needed[465], namely finding a strategy capable of permanently solving the root causes of (irregular) migration, providing adequate support to Syrians hosted in Turkey under the temporary protection clause, and reinforcing cooperation between the parties. In order to do so, both actors gave specific indications about their intended manoeuvres[466]. On the European side, commitments for the mobilisation of additional funds (in the form of three billion euros to be devoted to the Facility for Refugees in Turkey[467]), for the provision of humanitarian assistance and technical/administrative support to Turkey are made, together with the promise of being ready to support Turkey in its process of compliance with the European requirements deemed necessary for achieving the visa liberalisation. Differently, the Turkish side aims at: firstly, promoting a sound and incisive implementation of various legal instruments (among which there are the Law on Foreigners and International Protection and the policies granting adequate support to migrants hosted in its territory); secondly, increasing cooperation with all actors (such as the coast guard, Frontex, and the Greek authorities – to mention some) playing

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[462] European Commission, *Fact sheet – EU-Turkey Joint Action Plan*, MEMO/15/5860, 15 October 2015. Brussels: European Commission. Available at: file:///D:/USER/Downloads/MEMO-15-5860_EN.pdf.

[463] Pinar Gedikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond" in *European Scientific Journal*, 2016, 12(8): 14-35.

[464] The meeting on 16 November took place between Turkish President Recep Tayyip Erdoğan, the President of the European Commission Jean-Claude Juncker and the President of the European Council Donald Tusk. Differently, the meeting on 19 November gathered together the Vice-President of the European Commission Frans Timmermans and Turkish Foreign Minister Feridun Sinirlioğlu. See: Daily News, *EU, Turkish leaders to meet on migration in Brussels*, 24 November 2015. Available at: http://www.hurriyetdailynews.com/eu-turkish-leaders-to-meet-on-migration-in-brussels--91579.

[465] See footnote 462.

[466] *Ibidem*.

[467] It has been established that only a small portion of this amount (that is to say, 500 million euros) has to be provided by the Union through its budgets, while the rest is directly paid by the Member States. See: Daily News, *EU, Turkish leaders to meet on migration in Brussels*, 24 November 2015. Available at: http://www.hurriyetdailynews.com/eu-turkish-leaders-to-meet-on-migration-in-brussels--91579.

a role in the process of obstruction to irregular migration together with an effort for struggling against the inhuman and unlawful activities of smugglers and traffickers; and thirdly, harmonising Turkish policies to European benchmarks as far as visas are concerned.

Moreover, during the meeting on 29 November 2015, leaders of both factions reconfirmed the need to strengthen their relationship, since the challenges posed by the refugee crisis do not allow an individual and not-coordinated response[468]. Therefore, in the future, meetings would be held on a regular basis (together with high-level Summits twice a year), so as to further encourage the cooperation between the parties and emphasise the results jointly reached. In this context, also the visa liberalisation issue and accession negotiations have to be re-invigorated, since they constitute the most puzzling elements in their relations[469]. Accordingly, as regards the former, the lifting of visa requirements has been scheduled for October 2016, provided that Turkey is able to meet the benchmarks, while, in relation to the latter, the parties decided that, during the Intergovernmental Conference on 14 December 2015, negotiations on chapter 17 (i.e. economic and monetary policy) of the *acquis* have to be opened. To these elements, the complicated dynamics associated to EU-Turkey Readmission Agreement of December 2013 have to be added. Indeed, it is only with the meeting for the activation of the Joint Action Plan that the operationalisation of the Readmission Agreement was scheduled for June 2016[470]; in a way, the postponement of the implementation of this agreement has contributed to increase the tensions between the European Union and Turkey, in particular because of the fact that Member States perceived the situation in terms of arrivals from Turkey as unaltered.

In spite of the conciseness and simplicity of the Joint Action Plan, some elements deserve receiving special attention, due to their relevance also for the EU-Turkey Statement. To begin

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[468] Council of the European Union, *Meeting of the Heads of State or Government with Turkey, 29/11/2015*, Statements and remarks (870/15), 29 November 2015. Available at: https://www.consilium.europa.eu/en/press/press-releases/2015/11/29/eu-turkey-meeting-statement/pdf.

[469] The saliency of these issues cannot be underestimated, since they represent the common thread of the European-Turkish relations. It is not a case that even at the beginning of the process of negotiation of the Joint Action Plan, the importance of accession negotiations (and of visa liberalisation) was particularly stressed. For instance, during a working dinner held on Brussels on 17 May 2015 between Federica Mogherini (High Representative for Foreign Affairs) and Johannes Hahn (Commissioner for European Neighbourhood Policy and Enlargement Negotiations) for the European side, and Volkan Bozkir (Minister for EU Affairs and Chief Negotiator) and Mevlüt Çavuşoğlu (Turkish Foreign Minister) on the Turkish side jointly presented both visa and membership as the cornerstones of the whole EU-Turkish relations. See: European Commission, *Joint Statement following a working dinner with Turkish Ministers Çavuşoğlu and Bozkir*. Brussels, 17 May 2015. Available at: http://europa.eu/rapid/press-release_STATEMENT-15-4991_en.htm.

[470] Ipek Demirsu and Meltem Muftuler-Bac, *The Turkish-EU cooperation on the refugee crisis: The Turkish perceptions in the parliamentary debates* – Working Paper No. 07, Jean Monnet Network PACO, August 2017. Available at: https://ghum.kuleuven.be/ggs/research/paco/working-papers/pacowp07.pdf.

with, the fear that the important and historical rapprochement between Turkey and the European Union could be only "a small parenthesis within [their] problematic relationship"[471] has been displayed by professionals and scholars of EU-Turkey relations. This is due to the fact that the success (or failure) of this new period of positive reconciliation is strongly determined by the diligence and the energies the two actors are ready to invest so as to allow the growth of their relationship. In order for this objective to be reached, the two parties have to become both more flexible and more convincing as far as the commitments they undertook are concerned[472]. If they do not succeed in keeping their promises, the already fragile existing equilibrium will risk being disrupted, producing additional difficulties and obstacles. Even the false expectations that this rapprochement (thanks to the Joint Action Plan) will lead to immediate results have to be kept under control[473], otherwise dissatisfaction and mistrust will grow.

These uncertainties and worries cannot but be further exacerbated by the stance of the Turkish President, who has been defined as a "tricky partner for Europeans"[474]. Indeed, he has shown its readiness to take advantage of the situation (and of the 'anxiety' of Member States) for promoting Turkey's interests, first and foremost membership. The fact that the German Chancellor Angela Merkel (one of the most positive supporters of Turkey's involvement in the management of the crisis) travelled to Turkey two weeks before the Turkish elections in order to discuss the refugee issue[475] seemed to confirm that Erdoğan was trying to exhaust all available channels to increase his position and status both in Turkey and in Europe. What is more, the apparent turnaround made by Turkey the day following the agreement on the Joint Action Plan inflamed and distressed European partners. Indeed, Turkish Foreign Minister Feridun Sinirlioğlu declared[476] that, firstly, the agreement was actually only a draft to be

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[471] Pinar Gedikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond" in *European Scientific Journal*, 2016, 12(8), pp. 28-29.

[472] *Ibidem*.

[473] Jacopo Barigazzi, "EU recruits Erdoğan's help on refugees. Tusk and the Turkish leader to launch a high-level working group" in *Politico* website, 5 October 2015. Available at: https://www.politico.eu/article/eu-leaders-talk-turkey-erdogan-tusk-schulz-juncker-syria-refugees-migration/.

[474] Jacopo Barigazzi, "What Erdoğan wants from Europe. More help to deal with refugees, and action on Syria" in *Politico* website, 4 October 2015. Available at: https://www.politico.eu/article/what-erdogan-wants-from-europe-turkey-migration-refugee-crisis/.

[475] Matthew Karnitschnig, "Turkey gets EU concessions in return for refugee help. Erdoğan wins support from Merkel two weeks before Turkish elections" in *Politico* website, 18 October 2015. Available at: https://www.politico.eu/article/turkey-eu-concessions-refugee-help-migration-crisis-merkel-erdogan-germany/.

[476] BBC News, *Migrant crisis: Turkey says no deal done on EU action plan*, 16 October 2015. Available at: https://www.bbc.com/news/world-europe-34553458.

discussed and, secondly, that the financial aid proposals made by the Union were "unacceptable", following a previous Erdoğan's externalisation of discontentment concerning the paltry efforts made by the Union as regards the hosting of asylum seekers and refugees[477].

A final element of concern was raised by Amnesty International. In its report[478] of December 2015, it highlighted that, while the European disbursement of three billion euros for improving refugees' conditions in Turkey was commendable, the fact that neither Europe nor Turkey paid attention to the importance of creating new legal and safe routes for migrants needing to reach the European territory was highly alarming. Therefore, there is a concrete risk of seeing irregular migration through dangerous pathways increasing, instead of the other way around. The predominant feeling is that the European Union has 'hired' Turkey as its gendarme; by providing money to Turkey (in theory for assisting Syrian refugees in Turkey), it may be perceived that, in reality, the objective was to buy Turkish engagement in stemming the flows of people trying to cross European borders. In other words, the impression is that Europe is doing its best to reduce arrivals, without considering the needs of migrants, while Turkey is opportunistically using the situation as a way for accelerating the achievement of its interests.

2.3 The process of negotiation: dynamics and main actors.

The negotiation of the EU-Turkey Statement (associated to the previous Readmission Agreement and Joint Action Plan) represents a turning point of significant importance in the long-standing historical relationship between these two partners. In a sense, the refugee crisis has been the agent for the rapprochement between two actors who have lost their trust (and, maybe, also the interest) for a counterpart perceived as highly different and uncompromising[479]; the refugee crisis, then, managed to break through the impasse which had blocked the situation for years. The process, however, has not been an easy one. This sub-chapter precisely focuses on the analysis of the way in which the European Union and Turkey

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[477] His exact words were: "They announce they'll take in 30,000 to 40,000 refugees and then they are nominated for the Nobel for that. We are hosting two and a half million refugees but nobody cares", quoted in *ibidem*.

[478] Amnesty International, *Europe's gatekeeper: Unlawful detention and deportation of refugees from Turkey* – report, 16 December 2015. Available at: https://www.amnesty.org/download/Documents/EUR4430222015ENGLISH.pdf.

[479] Ipek Demirsu and Meltem Muftuler-Bac, *The Turkish-EU cooperation on the refugee crisis: The Turkish perceptions in the parliamentary debates* – Working Paper No. 07, Jean Monnet Network PACO, August 2017. Available at: https://ghum.kuleuven.be/ggs/research/paco/working-papers/pacowp07.pdf.

managed to find an agreement capable of satisfying their conflicting interests[480], in a context characterised by pressure and urgency. However, it has to be emphasised that the topicality represents a partial restriction to the task here carried out, since information available to the general public is limited.

To begin with, the negotiations started from a very clear situation, with two actors with well-defined objectives in their minds[481]. On the one hand, Turkey was continuing its fight for visa liberalisation and membership, in the meanwhile trying to carry out a process of harmonisation to European standards and benchmarks; at the same time, it started to advance some requests for financial and administrative help, since it had quickly become one of the main hosting countries for Syrians (but not only) asylum seekers and refugees. On the other hand, the European Union was divided between keeping on defending its rigid stance towards Turkey (being not ready to make any concession concerning the areas of membership and visa liberalisation), and the imperative need to find a solution in order to limit the almost uncontrollable flows of migrants entering the Union on a daily basis. This necessity was further increased by the pressure exerted by a public opinion which, being partially influenced by the media, demanded to their leaders and governments urgent measures capable of stopping the 'invasion' from the south and the east. Therefore, the crisis acted as the "stepping stone" for the cooperation between these two partners.

The important role played by Turkey after the beginning of the migratory crisis and the consequent rise in people's movement along the south-eastern routes made the country particularly interesting in the eyes of the Union[482]. Indeed, as already explained, Turkey represented one of the main points of transit for all those migrants desiring to cross European borders. As a consequence, the European Union tried to deploy once again its already tested strategy, based on the transformation of neighbouring countries into guards and gatekeepers of

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[480] Andrea Ott, *EU-Turkey cooperation in migration matters: A game changer in a multi-layered relationship?*, Cleer papers 2017/4. The Hague: Centre for the law of EU external relations, 2017.

[481] Priscilla Oltean and Claudia Anamaria Iov, "EU-Turkey negotiations in the context of securitizing migration after the 2015 refugee crisis: Joint Action Plan and the Readmission Agreement" in *International Relations*, September 2017, 31(3): 101-115. Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/rescito13&div=35&id=&page=.

[482] Angeliki Dimitriadi et al., "EU-Turkey relations and irregular migration: Transactional cooperation in the making" in *Feuture – online paper No.16*, March 2018. Available at: https://www.feuture.uni-koeln.de/sites/feuture/user_upload/FEUTURE_Online_Paper_No_16_D6.3.pdf.

European borders with the task of halting the flows of migrants in entrance[483]. In other words, by recalling what has been explained in chapter 3, the Union was acting according to the policy of externalisation, that is to say, it was trying to outsource and diffuse out of its territory the responsibilities of borders control and migration management[484]. This is what has happened with Turkey[485]; however, the dynamics are not as easy as they may seem. In this specific case, the European Union negotiated with an actor which was in a position of power[486]; thus, in order to obtain what it wanted, the Union was forced to make some difficult concessions.

The way in which the two parties managed to find an agreement can be studied according to five different theoretical approaches[487]. The first one is the processual approach, which understands the negotiation as a sequence of determined phases. The preparation phase is the first one; actors separately examine the situation, developing their point of view on the situation. This step is usually followed by (but sometimes it can be simultaneous to) the preliminary phase, i.e. the moment in which the actors begin their formal and informal meetings. This period is sometimes difficultly detected, due to the cautiousness and discretion of the parties. The working dinner held on 17 May 2015[488] (and concluded with a Joint Statement presenting the main topics discussed in the agenda) is considered one of the first official meetings between the two subjects. These introductory stages are complemented by an exchange of positions and demands between the parties; this is the information phase. These demands and requests are then discussed during the argumentation phase; this is one the most difficult and tense moment of the entire process, since various proposals are made and debated by negotiators who are willing to maximise as much as possible their gains. After intensive discussions, the two sides try to adjust their position, resizing personal requests and proposing

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[483] Ali Bilgic and Michelle Pace, "The European Union and refugees. A struggle over the fate of Europe" in *Global Affairs*, 2017, 3(1): 89-97.
[484] Lisa Haferlach and Dilek Kurban, "Lessons learnt from the EU-Turkey Refugee Agreement in guiding EU migration partnerships with origin and transit countries" in *Global Policy*, 2017, 8(S4): 85-93.
[485] See footnote 483.
[486] Marc Pierini, "The EU-Turkey refugee deal needs a reset" in *Carnegie Europe* website, 16 February 2016. Available at: https://carnegieeurope.eu/strategiceurope/62783.
[487] A detailed presentation of these five theoretical approaches is offered in: Priscilla Oltean and Claudia Anamaria Iov, "EU-Turkey negotiations in the context of securitizing migration after the 2015 refugee crisis: Joint Action Plan and the Readmission Agreement" in *International Relations*, September 2017, 31(3): 101-115. Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/rescito13&div=35&id=&page=.
[488] European Commission, *Joint Statement following a working dinner with Turkish Ministers Çavuşoğlu and Bozkir*. Brussels, 17 May 2015. Available at: http://europa.eu/rapid/press-release_STATEMENT-15-4991_en.htm. The negotiation of the EU-Turkey Statement cannot be understood without considering the previous discussions on the Joint Action Plan. This is the reason why the working dinner on 17 May 2015 is considered the first formal meeting for the discussion of both the Joint Action Plan and the EU-Turkey Statement.

some possible concessions. Finally, it is only with the ultimate phase that the detailed contents of the agreement are established (during the joint European Council Summit held on 13 March 2016) and agreed (18 March 2016). Some elements have to be highlighted now. Indeed, the last phases of negotiation of the Joint Action Plan do correspond to the initial phases of the EU-Turkey Statement. This is due to the fact that the two parties were not able to conclude at once an all-encompassing agreement[489]; accordingly, membership and visa issues together with the return of migrants to Turkey were anticipated during the negotiation of the Joint Action Plan but were concretely addressed only with the 'second' negotiation.

The second approach is called structural, and is based on the concept of power and how it is distributed between the negotiators. Power has been defined in many different ways by the various scholars of international relations; for instance, Thomas C. Schelling speaks about the power of weakness[490], Robert Dahl defines power as the ability to convince the counterpart in doing something that otherwise it would have never done[491], Steven Lukes describes it as the capacity of both manipulating counterparts' preferences and making them believe that what they do is, in reality, what they really want to do[492]. In the structural approach, power is a sort of synonym of fulfilment, i.e. an actor is powerful only if he or she manages to reach a meaningful part of its objectives; this power can be increased or decrease by various sources (such as the information and resources available to negotiators, the context of negotiation, and the events happening before or during the development of the negotiation). In the context of the EU-Turkey Statement, both actors can be defined as powerful since, on the one hand, the European Union succeeded in obtaining the one-for-one swapping mechanism and, in particular, the Turkish commitment to readmit in its territories all migrants (i.e. both Turkish citizens and third country nationals) who have tried to enter the Union by passing through Turkey; on the other hand, Turkey won European promises as regards the lifting of visa requirements and the re-energisation of accession negotiations, together with further financial aid to be devoted to the Facility for Refugees in Turkey. In this specific situation, the context

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[489] Priscilla Oltean and Claudia Anamaria Iov, "EU-Turkey negotiations in the context of securitizing migration after the 2015 refugee crisis: Joint Action Plan and the Readmission Agreement" in *International Relations*, September 2017, 31(3), p. 104. Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/rescito13&div=35&id=&page=.

[490] Thomas C. Schelling, "An Essay on Bargaining" in *The strategy of conflict*, 1980, p. 28. London: Harvard University Press.

[491] Robert Dahl, *Who governs? Democracy and power in an American City* – vol. 4 of Yale Studies in Political Science: Yale University Press, 1961.

[492] Steven Lukes, *Power, a radical view*, London: Macmillian, 1974.

and the events happening before the beginning of the negotiation played a fundamental role, since they determined a significant increase of power for Turkey. As a matter of fact, it could be said that while Turkey needed the Union support in order to reach its objectives and manage the economic and social costs deriving from the high numbers of refugees it hosted in its territory, "Europe needed Turkey even more"[493]. This is quite an evident fact; indeed, it is only with the migratory crisis that Turkey succeeded in obtaining some concessions concerning membership and visa by the European Union; this would not have been possibly happening without the crisis, as the previous decades of negotiation have demonstrated. Thus, Turkey consciously used the "migratory weapon"[494] to increase its bargaining power, once asking to the rival negotiators: "So how will you deal with refugees if you don't get a deal?"[495]. Erdoğan explicitly threatened Europe by affirming that he could have opened the doors of its country at any moment, leaving migrants flooding Bulgaria and Greece[496]. However, in order to work, a threat has to be credible[497]. If an actor is forced to implement its strategy, this means that the counterpart has not taken it seriously; this is the paradox of the threat. In the specific case analysed here, Erdoğan's menace was considered credible by the European Union, which accepted to make some concessions in order to obtain the deal.

Since concessions have been mentioned, the analysis continues with the presentation of the third theoretical approach, the strategic one. The strategic approach is based on the idea that the process of negotiation always involves some actors which can be defined as rational, that is to say, actors which are ready to make rational, strategic and well-founded choices so as to reach their objectives. As a consequence of this rationality, the final agreement cannot but be reached without mutual concessions. This is exactly what happened with the EU-Turkey Statement. On the one hand, Turkey accepted both to readmit its citizens and third country nationals transited through its territory for reaching Europe, and to make some progresses as regards hosting

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[493] See footnote 489.
[494] Soren Kern, "Turkey sets ultimatum for EU migrant deal. 'Erdoğan is openly pursuing the Islamization of Europe'" in *Gatestone* website, 2 August 2016. Available at: https://www.gatestoneinstitute.org/8613/turkey-eu-migrant-deal.
[495] Recep Tayyip Erdoğan, quoted in: Peter Foster, "Turkey's Erdoğan 'taunted EU leaders' over migrant deal" in *The Telegraph* website, 8 February 2016. Available at: https://www.telegraph.co.uk/news/worldnews/europe/turkey/12147167/Turkeys-Erdogan-taunted-EU-leaders-over-migrant-deal.html.
[496] See: 1) *Ibidem*. 2) Angeliki Dimitriadi et al., "EU-Turkey relations and irregular migration: Transactional cooperation in the making" in *Feuture – online paper No.16*, March 2018. Available at: https://www.feuture.uni-koeln.de/sites/feuture/user_upload/FEUTURE_Online_Paper_No_16_D6.3.pdf.
[497] See footnote 490.

conditions. On the other hand, the Union conceded extra funds, the speeding up of accession talks, and the lifting of visa requirements by June 2016 (provided that Turkey meets the requirements). The concessions made by the European Union, in particular the one concerning membership, were regarded with suspicion by numerous actors (e.g. NGOs, researchers, and so on); as a matter of fact, the fact that Member States accepted to overlook the non-democratic nature of Turkey and to open new chapters of the *acquis* to negotiation is seen as something really dangerous for the well-being of the Union[498]. Not only did the Union undermine its founding principles, but it also weakened its democratic influence on new candidate countries[499].

Two final approaches have to be considered, namely the cultural and the behavioural ones. The former considers culture as a factor significantly influencing negotiation dynamics; differences tend to distance the parties, while similarities move negotiators closer (facilitating the entire process). Due to the historical relationship connecting Turkey and the European Union, the presence of cultural differences did not represent a novelty, and consequently did not significantly affect the final result. Differently, the behavioural approach analyses the characteristics of each negotiator. As a matter of fact, personality strongly influences the evolution of the negotiation; competitive personalities make negotiations more difficult as compared to more cooperative ones[500]. The main actors involved in the negotiation can be divided in two factions: the European Union and Turkey. It is immediately evident that there seems to be no negotiator promoting the interests of migrants; as a matter of fact, non-governmental organisations could make their voices heard only after the conclusion of the Statement itself[501]. The main European representatives were Federica Mogherini (the High Representative of the Union Foreign Affairs and Security Policy), Donald Tusk (the President of the European Council) and Angela Merkel (German Chancellor). Federica Mogherini was fundamental for the negotiation, since she had the well-developed ability of mediation; she

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[498] Kirsty Hughes, "Turkey, the European Union and the refugee crisis – a story of multiple failures" in *Friends of Europe* website, 17 March 2016. Available at: http://www.friendsofeurope.org/future-euro pe/turkey-the-european-union-and-the-refugee-crisis-a-story-of-multiple-failures/.
[499] *Ibidem*.
[500] The personality of a negotiator is determined also by his or her culture. This is the reason why these two approaches have been jointly presented in this paragraph.
[501] It is likely that NGOs were not consulted during the negotiation phase because the two sides (in particular the European Union) were already aware of the unfavourable opinion of these humanitarian organisations. Being them advocates and promoters of human rights, they could never have supported an agreement clearly disadvantageous for migrants. This topic is going to be dealt with in the specific section (4) of this chapter.

managed to relax the situation when tension was increasing[502]. Donald Tusk was more firm and resolute; thanks to his behaviour, the European Union managed to impose some irrevocable requirements to Turkey, thus equilibrating the final outcomes[503]. Finally, Angela Merkel was the one who mainly pushed for the agreement; she is generally recognised as the negotiator who laid the basis for the final outcome[504]. However, she also made important concessions to Turkey, being strongly influenced by domestic pressures and requests. In a sense, she can be considered the personification of European urgency for an agreement: the sooner the parties find an agreement, the sooner the flows of migrants can be stopped. The Turkish side was represented by Ahmet Davutoğlu (the Prime Minister) and Recep Tayyip Erdoğan (President of Turkey). The former mainly related to Angela Merkel; together, they structured the agreement discussing the possible concessions. He is a very expert negotiator, charismatic and simple. He compensated for the aggression and inflexibility of his President. However, it is Erdoğan's behaviour that 'guided' the process of negotiation, since he moved from an initial softer approach (necessary for gaining European trust) to a tougher one so as to obtain the desired concessions. Only when his interests had sufficiently being satisfied, did he return to a more cooperative stance.

The analysis carried out so far allows affirming that migration has always represented a tension-filled issue between the European Union and Turkey[505]. This tension was further increased by the problem of membership; the lack of developments over the decades (together with the rigid opposition showed by many Member States) has led to a slowdown in the relations. Mistrust and bitterness prevailed, making it more difficult to find an agreement on such a salient issue. The European Union and Turkey have neither divergent nor identical interests. Their relationship can thus be better understood in terms of operational

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[502] Priscilla Oltean and Claudia Anamaria Iov, "EU-Turkey negotiations in the context of securitizing migration after the 2015 refugee crisis: Joint Action Plan and the Readmission Agreement" in *International Relations*, September 2017, 31(3): 101-115. Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/rescito13&div=35&id=&page=.
[503] *Ibidem*.
[504] See 1) Matthew Karnitschnig, "Turkey gets EU concessions in return for refugee help. Erdoğan wins support from Merkel two weeks before Turkish elections" in *Politico* website, 18 October 2015. Available at: https://www.politico.eu/article/turkey-eu-concessions-refugee-help-migration-crisis-merkel-erdogan-germany/. 2) Steve Peers and Emanuela Roman, "The EU, Turkey and refugee crisis. What could possibly go wrong?" in *EU Law Analysis Blog*, 5 February 2016. Available at: http://eulawanalysis.blogspot.com/2016/02/the-eu-turkey-and-refugee-crisis-what.html.
[505] Janja Vukašinović, "Illegal migration in Turkey-EU relations: An issue of political bargaining or political cooperation?" in *European Perspectives: Journal on European Perspectives of the Western Balkans*, October 2011, 3(2): 147-166.

cooperation[506]; this means that their cooperation will be possible only in those areas reawakening the interests of both sides. By considering all the elements presented so far, it can be concluded that actually the EU-Turkey Statement negotiation has little to do with migration and the crisis; rather, it is an opportunity for demonstrate the power and the ability of obtaining as much as possible from the negotiation[507].

2.4 The negotiations through the lens of the media.

The investigation of the process of negotiation of an international agreement cannot be complete without a proper consideration of how the main newspapers dealt with the issue. In this section, an analysis of a sample of the principal European newspapers has been made, in order to understand the level of awareness and the quality of information available to public opinion in relation to the development of the negotiations, and national representatives' involvement and opinion as regards the entire process.

Eight countries have been selected, and the choice has not been a random one. To begin with, Greece (with its newspapers *Dimokratiki*[508] and *Kathimerini*[509]) is obviously chosen because of the fundamental importance of this country for the Statement. The selection continues with Italy (*Corriere della Sera*[510] and *La Repubblica*[511]) and Spain (*El Mundo*[512] and *El País*[513]), which represent two of the main entry points for migrants travelling along the Central Mediterranean route and the Western Mediterranean route respectively. Germany (*Der Spiegel*[514], *Frankfurter Allgemeine Zeitung*[515] and *Süddeutsche Zeitung*[516]) is clearly taken into consideration because of both the role played by the Chancellor Angela Merkel in the negotiations and the fact that it is one of the main hosting countries in Europe. Then, there are:

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[506] Angeliki Dimitriadi et al., "EU-Turkey relations and irregular migration: Transactional cooperation in the making" in *Feuture – online paper No.16*, March 2018. Available at: https://www.feuture.uni-koeln.de/sites/feuture/user_upload/FEUTURE_Online_Paper_No_16_D6.3.pdf.

[507] Özgehan Şenyuva and Çiğdem Üstün, "A deal to end 'the' deal: Why the Refugee Agreement is a threat to Turkey-EU relations" in *The German Marshall Fund of the United States: On Turkey*, July 2016, 132: 1-4.

[508] Dimokratiki (Δημοκρατική) website: https://www.dimokratiki.gr/.

[509] Kathimerini (Η Καθημερινή) website: http://www.kathimerini.gr/.

[510] Corriere della Sera website: https://www.corriere.it/ and http://archivio.corriere.it/.

[511] La Repubblica website: https://www.repubblica.it/.

[512] El Mundo website: https://www.elmundo.es/.

[513] El País website: https://elpais.com/.

[514] Der Spiegel website: http://www.spiegel.de/.

[515] Frankfurter Allgemeine Zeitung website: https://www.faz.net/aktuell/.

[516] Süddeutsche Zeitung website: https://www.sueddeutsche.de/.

France (*Le Figaro*[517], *Le Monde*[518] and *Le Monde Diplomatique*[519]) as an example of the 'moderate' countries during the negotiations; Hungary (*Magyarhirlap*[520] and *Hgv*[521]) as one of the more severe and pessimistic countries, being also one of those which introduced border controls and rejected migrants back to Greece; Slovakia (*Pravda*[522] and *Sme*[523]) as a representative of Eastern countries; and finally Sweden (*Dagens Nyheter*[524] and *Svenska Dagbladet*[525]), being both an example of Northern countries and one of the main receiving countries in terms of numbers of migrants hosted. Italian, Spanish and French newspapers have been consulted in the original languages, whereas the English version (when available) or the use of a translator have been necessary for all the others.

The research has been conducted by key words, such as "EU-Turkey Statement", "EU-Turkey relations", "EU-Turkey agreement", "EU", "Turkey", "refugees" and "(im)migrants". When possible, the words and expressions have been looked for in the original language, and then the results translated into English and Italian (with the exception of Italian, Spanish and French newspapers which, as said, have been examined in the original version). The period taken into consideration goes from the beginning of 2015 to the end of 2016, so as to include both the period of discussion of the previous Joint Action Plan and the evaluations and opinions following the implementation of the EU-Turkey Statement.

All newspapers are full of articles concerning the problem of migration management with a focus on the high numbers of people continuously arriving at the European borders through illegal pathways (emphasising, in particular, the role played by smugglers and traffickers). As regards the holding of European Union negotiations with Turkey, it has been found that the entirety of the newspapers considered do report at least some articles concerning this issue.

Starting from Greece, the first interesting thing noticed during the research is a significant predominance of articles reporting data on arrivals, as compared to the articles dealing with the negotiations. This is particularly true when the words "immigrants" and "refugees" are typed;

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[517] Le Figaro website: http://www.lefigaro.fr/.
[518] Le Monde website: https://www.lemonde.fr/.
[519] Le Monde Diplomatique website: https://www.monde-diplomatique.fr/.
[520] Magyarhirlap website: http://magyarhirlap.hu/.
[521] Hgv website: https://hvg.hu/.
[522] Pravda website: https://www.pravda.sk/.
[523] Sme website: https://www.sme.sk/.
[524] Dagens Nyheter website: https://www.dn.se/.
[525] Svenska Dagbladet website: https://www.svd.se/.

approximately on a daily basis, news reporting how many migrants have arrived (or have been saved) in Greece and in Italy and the fatalities recorded are published. What is more, few articles 'criticising' the problematic and inadequate conditions of Greek reception centres have been found. As regards the negotiations, Greek newspapers started to publish information about the holding of meetings with Turkey aimed at finding a compromise for the joint management of the migratory crisis already in the second half of 2015 (period of conclusion of the Joint Action Plan), the entire process combined with Greek fear that a possible agreement would cause a sort of 'entrapment' of migrants on the Hellenic islands (whose reception conditions were on the brink of collapse). Angela Merkel's involvement is emphasised, with articles communicating that, according to the German Chancellor, Turkey is seen as a key partner; its importance, however, does not have to lead to the conclusion that Turkey is stronger than Europe during the negotiations (or, at least, these are Merkel's words).

Italian press followed the development of the negotiations with Turkey with great interest. Both *La Repubblica* and *Corriere della Sera* constantly reported updates on the status of the negotiations, emphasising in particular two main aspects of the possible agreement, namely the accession of Turkey to the European Union and the money the Union should provide to Turkey in order to help this country with the management of migrants. However, while Turkish membership is a matter of concern but, at the same time, is perceived as an unlikely happening in the near future[526], the issue of financial help is more controversial. It is exactly the disbursement of €3 billion to Turkey that created a temporary divide between Italy and Germany, with the Italian Prime Minister Matteo Renzi asking for more caution[527]. Eventually, in spite of the controversies and discontents existing between Member States during the negotiations, the EU-Turkey Statement (whose text is published in full in *La Repubblica*[528]) is welcomed by Italian political sphere with enthusiasm, with the Prime Minister declaring:

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[526] See, for instance, in *Corriere della Sera*: 1) Sergio Romano, "La Turchia nella UE – Improbabile per ora", 17 September 2015; 2) Luigi Offreddu, "Merkel apre alla Turchia la porta d'accesso alla UE", 19 October 2015; 3) "L'Unione Europea accelera sull'ingresso della Turchia", 30 November 2015. All articles are available at: http://archivio.corriere.it/.
[527] See, for instance, in *Corriere della Sera*: 1) Ivo Caizzi, "Migranti, scontro a Bruxelles. Roma frena sui 3 miliardi di euro", 15 January 2016; 2) Danilo Taino, "Tra Merkel e Renzi restano i nodi", 30 January 2016; 3) Federico Fibini, "Disgelo tra Merkel e Renzi. La telefonata a Palazzo Chigi: «Linea comune sui rifugiati»", 5 March 2016. All articles are available at: http://archivio.corriere.it/.
[528] *La Repubblica,* 18 March 2016. Available at: https://www.repubblica.it/esteri/2016/03/18/news/il_testo_completo_dell_accordo_ue-turchia-135813440/?refresh_ce.

"Now, we are not alone"[529]. This happiness appears to be in stark contrast with the opinion (mainly reported by *La Repubblica* journalists) of both the ecclesiastical and the humanitarian world, with representatives of the Church and of NGOs like Amnesty International, Médecin Sans Frontières and UNHCR opposing to the Statement and its consequences for migrants[530].

With regard to the situation of the Spanish press, the level of dissemination of information concerning the European-Turkish negotiations is similar to the Italian one. However, the national perception is quite different. The Spanish political and civil worlds did not agree with the mechanism based on the return of migrants to Turkey, to the point that the Statement was renamed "the pact of shame"[531]. Both *El País* and *El Mundo* published numerous articles in which the position of Spanish politicians was clearly stated; the Government and the Congress of Deputies decided to take position against what they defined as a plan for legalising the collective expulsion of migrants[532]. This rigid stance strongly contrasted with the fact that the Spanish Prime Minister Mariano Rajoy eventually decided to support the agreement with Turkey, justifying himself by affirming that he had been the first one to oppose the preliminary version of a project which was not in line with Spanish and European values and necessities. Moreover, he also declared that once the two main concerns of Spain had been adequately taken into consideration and resolved[533], Spain had no reason to continue opposing the new version of the deal[534]. In a sense, Rajoy promoted the role he played as a moderator of the

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[529] Levi Ricardo Franco, "Renzi e i migranti: ora non siamo soli" in *Corriere della Sera*, 18 March 2016. Available at: http://archivio.corriere.it/.

[530] See, for instance, in *La Repubblica*: 1) Zita Dazzi, "Migranti, l'arcivescovo Scola come Papa Francesco: «Poca cosa l'accordo tra UE e Turchia»", 20 March 2016; 2) "Messina, Don Ciotti: «Accordo UE-Turchia sui migranti umiliante e frutto di ipocrisia»", 21 March 2016; 3) "Rifugiati siriani, i respingimenti di massa illegali mostrano difetti fatali dell'accordo UE-Turchia", 2 April 2016. All articles are available at: La Repubblica: https://www.repubblica.it/.

[531] Rubén Amón, "El pacto de la vergüenza" in *El País*, 8 March 2016. Available at: https://elpais.com/elpais/2016/03/08/opinion/1457424011_548168.html.

[532] Carmen Remírez de Ganuza, "El Gobierno acuerda con el Congreso oponerse en Bruselas a las expulsiones colectivas de refugiados" in *El Mundo*, 16 March 2016. Available at: https://www.elmundo.es/espana/2016/03/16/56e94f81e2704e81638b4606.html.

[533] The two main worries of Spain were: firstly, to avoid the indiscriminate collective expulsion (solved with the guarantee of an individual and scrupulous assessment of the situation of each migrant); and secondly, to reduce to zero the fatalities caused by the dangerous illegal journeys undertook by migrants desiring to reach European territories.

[534] Marisa Cruz, "Rajoy afirma que España moderó el acuerdo migratorio entre UE y Turquía" in *El Mundo*, 6 April 2016. Available at: https://www.elmundo.es/espana/2016/04/06/5704c03de2704e463b8b459c.html.

negotiations, giving to the Statement a more human-rights-based nature[535]. This change obviously provoked the protests of the Spanish opposition and civil society[536].

In terms of awareness about of the ongoing negotiations, German citizens have not been kept in the dark; this seems to be quite an obvious result, due to the active participation of the German Chancellor in the entire process. Her position cannot be considered comfortable, though. She strongly believed that the engagement of Turkey was essential if Member States wanted to find a durable solution to the refugee crisis. Nevertheless, Angela Merkel had to fight against the resistance of the national opposition (first and foremost, the Christian Social Union), and the pressure of a public opinion asking for a significant reduction of the migrants hosted in Germany; to them, also various European States (Italy and Spain, for instance) showed their doubts about Merkel's plan, not believing that Turkey could actually represent a valid option[537]. At the same time, all eyes were on her moves, in particular because of the feeling that Germany (and Europe) were running out of time[538]; the failure of the negotiations would mark the inescapable end of the Schengen system and, consequently, of Europe as it was known.

France is another interesting country for this research. Its position as regards the EU-Turkey Statement (publicised on the average of the other examined countries) is quite a moderate one. The French President François Hollande demonstrated his support to the efforts made by the German Chancellor[539], emphasising at the same time that France was not willing to make any concession to Turkey as far as human rights are concerned[540]. It could have probably been

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[535] *Ibidem*.

[536] See, for instance, in *El País*: 1) "Los partidos de la oposición critican el acuerdo europeo sobre los refugiados", 18 March 2016; 2) Javier Doria, "El Parlamento navarro retira la bandera de la UE por el acuerdo de los refugiados", 18 March 2016. All articles are available at: https://elpais.com/.

[537] See, for instance, in *Der Spiegel*: 1) Spiegel's staff, "The lonely Chancellor. Merkel under fire as refugee crisis worsens", 2 November 2015; 2) Horand Knaup et al., "Turkish-German Pact. EU split by Merkel's refugee plan", 12 February 2016; 3) Ralf Neukirch and René Pfister, "Interview with Bavarian Governor Seehofer. The country is divided", 2 March 2016; 4) Spiegel's staff, "Alone in Berlin. How Merkel has gambled away her EU power", 11 March 2016. All articles are available at: http://www.spiegel.de/.

[538] See, for instance, in *Der Spiegel*: 1) Spiegel's staff, "Merkel's last stand? Chancellor running out of time on refugee issue", 19 January 2016; 2) David Böcking and Stefan Kaiser, "Interview with German Finance Minister Schäuble - «We are running out of time for refugee solutions»", 22 January 2016. All articles are available at: http://www.spiegel.de/.

[539] *Le Figaro*, "Entretien Hollande/Merkel sur la crise migratoire", 4 March 2016. Available at: http://www.lefigaro.fr/flash-actu/2016/03/04/97001-20160304FILWWW00068-entretien-hollandemerkelcameronrenzi-avec-poutine-sur-la-syrie.php.

[540] *Le monde,* "Hollande ne veut faire «aucune concession» à la Turquie sur les droits de l'homme", 12 March 2016. Available at: https://www.lemonde.fr/europe/article/2016/03/12/refugies-hollande-ne-veut-faire-aucune-

expected that France would be characterised by a more heated internal debate, given the role usually played by this country on the European scenario. However, this is not the case; during the negotiations with Turkey, France limited itself to impose some limits concerning the protection of human rights, being 'dragged' by German leadership for all the rest. Indeed, while the country recognised the need for an urgent solution, it did not seem to be willing to take on a more active role during the negotiations. In brief, its position can be defined as balanced and measured.

The research continues with Hungary, which was recognised as one of the most severe and aggressive countries as far as the migration management is concerned; once again, negotiations were made public. Despite the common belief that an agreement was in the interests of all European countries (Hungary included), the Prime Minister Viktor Orbán believed that the deal had substantial limitations. Firstly, he was firmly convinced that the only solution capable of providing significant results was the closure of European borders. Indeed, the implementation of the Statement would cause the confluence of all migrants in the Greek territory; this, in turn, would require the disbursement of further European financial aids[541]. Secondly, it has been reported that Orbán vetoed the proposal for the direct relocation of Syrian refugees from Turkish camps to European countries, believing it inadequate[542]; this is partially associated to the idea that Christian Europe has to be protected from every kind of menace or invasion. Finally, he labelled Turkey as an unreliable and problematic partner, conviction founded on both the lack of an effective freedom of the press and the patent use of torture[543]; the Prime Minister thought it disconcerting that the European Union was ready to come to terms with a country light years away from European values and principles. Hence, the idea that the Statement had no sense at all.

Now, the situation of Slovakia is considered; this country can be added to the list of those which gave information to its citizens about the ongoing negotiations. The analysis carried out for this country has led to the conclusion that Slovakia is one of the countries which appreciated the most the agreement concluded with Turkey. Despite the doubts concerning the

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concession-a-la-turquie-sur-les-droits-de-l-homme-et-les-
visas_4881784_3214.html?xtmc=declaration_ue_turquie&xtcr=16.
[541] *Magyarhirlap*, "Rendkívüli EU-csúcs Brüsszelben" ("Extraordinary EU summit in Brussels"), 8 March 2016. Available at: http://magyarhirlap.hu/cikk/49408/Rendkivuli_EUcsucs_Brusszelben.
[542] *Ibidem*.
[543] *Ibidem*.

possible accession of Turkey to the European Union, the role of Turkey as a necessary partner was recognised without any doubts. The Interior Minister Robert Kaliňák recognised that the Statement had some flaws but, on the whole, it could be positively judged[544]. This is because of the fact that, firstly, it can significantly decrease the activities of smugglers and traffickers; and secondly, it would increase the respect of European borders. He also added that some investments should be made in order to both increase living conditions for migrants temporarily hosted in refugee camps and engage in campaigns aimed at encouraging asylum seekers to resort to legal options. Slovakia has proved to be a country very sympathetic to migrants' cause, being willing to host high numbers of asylum seekers; indeed, in his speech of September 2015, the President Andrej Kiska declared that migrants did not represent a threat for the country, and that the dissemination of fear and xenophobic ideologies had to be stopped[545].

The last country taken into consideration is Sweden, another country in which negotiations were made public to its citizens. Here, attention was mainly directed towards the increasing power Turkey was able to gain during the negotiations, using migrants (and the possibility to open its frontiers) as the main weapon for forcing the Union making considerable concessions[546]. Articles about the division between Member States and the worry for migrants' conditions are also discovered. On the whole, the position of the country is quite a moderate one.

To sum up, it can be affirmed that all countries taken into consideration provided at least a minimum level of information about the negotiation process to their citizens. Their position is not homogenous, though; some countries were more optimistic and enthusiastic, while others perceived the issue in a more problematic way. The reason why the Statement was eventually adopted despite the divergences is going to be understood in the following section dealing with the legal nature of the Statement.

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[544] *Pravda*, "Kaliňák: Dohoda s Tureckom o zámene migrantov je naozaj dobra" ("Kaliňák: the agreement with Turkey on the exchange of migrant is quite a good one"), 10 March 2016. Available at: https://spravy.pravda.sk/domace/clanok/386369-kalinak-dohoda-s-tureckom-o-zamene-migrantov-je-naozaj-dobra/.
[545] *Pravda*, "Kiska: Prijatie utečencov bezpečnosť Slovenska a jeho hodnoty neohrozí" ("Kiska: the admission of migrants will not threaten the security and values of Slovakia"), 7 September 2015. Available at: https://spravy.pravda.sk/domace/clanok/366862-kiska-prijatie-utecencov-bezpecnost-slovenska-a-jeho-hodnoty-neohrozi/.
[546] See, for instance, in *Dagens Nyheter*: 1) Annika Ström Melin, "Erdogan stärkt i flyktingkrisen" ("Erdoğan reinforced by the refugee crisis"), 6 October 2015; 2) Annika Ström Melin, "Flyktingkrisen har gjort EU beroende av Turkiet" ("The refugee crisis made the EU dependent on Turkey"), 2 November 2015. All articles are available at: https://www.dn.se/.

3. The legal nature of the Statement.

The legal nature of the EU-Turkey Statement can be described as a very controversial issue subjected to a heated debate. It was the same European Parliament that, some weeks after the adoption of the Statement, started to pose questions on the legal nature of a document of such a magnitude.

The reasons explaining why the Statement cannot be considered legally binding are numerous. To begin with, it seems that, during the negotiation of the Statement, the article 218 of the Treaty on European Union has not been respected[547]. In order to have binding power, the text should have been subjected to the approval of the European Parliament or, at least, the Parliament should have given its preliminary authorisation (since, in principle, the European Council does not have the power to conclude any kind of international treaty on behalf of the Union)[548]. Secondly, as the name suggests, a Statement is not a Treaty[549]; both the 1969 Vienna Convention on the Law of Treaties and the Treaty on the Functioning of the European Union provide different definitions and interpretations for these two types of act. This point of view has been confirmed also by other academics and experts like Steve Peers[550] and Karolína Babická[551], who have declared that the form of Statement is emblematic for establishing if there is any obligation deriving from it. What is more, the document was announced only through a press release published in the institutional websites of the Union, a dynamic which would have never been acceptable for a deal. Thirdly, the intentions of the parties have to be analysed[552]; indeed, preparatory works and the same contents of the Statement seem to confirm that both Turkey and the Union did not intend to produce an agreement with legal effect, but

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[547] Maarten den Heijer and Thomas Spijkerboer, "Is the EU-Turkey refugee and migration deal a treaty?" in *EU Law Analysis Blog*, 7 April 2016. Available at: http://eulawanalysis.blogspot.com/2016/04/is-eu-turkey-refugee-and-migration-deal.html.

[548] Nicole Koenig and Marie Walter-Franke, *One year on: What lessons from the EU-Turkey deal?*. Berlin: Jacques Delors Institut, 17 March 2017 – Blog post available at: https://www.delorsinstitut.de/2015/wp-content/uploads/2017/03/20170317_EU-Turkey-deal-one-year-on-NK-MW.pdf.

[549] See footnote 547.

[550] Professor in the School of Law at the University of Essex, and author of numerous books and articles concerning European migration and asylum law. For his opinion on the issue, see: Steeve Peers, "The draft EU/Turkey deal on migration and refugees: Is it legal?" in *EU Law Analysis Blog*, 16 March 2016. Available at: http://eulawanalysis.blogspot.com/2016/03/the-draft-euturkey-deal-on-migration.html.

[551] Expert of European Law, currently member of the International Commission of Jurists in Brussels; previously, she was a migration and asylum policy and advocacy officer in Caritas Europe, and asylum and migration policy assistant at the Amnesty International European Institutions Office. For a brief article resuming her viewpoint, see: Karolína Babická, "EU-Turkey deal seems to be schizophrenic" in *Migrationonline*, 22 March 2016. Available at: https://migrationonline.cz/en/eu-turkey-deal-seems-to-be-schizophrenic.

[552] See footnote 547.

rather a statement reconfirming previous commitments jointly made. Within the document, there is a lack of explicit communication capable of clarifying their real intentions. Additionally, both the Member States and the main European institutions "have indicated that they consider this statement only to result in political commitments not legally enforceable"[553]. Fourthly, also the language chosen does not seem to be in line with the one commonly used when redacting an internationally binding agreement[554]; for instance, while an agreement (in the strictest sense of the word) usually selects verbs such as "shall", "should", "call upon", or "urge", the Statement predominantly prefers the verb "will" which, in comparison to the previous ones, does not provide a sense of well-defined obligation or struggle. Therefore, all these elements allow affirming that the EU-Turkey Statement is only a political statement produced by the European Council, rather than an international agreement with binding force.

However, there are just as many justifications supporting the idea that the Statement is really a deal; even worse, the exact same arguments used to support the non-binding position, but analysed from a different point of view, lead to opposite conclusions, i.e. that the Statement is a legally binding agreement. To start with, the argument according to which the name of the document (i.e. Statement instead of Agreement or Treaty) defines its legal nature has been discredited by the International Court of Justice which, deciding on similar cases, has ruled that the form is not a sufficient parameter to establish its legal nature; rather, more attention has to be paid to the intentions of the parties, that is to say if the parties aimed at binding themselves to a commitment or not[555]. This consideration allows creating a connection with other three assertions, namely those on intentions, on the confirmation of previous commitment, and on the language used. While it has just been explained that neither European countries nor the institutions believe that the EU-Turkey Statement is an agreement, the fact that both the European and the Turkish counterparts have started to implement the guidelines included in it is strongly relevant. In addition, this cannot just be set aside as a matter of enforcement of previously existing commitments; indeed, the document contains new interesting provisions, of which the one-to-one swapping mechanism is the most intriguing instance. As if that was not enough, even the issue of the linguistic choice is not as crucial as it may give the impression; as

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[553] Andrea Ott, *EU-Turkey cooperation in migration matters: A game changer in a multi-layered relationship?*, Cleer papers 2017/4. The Hague: Centre for the law of EU external relations, 2017, p. 28.
[554] *Ibidem*.
[555] Maarten den Heijer and Thomas Spijkerboer, "Is the EU-Turkey refugee and migration deal a treaty?" in *EU Law Analysis Blog*, 7 April 2016. Available at: http://eulawanalysis.blogspot.com/2016/04/is-eu-turkey-refugee-and-migration-deal.html.

a matter of fact, the document also contains an abundance of expressions emphasising the desire of the actors to create a legally-binding document, like "decide", "agree" or "take any necessary measures/steps". Finally, the fact that the parties have a duty to put into effect the EU-Turkey Statement finds further confirmation in the reports the European Commission periodically drafts in order to assess and evaluate the progresses made by Turkey and the Union in the implementation of the Statement.

To sum up, the debate on the legal nature of the EU-Turkey Statement is supposed to be a never ending one; there are several valid reasons supporting both positions, thus making the disputation even more problematic and blurred. Approximately three years after the conclusion of the Statement, experts and commentators have not been able to find a solution to this dilemma yet. Nevertheless, this issue cannot remain unresolved much longer. This is because the establishment of the legal nature is necessary for determining the real extent and scope of the Statement and, consequently, its authorship and implications.

Notwithstanding the weight of this uncertainty, some considerations can be made all the same. If it is recognised that the EU-Turkey Statement is not a European deal in the strictest sense of the term, then it follows that the Court of Justice of the European Union does not have the "jurisdiction to rule on the lawfulness of the deal"[556] and on the possible violations and infringements of human rights deriving from it; the same is established by the General Court of the European Union which, on 28 February 2017, "declares that it lacks jurisdiction to hear and determine the actions brought by three asylum seekers against the EU-Turkey Statement"[557]. Furthermore, the soft law nature of the statement is, on the one hand, responsible for diminishing its concrete effects, since the two sides cannot be prosecuted for their non-fulfilment[558]; on the other, it risks becoming an unaccountable and opaque instrument[559], slipping away from every type of controlling mechanism, both institutional and from the civil society. In simple words, the risk is that the European Union has promoted the development of

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[556] Mariana Gkliati, "The EU-Turkey Deal and the safe third country concept before the Greek Asylum Appeals Committees" in *Movements – Journal for critical migration and border regime studies*, 2017, 3(2), p. 213.

[557] General Court of the European Union, *The General Court declares that it lacks jurisdiction to hear and determine the actions brought by three asylum seekers against the EU-Turkey Statement which seeks to resolve the migration crisis*, Press release (19/17). Luxembourg, 28 February 2017. Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170019en.pdf.

[558] Nicole Koenig and Marie Walter-Franke, *One year on: What lessons from the EU-Turkey deal?*. Berlin: Jacques Delors Institut, 17 March 2017 – Blog post available at: https://www.delorsinstitut.de/2015/wp-content/uploads/2017/03/20170317_EU-Turkey-deal-one-year-on-NK-MW.pdf.

[559] Andrea Ott, *EU-Turkey cooperation in migration matters: A game changer in a multi-layered relationship?*, Cleer papers 2017/4. The Hague: Centre for the law of EU external relations, 2017.

an instrument whose ambiguous nature risks being extremely dangerous for migrants, that is to say, for the most vulnerable and voiceless part. Differently, if the binding nature is confirmed, then either a Member country or a European institution could ask for annulment of the Statement[560], having it being concluded by the Council without the Parliament authorisation. Nevertheless, it cannot be proclaimed void, since it does not violate jus cogens norms; indeed, the Statement explicitly affirms the duty to respect both international and European law in the field of human rights protection. Therefore, even in the case of patent violations of the migrants' rights, the responsibility is going to be attributed to the single 'guilty' country, and not to the Statement, since each state has the freedom to decide on its own the best way to implement it.

4. The ethical debate.

The conclusion of the EU-Turkey Statement raised numerous debates about its legality and its compliance with the international law, in particular as far as human rights are concerned. The main advocates of migrants' rights are the NGOs, which (since March 2016) have strenuously fought against the injustices and abuses deriving from the implementation of the Statement. While these advocates have recognised that the Statement has provided some positive outcomes (such as the financial support for refugees living in Turkey, and a reduction of the arrivals occurring through dangerous routes), the idea is that actually the drawbacks have outweighed the advantages; this assertion can be confirmed by analysing the situation of both Greece and Turkey.

To begin with Greece, Amnesty International has observed that the activation of the EU-Turkey Statement has significantly worsened reception conditions in the Hellenic Islands[561]. On the one hand, the existing facilities handling reception issues lived (from the very beginning) an important conversion, becoming real detention centres during this process. On the other hand, the number of migrants blocked into these territories increased, thus exacerbating the terrible living conditions. How can we explain this increase of asylum-seekers in Greece? As anticipated in the second chapter, it is true that migrants actually arriving in

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[560] See footnote 555.
[561] Amnesty International, *A blueprint for despair. Human rights impact of the EU-Turkey Deal*, 14 February 2017. Available at: https://www.amnesty.org/download/Documents/EUR2556642017ENGLISH.PDF.

Greece have diminished as compared to the months preceding the Statement; however, it is also correct that a great number of migrants have started to lodge their applications in this country, because of the fear of being unable to reach other European destinations[562]. The rise in the number of people staying in the country puts the already unstable and problematic reception mechanism in further distress, to the point that the government was not even capable of providing basic services (included personal – physical and psychological – security, education, access to adequate food and clean water, and health care) to the migrants in the camps; even worse, a lack of legal assistance and a difficult access to asylum proceeding were discovered by experts surveying the same camps. Conditions were so dire that numerous humanitarian organisations (among which UNHCR, Médicins Sans Frontières, and Save the Children) decided to suspend part of their activities to demonstrate their strong opposition to the way in which the situation was managed[563].

Another matter of concern can be found in the legal field. In order to adapt to the Statement and to the Directive 2013/32/EU[564], the Greek Government introduced the Law No. 4375[565] on 1 April 2016. The goal is to speed up the entire process of examination of asylum applications (maximum 15 days), starting from the first stages at the borders. The problem is that even the possibility for appeal has to be exhausted within this time limit; however, it is absolutely impossible for migrants to have access to this option in respect of the time limit. As a consequence, the law seems to have provoked only a reduction of the rights of the migrants. However, it does not stop there. Another important change has been made in the judicial field as well. Previous to the Statement, the requests lodged by asylum seekers were analysed firstly by the Greek Asylum Service, and secondly (only in case of appeal) by the administrative Committees, which were composed by a) a representative of the Ministry of Interior, b) a representative of the UNHCR, c) an official consultative organ to the state, and d) an expert of

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[562] *Ibidem*.
[563] *Ibidem*.
[564] European Parliament and Council, "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 (recast)" in *Official Journal of the European Union*, 26 June 2013. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN.
[565] Greece, *Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU "on common procedures for granting and withdrawing the status of international protection (recast"(L 180/29.6.2013), provisions on the employment of beneficiaries of international protection and other provisions*, 1 April 2016 [unofficial translation by UNHCR Turkey]. Available at: https://www.refworld.org/docid/573ad4cb4.html.

human rights[566]. With their work and their decisions[567], these Committees actually hindered the functioning of the Statement, since they did not believe that migrants could be resettled or 'refouled' to Turkey on the basis that it has been labelled as 'safe third country'[568]. It is likely that the activity of the Committees was not positively perceived by Greek authorities; as a consequence, a new reform of the Parliament established that the composition of such Committees had to be modified. From June 2016 onwards, the New Committees have been constituted by two judges (representatives of the State) and another member with the function of human rights expert and advocate[569]; immediately after the change, the number of decisions in favour of migrants' resettlement to Turkey went from approximately 0.76% to 100%.

The measures and reforms implemented by Greece are an example of the attempt made by this country to conform to European requirements, that is to say, increase as much as possible the number of people resettled to Turkey under the obligations established by the EU-Turkey Statement or, seen from the opposite viewpoint, reduce as much as possible the number of migrants within the European borders.

The situation does not improve when the conditions in Turkey are considered. First and foremost, Turkey is neither a safe third country nor a safe first country of asylum. These two concepts are defined in the recast Directive 2013/32/EU[570], in articles 38 and 35 respectively. In order for a country to be classified as safe third country, it has to safeguard the life and liberty of each individual, without discrimination based on nationality, religion, race or any element which may become a factor of intolerance. Additionally, the principle of non-refoulement has to be diligently followed, without any possibility of exemption, and it has to be combined with the full enjoyment of the right of lodging their asylum applications and receive the needed protection. What is more, there should be a justifiable link between the migrant and the third country chosen. Similarly, a first country of asylum has to promote the respect of both the principle of non-refoulement, and the life and dignity of individuals who have already been recognised the refugee status. But these principles are not sufficient *per se*; the safety of a country has to be impartially determined according to a case by case assessment,

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[566] Mariana Gkliati, "The EU-Turkey Deal and the safe third country concept before the Greek Asylum Appeals Committees" in *Movements – Journal for critical migration and border regime studies*, 2017, 3(2): 213-224.
[567] 390 out of 393 decisions concluded that, in the specific cases examined by the Committees, migrants could have not been resettled to Turkey; otherwise, their security was at risk. See previous footnote.
[568] This issue is going to be thoroughly examined in the following lines.
[569] See footnote 566.
[570] See footnote 564.

taking into consideration the specific situation of each individual[571]. Obviously, both concepts have been developed according to the main international legal obligations, among which the 1951 Refugee Convention and the European Convention on Human Rights.

The EU-Turkey Statement (and the previous Joint Action Plan) operates according to the presumption that Turkey can be considered a safe country for migrants, since during the years it has reformed its legal system in order to harmonise to European standards in the field of asylum and migration. In particular, the new Law on Foreigners and International Protection adopted in 2013 is presented as a sufficient reason to justify the security of this country[572]. The reality, however, is quite a different one. To begin with the Law on Foreigners and International Protection, international organisations' activists have observed the existence of a discrepancy between what is sanctioned in the Law and how it is actually implemented (in particular in the refugee camps)[573]. Secondly, Turkey has repeatedly been found responsible for the violation of the principle of non-refoulement[574], having put in place violent procedures of deportation[575] or rejection of migrants at borders. What is more, several individuals have been forced to opt for the 'voluntary' return to their countries of origin[576], sometimes even signing documents in languages they did not understand and without being informed of the (legal) consequences deriving from the act of signing. Thirdly, the implementation of the EU-Turkey Statement has made it more difficult for asylum seekers to have access to registration procedures necessary for obtaining the refugee status[577]; this is in stark contrast with the instructions contained in the recast Directive 2013/32/EU. All these elements taken together call into question the real safety of Turkey for migrants looking for international protection; in particular, the main fear is that migrants resettled from Europe to Turkey under the Statement'

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[571] Dutch Council for Refugees and European Council on Refugees and Exiles, *The DCR/ECRE Desk Research on application of a safe third country and a first country of asylum concepts to Tur*key, May 2016. Available at: http://www.statewatch.org/news/2016/may/eu-turkeyDCR-ECRE.pdf.

[572] Orçun Ulusoy, "Turkey as a safe third country?" in *Border Criminologies Blog*, The Faculty of Law – University of Oxford, 29 March 2016. Available at: https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/turkey-safe-third.

[573] *Ibidem.*

[574] Mariana Gkliati, "The EU-Turkey Deal and the safe third country concept before the Greek Asylum Appeals Committees" in *Movements – Journal for critical migration and border regime studies*, 2017, 3(2): 213-224.

[575] To read some testimonies on deportation, see: *Mülteci-Der and Pro-Asyl, Observations on the situation of refugees in Turkey, 22 April 2016* – report, April 2016. Available at: https://www.proasyl.de/wpcontent/uploads/2015/12/M%C3%BClteci-DER-OBSERVATIONS-ON-REFUGEESITUATION-TURKEY-APRIL-2016.pdf.

[576] See footnote 571.

[577] See footnote 575.

precepts may not receive the protection they are entitled to[578], as it happens for all those individuals arriving in Turkey directly from their country of origin.

Due to the fact that Turkey does not meet the requirements necessary for being considered either a safe third country or a safe first country of asylum, it may be asked if Turkey can at least be considered a super-safe third country. This option is provided by the same Asylum Procedure Directive in article 39 (under the heading "European safe third country"), which establishes that a country is safe if it has ratified and implemented both the 1951 Refugee Convention (without establishing any geographical limitation to it) and the European Convention on Human Rights, and if its legal system does include a functioning asylum procedure[579]. However, it goes without saying that Turkey cannot even be labelled as a European safe third country, due to the fact that it keeps on maintaining the geographical limitation establishing that only European migrants are entitled to receive the refugee status[580].

The elements drawn to attention by the activities of humanitarian organisations but also of experts of the field have underscored parts of the problems related to the 2016 EU-Turkey Statement. With this agreement, the European Union has demonstrated its inability in dealing with such a complicated and awkward issue. Once again, the main European goal emerges with all its strength: limiting as much as possible the entrance of migrants through the employment of neighbouring countries as its guards; by pushing the issue to the borders, the Union can (at least temporarily) assume that either there is no problem to be dealt with or that a solution has already been found[581]. In order for its objective to be reached, the Union seems to be ready to work against its founding principles, included the protection and promotion of human rights. As John Dalhuisen[582] has declared, "in their desperation to seal their borders, EU leaders have wilfully ignored the simplest of facts: Turkey is not a safe country for Syrian refugees and is

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[578] *Ibidem*.

[579] European Parliament and Council, "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 (recast)" in *Official Journal of the European Union*, 26 June 2013. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN.

[580] Steve Peers and Emanuela Roman, "The EU, Turkey and refugee crisis. What could possibly go wrong?" in *EU Law Analysis Blog*, 5 February 2016. Available at: http://eulawanalysis.blogspot.com/2016/02/the-eu-turkey-and-refugee-crisis-what.html.

[581] Kenan Malik, "The dark side of the EU-Turkey refugee deal" in *Aljazeera* website, 9 March 2016. Available at: https://www.aljazeera.com/indepth/opinion/2016/03/dark-side-eu-turkey-refugee-deal-160309080433064.html.

[582] Director of Amnesty International's Europe and Central Asia Programme in the period from 2012 to 2017.

getting less safe by the day"[583]. The European condescending attitude in relation to the way Turkey manages the fluxes of refugees has contributed in worsening the situation; Turkey has to readmit as many migrants as possible, it does not matter how it actually manages them. Consequently, John Dalhuisen further asserted: "far from pressuring Turkey to improve the protection it offers Syrian refugees, the EU is in fact incentivising the opposite"[584]. Thus, the doubt that the unlawful treatment experienced by migrants in Turkey is a consequence a European demands becomes stronger and stronger[585].

The result is quite a paradoxical one[586]. On the one hand, the European Union has fought for years for promoting its 'superior' asylum standards and for convincing neighbouring countries to implement them, so as to increase the level of protection granted to migrants. On the other hand, with the advent of the migratory crisis, European leaders seemed to have forgotten their previous commitments and values, since the desire to block arrivals was greater than the importance of protecting these vulnerable individuals; in this way, the Union has made itself guilty of violating its own principles and norms.

This paradox can be better understood with the concept of "decoupling", which is thoroughly explained in the paper by Emilie M. Hafner-Burton and Kiyoteru Tsutsui[587]. The concept is quite simple, since it confirms the existence of a discrepancy (i.e. decoupling) between the policies and practices implemented by a country or institution. Accordingly, this concept describes the practice of signing an international treaty (in particular regarding human rights) as the consequence of an international pressure, rather than as the by-product of a voluntary choice. In other words, countries sometimes feel compelled to sign relevant international treaties concerning human rights protection, since otherwise they would be considered 'deviant'; signing and ratification thus become an act aimed at gaining international legitimation. However, these same countries do not have the capacity or willingness to effectively comply with the principles and norms presented in the treaty itself.

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[583] Amnesty International, *Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey Deal*, 1 April 2016. Available at: https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/.
[584] *Ibidem*.
[585] Amnesty International, *Europe's gatekeeper: Unlawful detention and deportation of refugees from Turkey – report*, 16 December 2015. Available at: https://www.amnesty.org/download/Documents/EUR4430222015ENGLISH.pdf.
[586] Elizabeth Collett, "The paradox of the EU-Turkey refugee deal" in *Migration Policy Institute* website, March 2016. Available at: http://www.migrationpolicy.org/news/paradox-euturkey-refugee-deal.
[587] Emilie M. Hafner-Burton and Kiyotery Tsutsui. "Human rights in a globalizing world: The paradox of empty promises" in *American Journal of Sociology*, 2005, 110(5): 1373-1411.

Decoupling can take even a more radical shape (called "radical decoupling"[588]). In this case, not only do countries ratify human rights international agreements even if it is not in their will to do so, but they also take advantage of this situation for 'hiding' their non-compliant national behaviour. In other words, countries are in line with international requirements only in appearance. In a sense, there may be a great concern that the situation of the European Union can fall within this scheme. Indeed, on the one hand the European Union is a convinced and enthusiastic promoter of human rights protection, being the signatory of all the most important treaties in this field; on the other hand, it concludes agreements and declarations (such as the EU-Turkey Statement) which are blatantly in contrast with these same principles. Hence, it may be wondered if it is possible that the Union is using its reputation as human rights advocate in order to shield itself from the criticisms provoked by the Statement.

Notwithstanding this significant problem, all the same it has to be conceded that (at least in theory) European leaders are aware of their inadequate behaviour and of the possible consequences that may derive from it. In particular, the German Chancellor Angela Merkel recognised that

> Setting 'Fortress Europe' as the goal is both inconsistent with the EU's obligations to respect the rights of asylum-seekers, and seriously undermines the EU's soft power internationally and within its own region. Given the failure of EU countries to accept refugees, and their plan to ship refugees back from Greece to Turkey, how will the EU in future have any influence if other countries around the world similarly refuse to take people fleeing conflict?[589]

The ethical debate seems to confirm once again that both Turkey and the European Union have spent all their energies for promoting their interests, without paying proper attention to needs of refugees and asylum seekers. It would have been better to follow a strategy focused on a "win-win-win partnership"[590], that is to say, a partnership satisfying the interests of Turkey, the European Union, *and* migrants.

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[588] *Ibidem*.
[589] Angela Merkel's speech at the 2016 mid-February European summit. Quoted in: Kirsty Hughes, "Turkey, the European Union and the refugee crisis – a story of multiple failures" in *Friends of Europe* website, 17 March 2016. Available at: http://www.friendsofeurope.org/future-euro pe/turkey-the-european-union-and-the-refugee-crisis-a-story-of-multiple-failures/.
[590] Nicole Koenig, "The EU's external migration policy: Towards win-win-win partnerships" in *Policy Paper*. Berlin: Jacques Delors Institut, 6 April 2017, 190: 1-21.

5. An evaluation of the Statement: some years later.

The EU-Turkey Statement is sometimes depicted as a by-product of the previous unsuccessful Joint Action Plan of November 2015[591]. The effects and consequences it produced are, therefore, even more interesting for this analysis. To put it another way, it is worth asking if the EU-Turkey Statement managed to resolve the existing problems and if it succeeded in reaching the objectives that the Action Plan was not able to meet.

If the European Commission reports on the progresses made in the implementation of the EU-Turkey Statement[592] are taken into consideration, then a rather positive evaluation of the results reached emerges. On the whole, all reports tend to emphasise the fact that a significant diminution in terms of people arriving in Greece has been observed. On 20 April 2016, day of the first assessment of the situation, the Commission reported that 325 people have already been returned to Turkey[593]. With the following reports, the Commission continued to provide information on return and readmission rates, in order to demonstrate that the Statement was delivering some results, not only in terms of numbers but also in contrasting the activities of smugglers and traffickers. This downward trend is also confirmed by the Joint Action Plan on the implementation of the EU-Turkey Statement[594] (published in December 2016) which confronted data on arrivals eight months before and after the implementation of the deal; more in detail, 865,425 people were recorded to have arrived in Greece in the eight months preceding the Statement, while this figure drops to 22,838 in the eight months following it.

However, from the second report (June 2016) onwards, it became evident that something was not working the way it should. As a matter of fact, the European Union had wrongly supposed that the pace of the return of migrants from Greece to Turkey could have been quicker than it

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[591] Amnesty International, *No safe refuge: Asylum seekers and refugees denied effective protection in Turkey* – report, 3 June 2016. Available at: https://www.amnesty.org/download/Documents/EUR4438252016ENGLISH.pdf.

[592] For the scope of this thesis, the reports going from April 2016 to September 2017 have been taken into consideration. For more information, see: European Commission, *First/Second/Third/Fourth/Fifth/Sixth/Seventh report on the progress made in the implementation of the EU-Turkey Statement*.

[593] European Commission, *First report on the progress made in the implementation of the EU-Turkey Statement*, COM(2016) 231 final, 20 April 2016. Brussels: European Commission.

[594] European Commission, *Joint Action Plan on the implementation of the EU-Turkey Statement* – Annex 1 of "Fourth report on the progress made in the implementation of the EU-Turkey Statement". Brussels, 8 December 2016.

actually was[595]; this slowness is motivated by the need of competent authorities and administrative organs to examine with due diligence the lodged applications, in order to comply with European and international laws in the field of asylum and migration. In brief, arrivals to Greece far exceeded returns to Turkey. To make matter worse, not only was readmission to Turkey slower than expected, but an intensification of fluxes on other routes was also noted; indeed, already in the third report[596] (under the section "prevention of new sea or land routes for irregular migration"), it is affirmed that the Balkan and the Central Mediterranean routes started to perceive more migratory pressure than in the past, to the point that the European Commission produced in July 2017 its *Action Plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity*[597].

Other critical issues can now be pointed out. In the seventh report of September 2017[598], the European Commission highlighted that Member States were not doing enough as far as the resettlement of Syrians is concerned. From the beginning of the implementation of the Statement, only 8834 Syrian refugees were resettled to Europe; what is more, barely 15 countries out of 28 had actually took part in resettlement operations by concretely welcoming these refugees in their territories. As regards the more technical aspects, interesting progresses were made concerning firstly the disbursement and actual employment of the money specifically allocated for the Facility for Refugees in Turkey (up until September 2017, 48 projects were funded thanks to European economic aid); secondly, the possible introduction of the Voluntary Humanitarian Admission Scheme, on which a constructive work was begun; and thirdly, the upgrading of the Customs Union (in December 2016, the European Commission adopted a Council proposal on the beginning of a preferential trade relationship with Turkey in some specific areas). Differently, the issues of visa liberalisation and membership negotiations kept on being almost unaltered, the former because of the inability of Turkey in meeting the remaining seven requirements[599], the latter due to the strong resistance of some Member States

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[595] European Commission, *Second report on the progress made in the implementation of the EU-Turkey Statement*, COM(2016) 349 final, 15 June 2016. Brussels: European Commission.

[596] European Commission, *Third report on the progress made in the implementation of the EU-Turkey Statement*, COM(2016) 634 final, 28 September 2016. Brussels: European Commission.

[597] European Commission, *Action plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity*, SEC(2017) 339 final, 4 July 2017. Brussels: European Commission.

[598] European Commission, *Seventh report on the progress made in the implementation of the EU-Turkey Statement*, COM(2017) 470 final, 6 September 2017. Brussels: European Commission.

[599] See footnote 595.

(only chapter 33 – financial and budgetary provisions – was opened to negotiations after the conclusion of the EU-Turkey Statement, precisely on 30 June 2016).

It is likely that the evaluations made by the European Commission are slightly biased; this may be due to a desire of casting the EU-Turkey Statement in a positive light, so as to both increase the public opinion's confidence in the work of European institutions and reduce the pervasive (and dangerous) alarmism capable of fomenting sentiments like extremism and xenophobia. However, in this specific case, it is not fair to turn a blind eye to the main consequences deriving from this European-Turkish act. For instance, the real effectiveness of the Statement should be questioned. According to Thomas Spijkerboer (Professor of Migration Law at the Vrije Universiteit of Amsterdam) the reduction of arrivals in Greece actually started before the conclusion of the EU-Turkey Statement, in particular as a consequence of the closure of the Balkan route[600]; he claims that, by analysing available data, it is even possible to conclude that in reality the Statement had the effect of hindering of the spontaneous decline begun months before[601].

In addition to the outcomes directly affecting refugees and asylum seekers (analysed in sub-chapter 4), the Statement had an important impact on the relationship between Turkey and the European Union. While it has frequently been presented as an invaluable opportunity for rapprochement and for creating a stronger relationship based on trust and solidarity, the Statement actually represents an extra factor capable of undermining the already fragile equilibrium between the two actors. From the very beginning, the need for an agreement has been changed "from a cooperation opportunity [to] a bargaining matter, an issue of winning and losing"[602]. This has an unimaginable importance, since it is quite sure that its possible failure will irretrievably damage the relations between Turkey and the Union; what is more, each future negotiation in the field of asylum and migration will be based on what has

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[600] Thomas Spijkerboer, "Fact check: Did the EU-Turkey deal bring down the number of migrants and of border deaths?" in *Border Criminologies Blog*, The Faculty of Law – University of Oxford, 28 September 2016. Available at: https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/fact-check-did-eu.
[601] *Ibidem*.
[602] Özgehan Şenyuva, and Çiğdem Üstün, "A deal to end 'the' deal: Why the Refugee Agreement is a threat to Turkey-EU relations" in *The German Marshall Fund of the United States: On Turkey*, July 2016, 132: 1-4.

happened (and how) with this Statement[603]. In simple words, the costs deriving from a negative conclusion of the issue are incalculable.

At this point, one could simply be optimistic and hope for the best. However, the reality does not grant such a privilege. Difficulties were evident from the very beginning of the negotiations. Parties did not trust each other[604]. They did not relate to each other as two actors wishing to find a durable solution to a common problem; rather, they were ready to fight for their interests (namely, stopping arrivals on the European side; obtaining visa liberalisation and the acceleration of the accession process on the Turkish one). They did not recognise the positive steps undertook by the counterpart, but they simply limited themselves to accuse each other of being unable to produce concrete and solid results[605]. In other words, "illegal migration in EU-Turkey relations represents more an area of unpalatable political bargaining [...] than an area of close political cooperation"[606]. This negative climate endured even when the EU-Turkey Statement was finally agreed upon. Only some months after this event, Austria suggested that Turkish membership negotiations should come to an end[607], thus reinforcing Erdoğan's original opinion on the European Union; his doubt was legitimate: how is it possible that Turkey sufficiently fulfils European standards in the field of asylum and migration to the point that it is designed as safe country for migrants, but at the same time it does not manage to satisfy the same benchmarks (i.e. human rights protection) as far as the issue of membership is concerned? In reaction to the Austrian assertion, the Turkish President has threatened the Union several times with a possible end of the deal. Numerous experts have expressed their opinion on the issue, affirming that the agreement is doomed to fail, not only because of the difficult relation between the two actors, but also because of the problems inherent to the provisions contained in the Statement (among which, the presumption that Turkey is a safe country for migrants)[608]. Others are more 'confident', believing that the Statement has some

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[603] *Ibidem*.

[604] Marc Pierini, "The EU-Turkey double paradox in the refugee crisis" in *Carnegie Europe* website, 9 February 2016. Available at: http://carnegieeurope.eu/2016/02/09/eu-turkey-double-paradox-in-refugee-crisis-pub-62714.

[605] Janja Vukašinović, "Illegal migration in Turkey-EU relations: An issue of political bargaining or political cooperation?" in *European Perspectives: Journal on European Perspectives of the Western Balkans*, October 2011, 3(2): 147-166.

[606] *Ivi,* p. 163.

[607] BBC News, *Turkey scolds Austria in EU membership dispute*, 4 August 2016. Available at: https://www.bbc.com/news/world-europe-36973319.

[608] Camino Mortera Martinez, "Doomed: Five reasons why the EU Turkish refugee deal will not work" in *Centre for European Reform* website, 24 March 2016. Available at: https://www.cer.eu/insights/doomed-five-reasons-why-eu-turkish-refugee-deal-will-not-work.

possibilities of survival, at least because it is in the interest of the parties to do so[609]; Turkey needs European money, the Union needs Turkish help for halting the fluxes. Everything is thus reduced to a common and perfectly oiled mechanism: European money in exchange for border control and migration management[610].

On the whole, the answer to the question asked at the beginning of this sub-chapter is yes and no. Yes, the EU-Turkey Statement succeeded in reducing arrivals numbers, which was the main objective of the Union. No, because its fulfilment has proved to be very slow and problematic, in a way fomenting the bitterness and mistrust between the parties. Thus, its evaluation has to be very cautious and prudent.

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[609] Judy Dempsey, "Judy ask: Is the EU-Turkey refugee deal on the ropes?" in *Carnegie Europe* website, 26 July 2017. Available at: https://carnegieeurope.eu/strategiceurope/72634.
[610] Marie Walter-Franke, *Two years into the EU-Turkey 'deal': Impact and challenges of a turbulent partnership.* Berlin: Jacques Delors Institut, 15 March 2018 – Blog post available at: https://www.delorsinstitut.de/en/all-publications/two-years-into-the-eu-turkey-deal-taking-stock/.

Conclusion

In conclusion, this thesis has demonstrated that the current European Union approach to migration and asylum has its origins in the changes and developments happened during the twentieth century. Indeed, it is during the 1970s, in particular with the oil crisis, that European countries began to negatively perceive immigration, a feeling which had already made its way in European hearts in the interwar period[611]. The analysis of the main legal pillars of the European Union reinforced the idea that, from the very beginning, Member States primarily tried to create a migration and asylum framework capable of limiting as much as possible the arrival of 'undesired' individuals from the most diverse areas of the world.

The creation of this framework has not been (and continues not being) an easy task for Member States. The finding of an agreement on the best ways to manage migration as a community has met serious difficulties, since countries have demonstrated to be extremely reluctant in making concessions to European supranational institutions and organs; in other words, migration represents an area of concern on which Member States prefer to maintain a firm national sovereignty[612]. However, in order to have the possibility and power to effectively regulate migratory trends, a greater degree of harmonisation is fundamental.

Differently, European countries do seem to better agree on what has been defined as the external dimension, that is to say, the relations the Union establishes with third countries so as to commonly face the challenges linked to international migration. The external dimension presents two rather different sides[613], one based on prevention (which means, European commitment to tackle the root causes of (illegal) migration, mainly concretised through development assistance and humanitarian aid) and the other on externalisation (i.e. the imposition on third countries of responsibilities such as migration control and border management). The research here carried out has led to the conclusion that the European Union investments on externalisation far exceed the ones devoted to prevention; this is because of the fact that Member States mainly focus on those strategies which both reduce European duties (burden-sharing) and produce immediate and evident results (like decreased arrivals, increased

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[611] Klaus J. Bade, *Migration in European history*, Wiley-Blackwell Publishing, 2003.
[612] Andrew Geddes, "Europe's border relationships and international migration relations" in *Journal of Common Market Studies*, 2005, 43(4): 787-806.
[613] Christina Boswell, "The 'external dimension' of EU immigration and asylum policy" in *International Affairs*, 2003, 79(3): 619-638.

return rates, and so forth). This assertion is further confirmed by the analysis of the main instruments and programmes composing the European toolbox, of which return and readmission agreements are the most interesting example. However, these efforts are not sufficient. If a valid and durable solution capable of stemming the substantial flows of asylum seekers and refugees is to be found, then greater attention has to be paid to the root causes; to put it another way, the European Union should concentrate on the determinants, on the factors causing migration, rather than on its consequences[614]. A long-term plan based on prevention would bear its fruit more slowly, of course, but they would be permanent and sustainable.

The fact that the European Union tends to privilege externalisation over prevention is also observed in the examination of the current refugee crisis. Once again, a much higher priority is attributed to issues such as border management and arrivals reduction, results which have to be yielded in the shortest possible time. Member States' political establishment feels the pressure of a public opinion exasperated by the apparently unstoppable flows of individuals in search of help and protection; even worse, this dissatisfaction is encouraged by right-wing extremists and xenophobes, who take advantage of the situation so as to increase their leverage and political power[615]. It is obvious that such a thorny and complicated circumstance does not represent the ideal situation for decision-making.

The EU-Turkey Statement concluded on 18 March 2016 is an emblematic example of the European present approach to migration management. The relationship between the European Union and Turkey (mainly hinged on Turkey's ambition for membership) has always been characterised by mistrust, bitterness, and tension[616]. The migration crisis offered an opportunity

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[614] See for instance: 1) Luigi Scazzieri and John Springford, *How the EU and third countries can manage migration*. Centre for European Reform, November 2017. Available at: https://www.cer.eu/publications/archive/policy-brief/2017/how-eu-and-third-countries-can-manage-migration. 2) Hein de Haas, *The determinants of international migration. Conceptualising policy, origin and destination effects* – International Migration Institute Working Paper No. 32 (DEMIG project paper No. 2. University of Oxford, April 2011. Available at: https://www.imi.ox.ac.uk/publications/wp-32-11. 3) Nicholas R. Micinski and Thomas G. Weiss, "The European migration crisis: Can development agencies do better?" (Briefing 37), in *Future United Nations Development System*, January 2016. 4) Huub Dijstelbloem et al., "The migration machine" in Huub Dijstelbloem and Albert Meijer, *Migration and the new technological borders of Europe*, Palgrave Macmillan UK, 2011: 1-21.
[615] Pinar Gedikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond" in *European Scientific Journal*, 2016, 12(8): 14-35.
[616] Andrea Ott, *EU-Turkey cooperation in migration matters: A game changer in a multi-layered relationship?*, Cleer papers 2017/4. The Hague: Centre for the law of EU external relations, 2017.

for rapprochement and detente[617]; however, instead of taking this opportunity for reinforcing their relation, both parties opportunistically tried to gain as much as possible from the negotiations[618], in this way exacerbating the already existing problems. On the one hand, the European Union attempted to shift responsibility to Turkey, which mainly consists in: firstly, controlling European borders; secondly, readmitting in its territory all migrants who irregularly entered the Union by transiting to Turkey; thirdly, bearing the burden of reception. On the other hand, Turkey used the crisis for its own ends: by threatening the Union with a migrants' 'invasion', it managed to obtain some concessions which would have been unattainable in any other circumstances[619], i.e. a promise for visa liberalisation and an acceleration of accession talks.

As it has been immediately highlighted, the interests and rights of migrants[620] do not seem to represent a matter of concern for the negotiating parties. This is a first considerable and undeniable problem of the EU-Turkey Statement. The impression that emerges from the analysis is that refugees and asylum seekers are treated as an annoying inconvenience, as a bargaining chip for promoting the interests of one or the other party. This is what has been mainly criticised by non-governmental organisations (such as Amnesty International and Médecins Sans Frontières), which are worried about the consequences this agreement would generate for migrants. The second objection regards the legal nature of the Statement, whose vagueness is responsible for an ambiguous distribution of responsibilities and duties.

These elements suggest that there is still much work to be done if a valid and durable strategy for the management of migration has to be found. In particular, the European Union has to firmly keep in mind that the first objective to be reached is the protection of all the vulnerable individuals who are willing to resort to any options available in order to have even the slightest chance of living a better life. Hence, only a long-term strategy may be able to both reduce the costs and burdens borne by hosting communities and improve living conditions in sending

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[617] Pinar Gedikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond" in *European Scientific Journal*, 2016, 12(8): 14-35.

[618] Angeliki Dimitriadi et al., "EU-Turkey relations and irregular migration: Transactional cooperation in the making" in *Feuture – online paper No.16*, March 2018. Available at: https://www.feuture.uni-koeln.de/sites/feuture/user_upload/FEUTURE_Online_Paper_No_16_D6.3.pdf.

[619] Priscilla Oltean and Claudia Anamaria Iov, "EU-Turkey negotiations in the context of securitizing migration after the 2015 refugee crisis: Joint Action Plan and the Readmission Agreement" in *International Relations*, September 2017, 31(3): 101-115. Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/rescito13&div=35&id=&page=.

[620] Nicole Koenig, "The EU's external migration policy: Towards win-win-win partnerships" in *Policy Paper*. Berlin: Jacques Delors Institut, 6 April 2017, 190: 1-21.

countries. As a consequence, the EU-Turkey Statement cannot be considered a successful attempt that the Union could replicate in similar contexts; rather, the problems associated to it and the inadequate results it produced should be taken as an incentive to do better than what has been done until present. The European Union has all the instruments and possibilities for becoming a role model for the international community; it only has to find the best way to do it.

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