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The need for a common resettlement program in EU Refugee Law

Study for a comprehensive approach to international protection based on responsibility sharing and the principle of solidarity.

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Madrid
Abril 2023

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List of abbreviations

AI	Amnesty International
AMIF	Asylum, Migration, and Integration Fund
CEAS	Common European Asylum System
EEC	European Economic Community
EMN	European Migration Network
ENP	European Neighboring Policy
EU	European Union
NGO	Non-governmental Organization
TFEU	Treaty of the Functioning of the European Union
TPD	Temporary Protection Directive
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
US	United States (of America)

1- Introduction.

Resettlement is one of the durable solutions for refugees under the UNHCR; it consists of a country allowing the access to its borders to individuals who have already been granted the statute of refugee, thus avoiding illegal crossings and the managing of asylum seekers. The way it is defined by the UNHCR, it looks like a win-win situation, as the refugee is able to relocate in a place where its protection can be granted, and countries have a more orderly manner to contribute to their moral obligation towards refugees and asylum seekers.

On the context of the European Union, resettlement has served as a way to alleviate the position of those Member States absorbing big waves of individuals crossing their borders illegally, often seeking international protection. All of these arrivals, under the regime of the Dublin Regulation, must be managed by the Member State of first reception, an arrangement which has caused reception and lodging systems of the countries affected to collapse. One of these cases is Greece, whose geographic placement has made it the closest EU border to people fleeing Middle Eastern conflicts, like Syria or Afghanistan.

The EU, noticing that the vast majority of people reaching Greece were not coming directly from the conflictive regions, but were departing from Turkey, negotiated the EU-Turkey deal in 2015 with the latter. The premise of the agreement was that, every person illegally crossing from Turkey to Greece shall be returned to Turkey, and for every person returned, a Syrian refugee shall be resettled on the territory of the EU. This led to an application of resettlement on the EU which hardly complies with the basics of refugee protection, and still causes numerous problems, as it is still based on a voluntary approach.

On this dissertation I aim to discern which are the different uses that resettlement may have strategically speaking, and, specifically to the EU, how does it serve the principle of solidarity among Member States, a principle very much harmed by the Dublin regime. Also, to make an analysis of the practice that the EU has made of resettlement to this day, under the example of the EU-Turkey deal, and discern whether it constitutes a violation of the UNHCR principles.

Lastly, I intend to assess the role that resettlement schemes play on the general approach of the EU towards international protection, and the need for a comprehensive common protection system, integrating the already existing Common Asylum Policy and a common resettlement scheme, in view of the results of the EU-Turkey deal.

With the purpose of going through the necessary information to reach this conclusion, there is a first section of context and definitions, which goes through international refugee law, UNHCR guidelines, and, on the other side, what is the principle of solidarity in the EU and what role does it have on the process of European integration. Then, a quick glance through the legal framework of asylum, in which the Dublin Regulation will be analyzed. After setting this background, the practice of resettlement will be addressed: the current framework on the EU, the possible strategic uses, the study of the EU-Turkey deal, and a final reflection inspired on the late events caused by the war on Ukraine. Finally, a conclusion will be put forward.

The motivation under this analysis is to keep the debate alive, as the matters regarding refugees seem to have stagnated ever since there has not been a big, mediatic crisis. Most people still ignore the conditions in which asylum seekers are kept on refugee camps on Greek island, or don´t know about the fact that the EU is "allowing" them to be sent back to countries like Syria, Iran or Afghanistan, while the speech against taking them in is gaining more space of political debate throughout Europe.

2- Methodology

This is a work of research in which different sources have been consulted. Official sites such as UN and UNHCR, as well as EU´s institutions official websites, to find supportive documentation, including international treaties. Databases have also been consulted to confirm the statistics here included, namely Eurostat and other UN databases. The Regulations, Directives and all other EU law documents have been consulted on the official search engine of legislative texts EUR-Lex.

Outside official sources, the research here conducted includes books, and articles from scholars on the field, as well as reports from International Organizations and NGO´s, sections of newspapers and websites.

3- Context and definitions.

3.1- Briefly: what is a refugee under UNHCR Law.

The United Nations High Commissioner for Human Rights states what is considered a refugee on the 1951 Geneva Convention as any individual that “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (OHCHR, 1951: article 1). It covers third-state nationals as well as stateless individuals, who abandon their country of origin due to a justified fear of persecution and seek protection from other State. Before that, there existed different agreements to address the problem of refugees, but they mainly targeted one specific group like with Russians or Armenians; since then, there had been efforts to consolidate an international agreement by the League of Nations; without success until the end of the Second World War and the rise of the UN (Fullerton, 1993). It directly responded to the situation after the War, therefore limiting its temporal scope to the already known groups of refugees: those becoming refugees for events happening prior to 1st January 1951; however, since its birth, the Convention had the aspiration of universal applicability (United Nations, 1951).

The UNHCR was founded in 1950 and took its role as guardian of the Convention. The authority of the UNHCR relies on both the 1951 Convention and the following 1967 Protocol, and its mandate being based on the understanding that States would cooperate with the High Commissioner in fulfilling such mandate and allowing refugees into their territories (Betts et.al., 2011). Said mandate consists of safeguarding the rights of refugees by leading international coordination in the matter, and to provide them with a solution to their pleas (Australian Government, 2012). The UNHCR has come up with three so-called durable solutions for refugees in an attempt to ensure their protection: repatriation to their country of origin, integration in the host society, and resettlement to a third “safe” country (UNHCR, 2007).

The definition of refugee stated in the Convention and referenced above has been long discussed in its different elements. From the beginning, the referral to a “well-founded” fear is more ambiguous that it may seem, since there are no objective guidelines as to how is it evidenced. The same choice of the word “fear” suggests this is rather a subjective

factor and dependent on pure appreciations. Hathaway et.al., 2005 makes an examination of the different meanings that have been associated with this part of the definition, including the bipartite approach in which there is both a subjective part, included in “fear”, and an objective part in “well-founded”, and both are essential as to whether considering an individual a refugee. Other views regard “fear” as the forward expectation of risk, which has significantly less subjective connotations; although they are not reduced to zero, as the “fear” as trepidation is used as an additional element in absence of the evidence of real risk.

Appreciations are that, according to the very purpose of the Convention, incorporating a subjective element could be detrimental to refugee protection, due to the fact that fear depends on one´s own personality, some people are more fearful than others; but not because of it are they deserving of less protection. In some cases, however, personal appreciations are needed to assess a person´s vulnerability to certain risks, like, for example, religious or political beliefs. Currently, practice and jurisprudence go in both directions, so there is not unified doctrine about the issue. The use of “fear” as forward apprehension has not proven to have any downsides in terms of refugee protection, and it is fully supported by the language and the ultimate purpose of the Convention; therefore, it should be the preferrable option.

As for what can be considered “well-founded” or not, the UNHCR Handbook states that, “in general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition or would for the same reasons be intolerable if he returned there”. (UNHCR, 1992: article 42). Such reasons are not exempt of discussion either, discussions which should also be addressed on this introductory chapter.

Although small nuances, it is fair to say that the words “race”, “religion” and “nationality” pose little to no controversy; the issue could come when talking about “social groups”. Again, it is needed to recur to the study of the Convention´s language along with its primary purpose and background. The definition given on the UNHCR Handbook is quite superficial, as it reads that “a “particular social group” normally comprises persons of similar background, habits or social status” (UNHCR, 1992: article 42). As can be seen, it doesn´t differ much to what could be considered a race “membership of a specific social group of common descent” (UNHCR, 1992: article 42); religion, “membership of a particular religious community will normally not be enough to substantiate a claim to

refugee status" (UNHCR, 1992: article 42); or nationality, "membership of an ethnic or linguistic group" (UNHCR, 1992: article 42). Seeing that it indeed overlaps with several other terms, and such overlapping may also occur within those same terms -between race and nationality, for example-, it can be discerned that the purpose is to include any possibility for which an individual could not feel safe and have risk of persecution, including any unforeseeable reason at the time of the signing of the Convention (Fullerton, 1993). This way, the Uyghur in China can either fall into the category of nationality or, if not deemed persecuted by nationality, by membership of a particular social group; the importance of the categorization is minimum, because the very ultimate goal is their protection.

Lastly, the last part of the definition implies that a refugee doesn´t necessarily have to be a national of the country they are fleeing from; in fact, they don´t even need to have any nationality. There are cases in which certain minorities have been striped out of their nationality in order to also stripe them out of any right and benefit that citizenship entails. One of the most known current ones being the Rohingya in Myanmar, but it has long been a concern as a result of diasporas and displacement caused by colonial rule and other reasons not covered under the Convention; these situations usually created need for temporary asylum, covered by the United Nations Relief and Work Agency created to manage the Palestinian refugee crisis (Banko et.al., 2022).

Throughout history the world has witnessed several crises involving the displacement of people seeking international protection; it has been protagonist to every war aftermath, and it is still a matter of concern. Imperialism has caused innumerable displacement of populations, each of them with historical, social and contextual specialties that make the discipline of refugee studies be based on a case-by-case analysis; treating all crises the same would be a big mistake (Banko et.al., 2022). Still to this day, not only imperialist aspirations but domestic dynamics keep pushing people to leave their houses and look for protection, the most recent and present one being the one caused by the invasion of Ukraine; it is the international community´s duty to ensure such protection, although its performance is, as will later be analyzed, inconsistent and flawed in some cases.

3.2- Resettlement as a durable solution. Its three goals: protection of refugees, to provide a durable solution and burden-sharing.

Resettlement constitutes one of the three durable solutions provided by the UNHCR for the protection of refugees. It is defined as the "transfer of refugees from an asylum country to another State, that has agreed to admit them and ultimately grant them permanent residence." (UNHCR, n.d.). The choosing of any of the three durable solution relies on the discretion of each State, although assistance by the UNHCR to ensure the protection of refugees during the different processes; the preference has changed over time. It is recurred to when refugees cannot return to their country of origin, neither can be established safely or integrate on their country of first asylum (Van Selm, 2004).

Betts et.al. makes an orderly timeline with the history of preferrable durable solutions; starting with right after the Cold War, the vast majority of refugees were scaping from communist or colonial regimes and therefore repatriation was not an immediate possibility; de facto local integration was greatly used, as well as resettlement. On the 80´s, States started becoming more concerned about border and migration control and repudiated resettlement as a consequence, being repatriation the emergent preferrable durable solution. Repatriation processes during the 90´s were dangerous to the lives of refugees -who were returned to Afghanistan or Myanmar without any further contemplation- and so the UNHCR came up with new instruments of burden sharing to make resettlement attractive again, or to make repatriation sustainable and safe. The efforts of the UNHCR on this matter focus on convincing host States to open more places to refugee resettlement enhancing its strategic use; a rather arduous political task for which many argue the agency is even capacitated to (Betts et. al., 2011).

The practice of resettlement has three traditional goals: the protection of the refugee, providing them with a durable solution, and burden-sharing (Van Selm, 2004). The international protection of refugees is one of the main functions and *raison d´etre* of the UNHCR, as it is stated on its Statute, it "shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute" (UNHCR, 1950: article 1). That traditionally includes ensuring the access of asylum seekers and refugees to the territory of a State, including the principle of non-refoulment, that is, the quantity of asylum; as well as the quality of asylum, safeguarding the rights of the refugee enshrined in the Convention and the Protocol, as well as on other regional instruments like the Convention Governing the Specific Aspects of Refugee Problems in Africa; together they conform a set of international obligations and standards for refugee treatment (Chiusiwa, 1999).

These rights consist of basic rights, some specific for refugees like the right for a travel document, others also recognized in many other Human Rights treaties, like freedom of religion, right to work and right to education; in summary, refugees are entitled to equal treatment from other foreign nationals, as well as to some benefits and rights applied to citizens regarding labor rights or access to courts (Refugee Council of Australia, 2020). Perhaps the main and most important right for refugees that enables the safeguarding of the rest of their rights is the so-called right to *non-refoulment*. Non-refoulment implies that no refugee shall suffer expulsion or forcible return to a country where they may face persecution, or where their basic Human Rights cannot be safeguarded (Chiusiwa, 1999). This is a highly relevant concept for the study of resettlement and will be referenced on multiple occasions for further analysis of its implications.

Another one of the main rights of refugees and very convenient to mention for the development of this essay, is the right to freedom of movement along with the right not to be arbitrarily detained. Detentions have been carried out by several countries within the EU in an attempt to stop "secondary movement", referring to when those refugees who have already applied for asylum on one State, move and seek asylum elsewhere without the first process being resolved (Majcher, 2021). It is a concept derived from European refugee law, more specifically, from the Dublin III Regulation according to which the country responsible for granting refugee status is the country where the individual first arrives. There are some circumstances in which detention is generally considered justified, when it´s rather preventive and not punitive, like for the verification of identity or for absconding prevention (Cornelisse, 2012).

As for the right of freedom of movement, it is provisioned in the article 26 of the Convention, but it doesn´t constitute an absolute right, and International Law indeed allows for it to be limited under certain requirements: that the exception is stated by law with clear criteria, they should serve one of the legitimate purposes listed on the International Covenant on Civil and Political Rights "necessary to protect national security, public order (*ordre publique*), public health or morals or the rights and freedoms of others" (United Nations, 1966: article 12) and Protocol no. 4 of the European Convention of Human Rights "justified by the public interest in a democratic society." (Council of Europe, 1986: article 2), and should be necessary, appropriate, proportionate and follow the least intrusive principle to achieve the legitimate purpose (Majcher, 2021).

Some scholars also argue that the sole situation of refugees entails the right to easier access to citizenship, as they are no regular immigrants, and can be considered exiles. People that flee their country of citizenship lose their place as a member of global political society granted by the membership to a certain country, becoming stateless *de facto* (Owen, 2019). Nonetheless, it still doesn´t belong to the fixed set of rights that refugees enjoy; political rights didn´t indeed have a place on the Convention, apart from its 34th article, which encourages States to "facilitate the assimilation and naturalization of refugees (and stateless persons) to the fullest possible extent", but still not being an obligation. States become somehow responsible for the person they have granted asylum to and recognize their vulnerability and the injustice they are being subject to, one of them being striped away of their benefits as citizens and getting stagnated in this kind of limbo where they are not able to either build a new life or to commit to their old one (Owen, 2019). It just seems then necessary that they get some of the freedoms they have the right to enjoy as part of a global political community.

The second essential goal of the UNHCR mandate is to provide refugees with a durable solution to their pleas. A durable solution is achieved when refugees can start living a normal life, ending the cycle of displacement. As listed before, they are voluntary repatriation, resettlement or local integration within the host community. The achievement of a durable solution solves the situation of refugee protraction, very present on the current situation of refugee crises. Protracted refugees are those whose claim has not been resolved for five years or more, and who is kept on a refugee camp, unable to move and condemned to live on precarious conditions (Azad & Jasmin, 2013).

The mandate of the UNHCR goes on even after individuals arrive to the safety of a new country fleeing from some threat, as stated by the Standing Committee, protracted situations are "one in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance" (UNHCR, 2004: p. 1). Technically, providing with a durable solution doesn´t mean interfering in any way in the managing of refugee camps; however, the latest practice is that the mandate is also entirely extended to that task due to the overwhelming numbers of refugees worldwide and the unwillingness for States to open more resettlement places which are highly insufficient currently (Betts et.al., 2011). That is not -or shouldn´t be-

the ultimate goal of the UNHCR, since short-term solutions like trying to increase the living quality in camps is not comparable to the facilitation of long-term independence and stability.

Lastly, the third goal would be that of burden-sharing. Of course, the concept of burden sharing is in itself very abstract and has had different materializations on regulation. The original idea was that an international sharing scheme be set up taking into account both the refugee´s preferences and the capacity of the State to host them based on wealth and population density (Suhrke, 1998). Refugee flows are hard to control, and the countries for which the larger numbers of refugees arrive responds mainly to geographical accessibility reasons and are hard to shape; that is why the ideal instrument for burden sharing would be that of a fair and working resettlement scheme. The concept of burden sharing doesn´t have a definition on the Convention or the Protocol, and neither in the general of International Law; the Executive Committee has since addressed the issue multiple times, acknowledging the burden that excessive inflows may cause on certain States and how it can only be solved by international cooperation (Ineli-Ciger, 2019).

3.3- Principle of solidarity in EU Law as enshrined in the TFEU and Treaty of Lisbon.

Burden sharing has been a concern for the EU, where different schemes have also been brought up to reach a fairer distribution. Burden sharing is also referred as to responsibility sharing, avoiding the negative connotations that the word "burden" may entail, as no refugee shall be considered trouble or hardship (Suhrke, 1998).

The sharing of responsibilities, among other instruments, can be materialized on the principle of solidarity present in the European Union. It constitutes one of the values common to the Member States which may prevail, as stated on article 2 of the Lisbon Treaty of 2009, alongside pluralism, non-discrimination, tolerance, justice and equality. As abstract as this mention of solidarity is, some argue its implications depend on the different perspectives on the purpose of the Union; that way, when it is understood not as a mere supranational authority, but as a way for Member States to channel their problem-solving capabilities facing a globalized world, solidarity becomes the idea of having a shared fate in which all Members share the same risk (Sangiovanni, 2013).

Solidarity in policy and solidarity in the common perception can also differ, the feeling of solidarity and the development of solidarity programs may follow different ideas of solidarity. What is widely understood of solidarity is transactional in nature and happens

when there is a sudden crisis or tragedy, then the rest of Member States would be compelled to bring support and aid; that is the general understanding, rather than redistributive schemes of cohesion or common funds, because these latter are not usually framed within solidarity mechanisms (Pornschlegel, 2021). Under this understanding, the response to the 2015 refugee crisis with a relocation system to relieve the emergency happening on some southern European countries can very well fit into the popular idea of solidarity, even though it was very successful as will be explained further. However, resettlement schemes wouldn´t necessarily be seen as a solidarity response, even more so regarding the Dublin Regulations which makes States fully responsible for refugees entering their territory. This last fact is precisely what stagnates the situation or resettlement programs; taking in refugees is often not regarded as an obligation, partly because it is not treated as such -resettlement is based on voluntary contributions-, but also because they perceive the moral duty to preserve solidarity as something that has nothing to do with the measure.

Solidarity in the EU, although not thoroughly defined, has two dimensions. Internal solidarity guides the relationship between Member States and with the European Union, as well as the relationship between European citizens. External solidarity then refers to "people in third countries who are fleeing war, persecution, hunger or violent conflicts in their country of origin, and solidarity with third countries that currently receive huge numbers of refugees fleeing war, persecution and hunger in neighboring countries." (European Parliament, 2020: p. 3). While the requirement for external solidarity is met by the sole action of allowing refugees to access territory of the Union and ensuring they find the protection they seek within it, internal solidarity would mean that Member States cooperate in the search for better and fair solutions for everyone.

The Dublin Regulation uses responsibility to name the jurisdiction that a Member State has over a refugee reaching its territory; the use of the term jurisdiction becomes very relevant when analyzing the obligation for resettlement form a third country and will later be addressed. As stated before, responsibility-sharing is generally used as a synonym -even as a preferred expression- for burden-sharing, one of the essential points of the UNHCR mandate. Responsibility sharing is not only relevant to the UNHCR as an external agency, but also article 80 of the TFEU, stating the policies of the Union "shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts

adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle." (European Union, 2012: article 80). The Chapter in question refers to chapter number 2 regarding to policies on border checks, asylum and immigration included in title V on the area of Freedom, Security and Justice.

3.4- The process of European integration by the three-pillar system, the CEAS as part of the third pillar.

Any common policy within the EU would contribute in some level to the ongoing process of European integration. European integration is the very nature and pursuit of the European Union from its very first steps on the treaty of Paris in 1951, which was creating a united and strong enough Europe to recover and to avoid any more wars. Especially remarkable was the signing of the EEC treaty, which called for the elimination of custom duties, the introduction of common policies on agriculture and transport, the establishment of the European Investment Bank and for a common commercial policy, all of them the building ground in which the EU stands today (European Parliament, 2018).

Later on, the treaties following the treaty of Rome kept adding up to that process; once the common market was set up and working, more spheres and issues were brought to scene, right up to the treaty of Maastricht, which sets up a new integration system based on pillars, scheme which had been developing but which was only stablished as we know it today in said treaty. The treaty of Maastricht puts forward a three-pillar structure founded on European Communities -first pillar-, the Common Foreign and Security Policy -second pillar- and Justice and Home Affairs -third pillar- (Official Journal of the European Communities, 1992).

Of course, the EU can only push forward common policies within its scope of competence, in other words, out of those affairs whose competence has been ceded to the Union. The Common European Asylum System was stablished in 1999 with the treaty of Amsterdam (Europa.eu, n.d.). It was launched as a part of the external dimension of the Justice and Home Affairs by the Tampere European Council, whose objective is to project the EU asylum policies on its relations with third States (Gil-Bazo, 2006). That would make asylum policy part of the third pillar of European integration. Areas of common interest inside the Justice and Home Affairs dimension are listed including asylum policy, rules governing the crossing of the Union's external borders, immigration policy and policy regarding third-country nationals, combating drug addiction and fraud on an international

scale, judicial cooperation in civil and criminal matters and customs and police cooperation (CVCE website, n.d.).

The nature of the external dimension of the Justice and Home Affairs pillar founded the principles of the European Neighborhood Policy, which facilitates cooperation and mutual aid with north African third countries; and the Multi-Annual Programme for the Area of Freedom, Security and Justice, which sets the political guidelines for developing an asylum policy (Gil-Bazo, 2006).

Common migration and asylum policies become then essential to the process of European integration, as they are an important part of the third pillar stated on the treaty of Maastricht. A common scheme for resettlement would also contribute to homogenize guidelines and allow the EU to act as a whole in addressing asylum policies and the security of its borders. It is therefore also an inherent part of the third pillar of integration.

4- Asylum framework, resettlement/relocation dichotomy.

For a person to become a refugee, an application for asylum has to be lodged first, what makes them asylum seekers. The regime for asylum seekers naturally varies from that of refugees, and to understand the different phases of the process, it is necessary to go through the EU legal framework for asylum. As a first step to reach the so-desired refugee status, it has a lot of relevance in terms of refugee protection, as asylum seekers, although not yet legally declared, are potential refugees and must enjoy some rights and liberties that would make it possible for them to establish themselves temporarily on a foreign country; and to people who may be vulnerable or in any danger, to be protected as such.

In the EU, the asylum is regulated by the Dublin Regulation, currently on its third version revised in 2013 -more colloquially know as Dublin III Regulation-. The Regulation (2013) establishes that it applies equally to all asylum seekers, to those qualifying for refugee status, and for those who don´t but are nevertheless eligible for subsidiary protection. Subsidiary protection is meant for those individuals "in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm" (EurLex, 2004: art.2).

The necessary qualifications and the content of the protection granted by this category of protection, as well as to those who do qualify as refugees, is included on the council directive 2004/83. Of course, the scope of the protection granted would be different -and, naturally wider- than that of asylum seekers, who still have not obtained either consideration.

Directive 2004/38 sets the basics of international protection any Member State shall offer to any refugee or person eligible for subsidiary protection they find within their jurisdiction. Specifically, article 7 states that the protection can be given directly by the State or by parties or international organizations controlling the State or a substantial part of it. Protection is understood to be when any of these actors previously mentioned "take reasonable steps to prevent the persecution or suffering of serious harm"(EurLex, 2004: art.7), this harm being referred to getting a death sentence, torture or inhumane treatment or situations of violent discrimination, as it says on article 15. It then goes on, on Chapter VII, about the rights conforming such protection; it makes a brief reference to the rights on the Geneva Convention already mentioned, and then elaborated on protection from

refoulment, right to information, right to maintain family unity, access to residence, travel documents, education, employment, social security, accommodation and freedom of movement, as well as establishing an special treatment for unaccompanied minors on article 30.

The protection of asylum seekers does not entail all these listed rights, the right to information remains, which extends to the whole process and must be given on a language the applicant understands, but not most of the rest, which are inevitably linked to some sort of nationality benefits. The main right is access to the procedure of application for international protection, in a country without flaws on its asylum system or risk of degrading treatment. There are also special guarantees to minors, mainly regarding the principle of best interest of the child.

Going back to the Dublin Regulation, its main contribution is the establishing of the country responsible for lodging the asylum application and its examination, attending to multiple factors.

4.1- Dublin Regulation and its faults.

The Regulation uses a hierarchy of criteria in order to establish the Member State responsible for managing asylum claims, being, in first place, family considerations, mainly driven by the utmost protection of children and minors; in second place, the recent possession of a visa or a residence permit from a Member State, and, lastly, the entry of the individual to the territory of the EU, and whether it has been an irregular or regular entry (European Union, 2013b). Any of these situations must be consolidated when the applicant has first lodged an asylum claim on any Member State.

The vast majority of asylum seekers enter the EU irregularly, only a small part of them do it with a visa or following family on any Member State. The first nationality by number of first asylum applicants in 2021 was Syrian, closely followed by Afghan, as shown on Annex I. Syrians are also the ones who cross the border irregurarly the most, followed - this time, not so closely- by Afghans and Tunisians, in 2021 (Annex II). Most of these crossing were made by sea, 112,600 crossings in total, while crossings by land registered 87,300 cases, a total of almost 200,000 people (European Commission, n.d.). In 2022, this number was 85% higher for the period of January until July compared to that same period of 2021; however, the reason behind this significant increase appears quite obvious, as, if we take a look at the geographical location of the crossings, it has slightly shifted

towards eastern and central European routes -due to the recent flow coming from Ukraine-, although western and Mediterranean routes are still going strong (European Commission, n.d.).

Taking into account the geographical features of European borders and practices of asylum seekers routes, and going back to Dublin law, we can discern which countries are going to be receiving, and therefore are going to be responsible for, the greatest number of asylum applications. Indeed, in 2021, as shown on Annex III, the country lodging more applications was Italy at 24,000, followed by Germany at 17,000 and Greece at 13,000 applications; the rest of the Member States reach nowhere near these numbers, getting as low as 50 for countries like Ireland (Eurostat, 2021). Given the geographics of refugee mobility flows, it seems reasonable to think that those countries having open access to the Mediterranean would receive a larger number of asylum seekers entering their borders; therefore, the premise stated about solidarity between Member States is not met on a first approach. Not only geography counts, but it is also important to keep in mind the "migration profile" these southern States have, and question whether they are the targeted destination or mere transit countries to northern Europe (Fassmann & İçduygu, 2013). One clear example is Turkish population, which generally access European territory through Greece, but always move out to central European States before lodging their application, mainly Germany, being that the main reason of Germany´s high number of claims.

Unless the applicant can prove to have family in a Member State -not any family counts, only relatives included in the 2004/38 Directive-, or has recently been granted a visa or residence permit from any Member State, under Dublin law, Italy would be responsible for handling 24,000 asylum claims, and Ireland for 50, which is hardly compatible with the principle of solidarity and responsibility sharing previously explained. This is nothing new, as it has been pointed out by multiple scholars throughout time.

Cooperating to build a fair scheme for burden sharing is one of the main takeaways of the principle of solidarity, as the concept of solidarity entails "a special kind of associative obligation triggered by (among other conditions) joint action." (Owen, 2019: 352). Receiving asylum seekers and granting them protection is an international moral obligation (Pornschlegel, 2021); although granting asylum is entirely discretionary, countries usually visualize it as a work of charity rather than a proper obligation (Allard, 2013). Applicants have the right to access the process, but they do not have the right to

be granted refugee status; however, the handling of a large number of applications is arduous enough to cause the system to collapse in extreme cases, like it happened in 2015 and 2016, a crisis for which special measures were needed, and whose consequences still cause the delay or fault of the majority of processes in places like Greece.

The start of the Syrian war in 2015 and the subsequent massive movement of refugees caused severe detriments on the capacity of Mediterranean Member States to absorb the flow. In the case of the EU, the large waves of undocumented migration accessing European borders have pushed it towards a more rejective shift in its migration policies (Gil-Bazo, 2006). The migration crisis in 2015 inevitably exposed the deficiencies of the Dublin System, as major flows were arriving to the coastlines of Italy, Greece and Malta from the other side of the Mediterranean. The event triggered unexpected policy reactions; countries like Germany, Austria or Sweden re-imposed border controls with some neighboring countries (Scipioni, 2018).

The instant response of the EU was coming up with an emergency relocation system that would ease the burden from southern countries absorbing the unprecedented flows by transferring some of those asylum seekers to other Member States. The Commission stablished a compulsory relocation target for each State, taking into account variables to discern the State´s capacity to absorb and integrate refugees, to know: GDP, population size, unemployment rate and the number of asylum application and resettled refugees between 2010 and 2014 (Šabić, 2017).

4.2- Briefly: emergency relocation schemes experiences.

Relocation is based on a very similar concept to that of resettlement, as it has as ultimate goal the redistribution of individuals in order to avoid or relieve large concentrations of asylum seekers and refugees. The legal regime of both figures is also inherently different, relocation being used in the EU as one-time response to emergency circumstances, rather than having it incorporated into its normal practice like resettlement is. They are carried out to alleviate pressure on the Member States whose local reception and works of search and rescue are starting to collapse; and also for the wellbeing of asylum seekers reaching the EU, caring for their vulnerability to faulty action or potential exposal to inhumane conditions.

The legal regime of relocation finds its base on article 78.3 of the TFEU, which goes: "3. In the event of one or more Member States being confronted by an emergency situation

characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.". The Council is, then, the one that approves the measures, after a proposal from the Commission and the consulting of the Parliament, and that is exactly what happened in 2015 when the Council decision 2015/1601 allowed the launch of an emergency relocation scheme.

The decision provides for the relocation of 120,000 asylum applicants from Italy and Greece, according to the tables included on the annexes, which specify the share for every Member State. Of course, this is a target that needs from individual efforts of every Member State, who shall, at least every 3 months, indicate the number of applicants who can be relocated to their territory; at the same time, Italy and Greece shall identify those applicants who may be relocated to other Member States, and communicate it alongside all relevant information -the complete process explained on article 5 of the Decision-. Applicants have to be informed on their language of the whole process, and family relocation must be a priority as well as the best interests of the child in the relocation of individuals.

The relief of the human pressure is not the only type of support that the decision provides, it also arranges for operational support with the activities of the screening and identification of applicants, providing them of information, and returning to country of origin of those whose right to remain in the territory of the Member States has ceased. Financial support from the EU comes in form of a sum received for each relocated person, of 500€ to Italy or Greece, and of 6,000€ to the Member State of relocation. Finally, the support may also come from outside of the EU, namely Iceland, Lichtenstein, Norway and Switzerland in the form of bilateral arrangements. However, the numbers of compliance are only above 100% in the case of Malta, and as low as 0% in some Member States like Hungary or Poland, who rejected the decision of the Commission (Šabić, 2017). The rest of compliance percentages are presented on Annex IV. The aggregate total of compliance is set on 29.9%; with results like this, it can fairly be considered a failed attempt to reinforce the principle of solidarity.

This scheme finished in 2017, but in 2018 some Member States -like Italy and Malta- started making requests for the relocation of asylum seekers rescued at sea by Mediterranean States (European Commission, n.d.). This was coordinated by the Commission into making a voluntary relocation scheme, included in the Malta declaration

in 2019, which states that “with hundreds having already lost their lives in 2017 and spring approaching, we are determined to take additional action to significantly reduce migratory flows along the Central Mediterranean route and break the business model of smugglers” (European Council, 2017). They mostly ask, precisely, for support on search and rescue at sea operations. This system provided the relocation of 3,000 applicants (European Commission, n.d.).

Later, in 2020, the Commission presented the Action Plan for immediate measures to support Greece, which calls Member States to show solidarity with Greece, also in the form of finding solutions for the unaccompanied minors in the islands. (European Commission, 2020). It would be in form of relocation schemes, which resulted on the relocation of 5,000 people in a two-year period (European Commission, n.d.).

Lastly, the voluntary solidarity mechanism, which is one of the steps towards the recently proposed Pact on Migration and Asylum. Such mechanism includes a voluntary relocation scheme started on August 2022 (European Commission, n.d.).

5- Resettlement.

5.1- State of the matter: current framework in the EU.

As stated before, resettlement is one of the durable solutions provided by the UNHCR, who monitors the processes and countries using this practice as the most appropriate solution. For the EU, resettlement is defined as the "selection and transfer of refugees from a state in which they have sought protection to a third state which has agreed to admit them as refugees with permanent residence status. The status provided ensures protection against refoulement and provides a resettled refugee and his/her family or dependents with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country", as stated in the EMN Asylum and Migration Glossary (Migration and Home Affairs n.d.).

This definition contains some important elements for the resettling of refugees, and for the countries making the resettlement. First, the individual must hold the condition of refugee before the movement, which protects them from refoulment. Secondly, the refugee has the right to take their family with them, enjoying, all of them, rights traditionally reserved to nationals. Lastly, resettled refugees must have the opportunity to become a naturalized citizen of the country in which they have been resettled in.

Refugees must be deemed in need of resettlement by UNHCR, because of the risk in their country of refuge, in order to be submitted to any potential resettlement state, who then examines the application through missions located on the country of first asylum. The risk can respond to particular needs or vulnerabilities, as well as family reunification (Radjenovic, 2017).

In the context of the EU, resettlement is included on the article 11 of the AMIF regulation as a component for the allocation to the thematic facility; it states that Members shall receive a sum of 10, 000€ for each person admitted through resettlement, in addition to their allocation of article 13 -which, for the year 2021 was of 225, 000, 000€. (EurLex, 2021). On implementing measures, the Regulation establishes that, at the start of the programming period each Member State receives a fixed amount, which is the same for all States except from Cyprus, Malta and Greece, whose amount goes that far up as 20, 000, 000€ more than the rest of States in 2021; the remaining budget then is distributed, and 35% must be dedicated to asylum, out of which, 10% to resettlement (EurLex, 2021).

The Commission has proposed for the next EU budget framework for 2021-2027 a reinforcement of the funding for migration, with 4.1 billion euros reserved for project with “European added value”, like resettlement, or, for example, providing funding for emergency needs (Radjenovic, 2017).

AMIF will support the development of these national resettlement programs, as well as the needed infrastructure and services to support such programmes -centers, activities of identifying, registering and processing-, for the refugees resettled within the calendar year of the respective AMIF programme (Radjenovic, 2017).

This way, each Member State shall come up if their own resettlement scheme. The European Union Agency for Asylum oversees the coordination and monitors the implementation of these resettlement plans on Member States, by setting up the Resettlement and Humanitarian Admission Network, which includes any relevant actor at strategic and operational levels. In addition, it provides with tools and guides to support a deeper knowledge of obligations and good practices in relation with technicalities of asylum processes to national authorities of Member States. (EUAA, n.d.).

However, since 2015, there has been an attempt for a common European resettlement scheme, in a form of a Recommendation adopted by the Commission, and later on also by the European Council and the Council. Such Recommendation called for the resettlement of 20, 000 people “in clear need for international protection” in a two-year period. Moreover, the Commission adopted another Recommendation with the objective of bridging the transition to the new unified resettlement framework, with Member States having to offer, at least, 50, 000 resettlement places by the end of 2019 (Radjenovic, 2017).

This process has not yet reached its goal, being mostly composed by multilateral programmes working on exceptional circumstances. There is still no common procedure, each Member State may apply different selection criteria, integration tools, residence permits, and, most importantly, places offered for resettlement (Radjenovic, 2017). This way, the path to a common framework on resettlement is still uncertain, as most approaches are voluntary, going back to AMIF being the main mechanism for incentivizing Member States to increase their resettlement quotas.

In 2021, 23, 755 refugees were resettled by the 27 Member States of the European Union, even though there were several Member States who did not offer a single place for

resettlement, such as Slovenia, Hungary or Czechia, in addition to, of course, countries like Greece or Malta, who are dealing already with enough responsibility related to asylum obligations. Among the Member States who resettle a higher number of refugees, we have Germany, Sweden or Norway, which are the ones who have been generally leading on the practice of resettlement throughout the years (Eurostat, 2021b).

5.2- Strategic use of resettlement.

Solidarity is not only a principle of the European Union, but also one of the goals of resettlement; therefore, it transcends the borders of the Union, and refers also to the general solidarity towards those countries most affected by refugee crisis around the world. That way, countries that are in a position to help those having trouble absorbing big movement waves, may offer resettlement positions out of willingness to help.

However, altruist interests are not the only factors contributing to countries offering up places for resettlement, as it may have deeper implications on certain political dynamics. Sometimes, certain countries would only accept to become the initial place of refuge, if they are promised that there would be a forward move to another countries, like it happened with Austria receiving asylum seekers from Hungary in 1956, when their onward movement was assured by other states (Van Selm, 2004). This same author identifies another reason why countries would choose to resettle other than the objectives set out by the UNHCR -that being protection, providing for a durable solution, and responsibility sharing-; resettled refugees, as opposed to asylum seekers, don't arrive spontaneously, but the authorities know them and they enter legally, without causing disturbance on the reception processes.

On the context of the EU, this purpose has been acknowledged multiple times, one of them being on the presidency conclusions to the declaration of Thessaloniki in 2003 on the framework of the EU-Western Balkans Summit, in which the Council "invites the Commission to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection" (Council of the European Union, 2003).

With an organized arrival of refugees, in addition to evading problems related with the reception and processing of individuals, it also provides with advanced information on the characteristics of the people arriving. This knowledge can be of great use for the development of more adequate integration and orientation programs, which can even start

before the departure; that way, both the country and the refugee can develop more accurate expectations.

Given that resettlement would provide for a better managing of refugee arrivals as they cross borders legally, States would welcome this possibility at a greater level than they would with the reception and processing of asylum seekers reaching their territory irregularly. It could also be expected that eventually Member States would be willing to welcome a bigger number of refugees, acquiring a greater compromise with international protection. “It can be said with certainty that the development of resettlement capacity across the EU would facilitate the managed arrival of more refugees.” (Van Selm, 2004: p. 44).

This doesn´t mean, however, that the arrival of resettled refugees would reduce the number of individuals arriving to seek asylum, as the groups of people targeted by resettlement are different from those groups more likely to seek asylum. That is because the practice of resettling refugees from situations in which resettling countries may find themselves on a difficult political position can be seen as a foreign policy statement - which can happen, for example, in the case of individuals coming from Russia due to human rights abuses-. Those people don´t usually have an urgent need for protection like asylum seekers might do.

According to the UNHCR, resettlement serves a whole range of functions outside the three goals, applicable to different areas, including political strategies or public support. The main ones are included on the table on Annex V, although empirical knowledge and investigation on whether these hypotheses are confirmed is still limited.

Resettlement can also serve some other migration policy strategies, as it may legitimate more the regular entry of resettled refugees, who are generally more welcomed as they cause little trouble and have waited patiently until they got accepted into the country of resettlement; in detriment of the view the public has over asylum seekers, who might be treated with a little more resentment, like in Australia, where they are often called “queue jumpers”. Australia has a strong tradition of resettlement, which has delegitimized in part the actions of those who reach its borders to seek asylum instead of waiting “their turn”, seeking asylum is disincentivized this way (Betts, 2017).

The truth is, resettlement is not available to everyone, it is offered to 1% of the world´s refugees when it is estimated than around 7% are in need of it (UNHCR, 2020, p.16),

which allows for countries to decide which nationalities to resettle. These nationalities may represent the most vulnerable groups of people and the group of refugees more needed of resettlement, but it can still be considered a discriminatory measure towards other individuals who were not offered resettlement because they didn´t fall on any of these nationality groups. In any case, countries can decide, upon an investigation and interviews made by their missions on the respective countries of first asylum, who is resettled, which can give way to countries having discriminatory choice guidelines. The scope of decision of the refugees themselves is often disregarded as well.

On the EU, Member States have agreed to take as a priority of nationals of regions like North Africa, the Middle East and the Horn of Africa, and in particular on countries where the Regional Development and Protection Programmes are implemented (Radjenovic, 2019). This has some relation with the EU´s Neighborhood Policy, which covers more aspects than migration, like security and economic development; migration is indeed a big topic in the discussions. The ENP aims to bring the EU´s and its neighboring countries interests closer, promoting their cooperation based on shared values (EEAS, 2021). This policy is nothing but a foreign policy strategy in which the EU tries to form partnerships with the countries closer to its territory to ensure a good relation and that both the EU´s and the third countries aspirations towards one another are met; and since most irregular migrants come from countries neighboring the EU, this is one of the topics that cannot be missed on the plans.

These are not the only priorities that the Member States are allowed to have under common Union resettlement programmes; however, to receive funding under the AMIF Regulation, the reasons are reduced to: persons from a country or region identified in the UNHCR resettlement forecast or belonging to a specific category under the UNHCR resettlement criteria. And lump sums are also paid for persons belonging to vulnerable groups: women and children at risk; unaccompanied minors; persons having medical needs; and persons in need of emergency or urgent resettlement (Radjenovic, 2019: p. 3).

While having priorities may serve national objectives, strategies, plans or policies, they have a risk of becoming discriminatory towards the individuals in need of resettlement, and undermine their own power of decision over how to orientate their own lives. There exists current -although worryingly little- research about resettled people living in a country they did not choose to live, like the one finding that 70% of the 100 000 Syrian refugees approached by the UNHCR in Canada in late 2015 said they didn´t want to live

in Canada (Betts, 2017: p. 73). 70% is a big proportion to attribute it to personal preferences, but rather to community factors that should definitely be taken more into account.

It may seem that resettlement is done out of pure compassion and generosity, which is not completely true, as a lot of resources are allocated for it and it can serve many purposes, as we have stated before. In is uncertain to which point refugees must be just thankful to be out of their countries of origin, regardless of the country they ended up living in. This is an absurd simplification, because refugees may as well have a number of reasons that are legit and completely ignored, like closeness to family, cultural similarities, language, lifestyle and religious compatibilities, capacity of personal growth, ability to support and help local communities, and most importantly, they should be able to choose to go to places where they are most likely to develop a sense of belonging.

This is the ideal situation; however, it is not always technically possible because it often clashes with solidarity and burden sharing. For example, a big proportion of Syrian refugees want to go to Germany, where a big number of refugees were accepted back in 2015, forming a strong refugee network that attracts more and more people who have decided on Germany as their final destination before they even leave Syria, on the basis on what they have been told about life there. To avoid this force of attraction, often precipitating uninformed choices, more general-value preferences might be taken into account. These generic preferences are able to provide a basis for what is valuable for refugees, less dependent on the accuracy of the information about destination states that the refugees might possess (Owen, 2019: p. 357). That is, instead of a list of states preferred, taking a deeper consideration of the reasons behind the preferences, to be able to supply for the best alternatives.

Resettlement has also a significant lobby behind it in some countries, like in the US, which can allow political or even economic factors -we are not talking anymore of migration policies- influence decisions on this regard. The "resettlement industry" moves money on NGOs and other civil society organizations that are involved in it, and money brings all type of interests to the scene which can have nothing to do with the protection or wellbeing of refugees (Betts, 2017).

The motives, uses and strategies of the EU in doing resettlement are important to understand its global role on the international protection regime and its standing on global

discussions about the different functions on resettlement and its possible strategic use. In addition, it is important to define the general practice of resettlement in the EU to see what the role of resettlement on refugee protection regime is and how it can contribute to a holistic approach to international protection that will be addressed on the conclusion.

5.3- 1:1 model. Case study EU-Turkey Statement.

The biggest ongoing common resettlement scheme on the EU is the one resulting from the EU-Turkey Statement. The Statement represents an inherently political agreement to handle migration more efficiently and the prevention of the collapsing on reception processes due to big waves of asylum seekers, as well as preventing the deaths from those individuals trying to cross the Mediterranean on unsafe conditions, victims of smuggler´s practices.

In 2015, the EU-Turkey Statement came to scene. The Agreement targets Syrian refugees and asylum seekers and establishes that any migrant coming from Turkey reaching Greece after 20 March 2016, and whose asylum application has been declared "inadmissible" should be returned to Turkey (European Parliament, 2023). The deal applies to irregular migrants including those who do not apply or do not qualify for asylum, as well as those who apply for asylum but have arrived from a safe country where they could have claimed protection (McEwen, 2017). Based on a 1:1 system, for every Syrian asylum seeker returned to Turkey, a Syrian refugee shall be resettled in a Member State of the European Union. In theory, this measure could dissuade people from crossing from Turkey to Greece, that way reducing the possibility of deaths at sea, alleviating the pressure on rescue authorities, as well as on asylum reception infrastructure. In addition, the EU is expected, under the deal, to mobilize funding for the Facility for Refugees in Turkey, namely of €3 billion by 2018 (European Parliament, 2023).

We can identify two parts of the deal: on the one hand, the return to Turkey of any migrant reaching Greece who is not in need of international protection. And on the other hand, the compromise to resettle Syrian refugees from Turkey to the EU. All in all, the deal constitutes an irregular migration managing policy containing a resettlement scheme agreed between Turkey and the EU.

The return to Turkey of any migrant reaching Greece is based on the premise that Turkey is safe for them (Gkliati, 2017: p. 214). The concept of "safe third country" is greatly contested, and there is diversity of opinions in whether we can consider Turkey as a safe

country; following guidelines of the UNHCR for the protection of refugees, we can argue Turkey is not effectively a safe country for a number of reasons.

Firstly, the concept of "safe third country" is the result of a strict interpretation of article 31.1 of the Refugee Convention, which excludes the traditional penalization for illegal entry to a territory of a State for individuals seeking asylum, whenever they are coming -directly- from a territory where they are suffering persecution (Roman, Baird & Radcliffe 2016). If it is considered that they do not face persecution in Turkey, but in Syria, Iraq or Afghanistan -mostly-, in principle, the refugees should seek asylum in Turkey, as it is the first safe country they reach.

In the case of asylum seekers reaching Greece, previously coming from Turkey and not directly from "unsafe" territories, their claim can be considered inadmissible without getting to the merits of the case, as the EU deems Turkey a "safe third country"; this stipulation is backed by article 33.2c) of the EU Asylum Procedures Directive. As the EU Commission (2016) stated about the implementation of the Statement, there are two legal possibilities that can be used for declaring asylum applications inadmissible: 1) first country of asylum (Article 35 of the Asylum Procedures Directive): where the person has already been recognised as a refugee in that country or otherwise enjoys sufficient protection there; 2) safe third country (Article 38 of the Asylum Procedures Directive): where the person has not already received protection in the third country but the third country can guarantee effective access to protection to the readmitted person.

Following this same Directive, on article 38 we can find the exact definition of "safe third country", as a place where the asylum seeker will be treated following some listed principles, to know: "(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) there is no risk of serious harm as defined in Directive 2011/95/EU; (c) the principle of non-refoulement in accordance with the Geneva Convention is respected; (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention." (EurLex, 2013: art. 38).

The admissibility must be determined by national authorities, in this case, the Greek ones, following a procedure that grants fair consideration and right to appeal. In 2016, Greece

adopted a new law to modify its asylum procedures, introducing a fast-track process at the borders which should be completed within 15 days, including the appeal stage. In addition, this law does not guarantee the right to free legal assistance and limits the right to an oral hearing at second instance (Amnesty International, 2017). Having such a fast procedure and a clear lack of legal aid, it seems difficult to assert the possibility for asylum seekers to defend their claims on a way that is fair with their situation.

On other order of things, the EU may encounter problems regarding the right to *non-refoulment*, that is, the right of refugees not to be sent back to the country from which they are fleeing without assuring that they will not suffer Human Rights violations (Betts et.al., 2012). Human Rights Watch claims to have information provided by direct witnesses that would confirm that Syrian refugees in Turkey are violently forced or coerced by the use of force to sign voluntary repatriation forms, which are, in addition, in a language they do not understand (Human Rights Watch, 2022).

These statements evidence the non-qualification of Turkey as a "safe third country", and would place Greece on a critical position, as it could be argued that Greek authorities have illegally deported asylum seekers to a territory in which they cannot assure the compliance of their basic rights as refugees. These deportations would go against UNHCR basic obligations and therefore against international refugee law. Amnesty International´s research (2017) conducted in Turkey in 2015 and 2016 also shows that the risk of refoulment of those refugees staying in Turkey is considerably high. Other findings by AI verge about the incapability of Turkey´s asylum system of coping with that many individual applications. Refugees are striped out of the access to durable solutions, and are, in some cases, subject to human rights violations -namely arbitrary detention, denial to legal representation or medical care- (Amnesty International, 2017). Turkey is currently the country that hosts the highest number of refugees worldwide, hosting nearly 4 million refugees (UNHCR, 2022). Refugee reception and protection systems in Greece may be collapsed, but the structures to the country they are sending them back to are in no better conditions.

Stated on the EU- Turkey Statement action plan, the deal aims to "offer migrants an alternative to putting their lives at risk" (European Parliament, 2023), among other objectives. The goals of the agreement could be considered satisfactory achieved, as data is very concise to show that the numbers of migrants reaching Greek coasts decreased significantly, dropping by 97% immediately after the deal was enacted (European

Commission, 2017b: p.2). The deal also achieved the objective of reducing the “loss of life in the Aegean”, as these losses were reduced from 1.145 the year before the statement to 80 the following year (European Commission, 2017: p.2).

The facts are that the dead and missing migrant numbers have never been as high as they were in 2015, although their decreasing tendency was reversed in 2021, which can doubt the effectiveness of the deal long term. The eastern Mediterranean route is currently, by far, the least used by asylum seekers, as shown on Annex VI.

But this is not the only issue identified with the scheme, as it also creates a situation of overcrowding on refugee camps, where asylum seekers live in inhumane conditions and are not allowed to move until their respective processes are complete. Seeing the conditions in which these camps are found in, the UNHCR has taken control of the managing of some of them in order to try and ensure the wellbeing of asylum seekers everywhere. This identifies a failure on the practice of the Statement, in addition to it being only a short-term solution for a much bigger problem, which is the extreme delay on the processes to determine refugee statute. Thousands of asylum seekers and refugees are trapped under a limbo, which has terrible consequences on their physical and mental health. This problem has recently gotten worse: because of the Covid crisis, Turkey didn´t take any returns for two years, so the people whose claim has been considered inadmissible because they came from a safe country have been stuck on this legal limbo in Greece all this time, with no access to asylum or any other kind of documentation, no right to housing or to work due to their inconclusive legal status (International Rescue Committee, 2022).

Attached to this system for the returning of migrants we find a resettlement agreement made, on the framework of the Statement, between the EU and Turkey. On the first year of implementation of the agreement, 325 returns were made form the Greek islands to Turkey, for which only 103 Syrian refugees were resettled from Turkey to the EU (European Commission, 2016), which may show that there is some level of compromise by the EU, although resettlement is on a considerable backlog.

The practice and implementation of the deal is of great importance, because cooperation with third countries is one of the main priorities for migration policy, at the national and at the EU level. The EU-Turkey deal constitutes a very relevant form of cooperation to

fix a migration issue directly at its root. The inclusion of refugees and asylum seekers on migration policies has been strongly criticized.

Critiques of the deal´s model say that it can constitute a well-built system for migrant picking, as the criteria for choosing to resettle certain individuals is rather open, mostly a mix of priority groups stablished by the UNHCR and own national criteria, creating each State their own resettlement processes. Although the EU Regulation No 516/2014, establishing the Asylum, Migration and Integration Fund stablishes a principle of nondiscrimination, the truth is that many Member States have set criteria such as: the priority of those individuals with "a higher profile in the field of human rights and pro-democracy movements", set up by The Netherlands, or assessing "the ability to integrate" on Germany (De Boer & Zieck, 2020).

5.4- Ukrainian crisis v. Syrian crisis.

There is one aspect of resettlement that has not yet been assessed, and that is its relation to politics. Refugee crisis are often politicized responding to multiple objectives on migration and border control, cultural homogeneity, resources allocated to refugee protection, specially rescue at sea on Mediterranean states, and many more. As this has many internal specificities depending on the State, such as the political party on the government and opposition, parties and elections dynamics, and even historical experience; the reasoning behind the politization of crisis may be different and even take different directions. However, this creates an issue concerning the discriminatory use of the EU legislation on asylum, through the Temporary Protection Directive. A very clear example of this loophole would be put forward, one that is very present and whose consequences may be presented very clear to anyone paying attention to the news lately.

The Temporary Protection Directive 2001/55/CE states, on its article 2, that temporary protection has the "exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation. It adds on saying that "mass influx means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area.". This is the normative being applied to all individuals fleeing Ukraine since the start of the war in February 2022.

The application of this Directive to the people fleeing Ukraine, along with the increasing trend of containment and closeness of borders led by the EU-Turkey Statement, evidences a differentiation of treatment due to nationality (Kienast et.al., 2022). The purpose of the TPD is to grant fast access to protection to Ukrainians, but this open border policy is not being applied equally to all individuals arriving to the borders of the EU, even if they do come from areas of armed conflict and are victims of generalized violations of their Human Rights (EurLex, 2001: art, 2).

Discriminatory treatment is usually defined as unjustified unequal treatment for individuals on the exact same situation. Article 14 of the European Convention on Human Rights prohibits discrimination for the sole reason of "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." (coe.int, 1953). The Council emitted a decision on the temporary protection for Ukrainians, which provides for a special treatment, clearly meaning a established preference to Ukrainian citizens from asylum and protection seekers from other nationalities, coming from previous conflicts. The Decision not only makes this distinction, but also doesn´t cover third country nationals residing in Ukraine at the time of the invasion, as temporary protection is only applicable to "Ukrainian nationals residing in Ukraine before 24 February 2022; (b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and, (c) family members of the persons referred to in points (a) and (b)." (EurLex, 2022).

There are certain arguments that question the preferential treatment to be in any way discriminatory, as the EU and Ukraine had a privileged relationship prior to the start of the conflict, in line with the "Eastern Partnership", a part of the European Neighborhood Policy framework, including a visa-free regime with a biometric passport within a time limit (Kienast et.al., 2022). This may be part of a legitimate migration policy, but it is not so sure whether it provides for a justification of preferential treatment any further, as it still leaves out Ukrainians who didn´t qualify to get the biometric passport, or who didn´t meet the formal requirements for visa-free travel -including children-, and also Russians escaping oppression or deserting, who are undoubtedly also victims of the conflict.

In reality, persons benefitting from temporary protection have some additional rights to asylum seekers, as they can move freely across the Schengen area, in the case that they have not applied for asylum in any of the State, to which they are also entitled. Ironically

enough, this flexible regime has been beneficial for solidarity and burden sharing among Member States, and to relieve the pressure on bordering States (Kienast et.al., 2022).

It is clear that the temporary protection regime allows for a certain level of nationality and race profiling, although whether this constitutes a violation of the right not to be discriminated is still complex and needs from a deeper quest on the differential treatment concerns in terms of access to the EU and the different standards of protection on the TPD in comparison to the Reception Conditions Directive or the Qualification Directive applicable to asylum seekers (Kienast et.al., 2022).

Aside from technical considerations, we cannot disregard the effect that cultural and geographical closedness has on the way civil society acts towards refugee crisis. There is a clear difference: Ukrainians belong to the same civilization than the rest of European countries, Syrians do not; this makes it easier to class them as "invaders" or "illegal immigrants"(Ferrari, 2023). Cultural, religious, even physical differences obstruct the capacity to build a sense of empathy, whereas with Ukrainians, we can think that it may as well have happened to us, so we feel a solidarity towards them that we don't feel towards people from traditionally conflictive areas. Relevant factor, too, for the public opinion on refugees, are the Westerners prejudges towards Arabic culture brought by the discourse of the war against terrorism.

Images reaching the population also contributes to building different ideas on refugees. Syrians are often portrayed on these chaotic masses trying to illegally entering the borders of the EU thus creating a collapse of the system, while Ukrainians are more orderly and don´t cause major inconveniences (Ferrari, 2022).

All these circumstances that lead to a differentiation among refugee classes evidences a phenomenon relevant to our analysis: the increasing securitization of migration, and therefore, of asylum in Europe. Europeans feel their own identity to be threatened by the mass influx of irregular immigrants reaching their borders, in part because it is often linked with criminality or directly with terrorism, which makes them target of restrictive measures justified by matters of security (Delfino, 2022). We see how, then, the trend on the EU is eminently directed towards closing borders to individuals who are considered not to share the values that inspire the Union.

6- Conclusions: the need for a Common Protection System integrating Common Asylum Policy and Common Resettlement Scheme.

These analyses put forward here are intended to set up a picture of the role that resettlement currently plays in the EU in relation to its compromise with international protection. Resettlement policies are not part of a cohesive, integrated asylum policy, but rather work on a voluntary basis and according to national plans, or on one-time arrangements. That is, precisely, the problem.

The CEAS is the common framework for asylum policy on the EU, and it includes the Dublin Regulation, the reception conditions directive, the asylum procedure directive and the qualification directive, all mentioned throughout the paper, and none of them related to the practice of resettlement. Even leaving the inclusion of resettlement aside, the lack of harmonization of the CEAS has raised concerns among scholars. One of them is Vianelli (2022), who states that the number of matters that are not directly regulated by EU law makes it impossible to create a level playing field where asylum procedures look identical in all Member States, thus encountering a very limited harmonization.

We can extract the reasons why resettlement should be part of a common, comprehensive asylum policy from the analysis made above. Both resettlement and asylum are elements of the international refugee protection system (Van Selm, 2004: p. 44), however, they are often conducted separately. That is because they are built differently, being resettlement policies more easily influenced by historical experiences, political interests or strong lobbying. As previously stated, resettlement policies may serve a number of different purposes, not necessarily linked with refugee protection. It doesn´t have to be a negative asset, but combined with lack of strict regulation and having a voluntary approach, the policies relating to resettlement become more "usable", more "shapeable".

The informal character of resettlement policies, led primarily by beliefs, culture and habits (Van Selm, 2004), makes it one of the least researched, least evidence-based areas of international protection. UNHCR fails to coordinate resettlement at an international level the way it does with asylum, it is truly a domain that is little known, but has a tremendous effect on refugees.

It is precisely because of this effect why it should be regarded as an inherent part of the EU´s approach to asylum. We may take for example the Syrian refugees under the EU-Turkey agreement, who may be waiting in Turkey for a resettlement decision -that may,

or may not come- for many years, so many years that it becomes almost cruel, even more considering the true risk they face of being sent back to Syria. This situation of "limbo" has serious consequences on their physical -reports show evidence of Human Rights violations to refugees in Turkey- and psychological health. This treatment is hardly in concordance with the core values of international protection.

Therefore, the next steps for the European Union should be to come up with a reformulated approach to international protection, one that would provide for a common framework not only for asylum, but for all instruments, mainly resettlement. Those instruments would be part of a wider strategy able to bring solutions for a variety of situations; asylum, resettlement and temporary protection are three examples of mechanisms that can apply to specific cases in a way in which it avoids imbalances and situations of discrimination -like the one explained about Ukrainians and the rest of asylum seekers-.

A common resettlement scheme would have the capacity to end the situation of protracted refugees, relieve the pressure of bordering countries like Greece, promote solidarity among Member States and contribute to the process of European integration, as well as ensuring the wellbeing of refugees and the consideration of their personal preferences when starting their new life.

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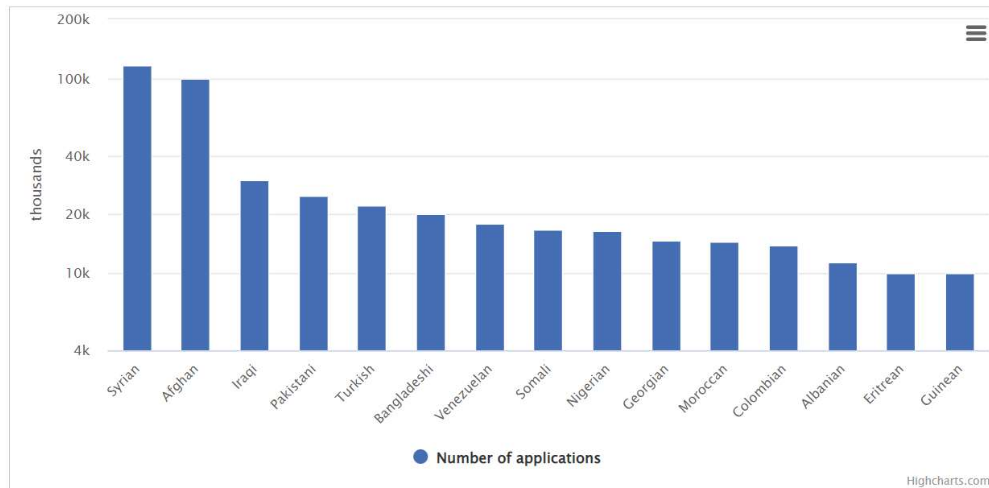
ANNEXES

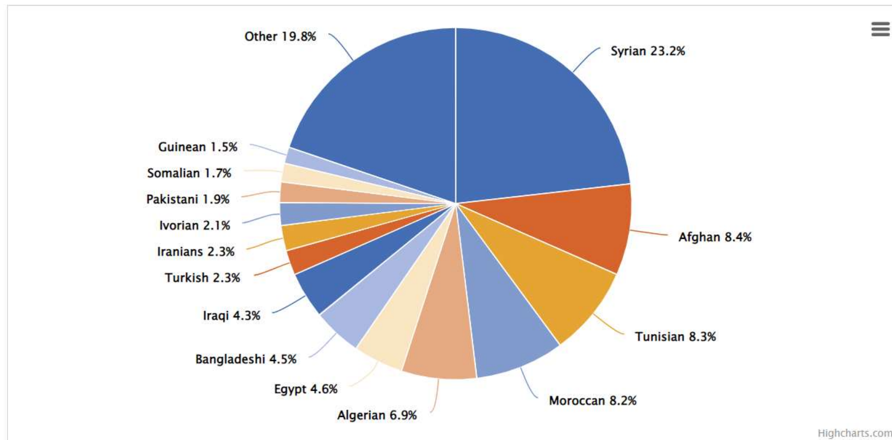
Annex I

Top 15 nationalities of first time asylum applicants (2021)



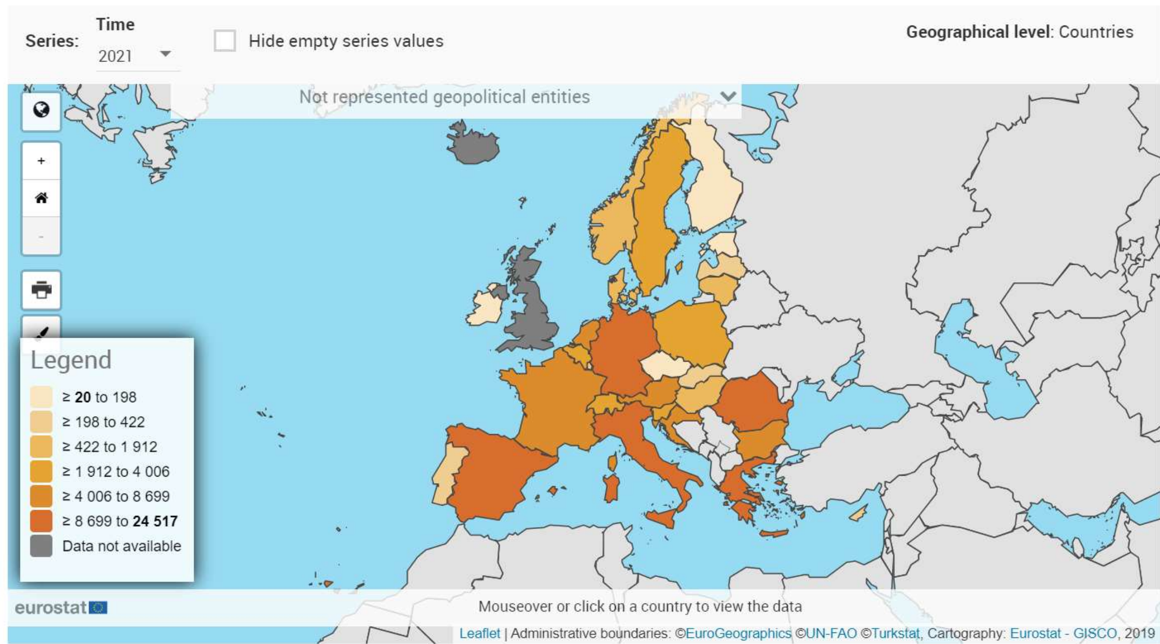
Number of first asylum applicants by thousands of people on the European Union on 2021 by nationality. Source: Eurostat.

Annex II



Irregular EU border crossings by percentage by nationality in 2021. Source: Frontex

Annex III



European countries by number if asylum applications lodged in 2021. Source: Eurostat

Annex IV

Country	Commitment Legally Foreseen*	Places Formally Pledged**	Number of Relocated Refugees	Percentage of relocated persons in relation to legally foreseen
Austria	1953	50	15	0,8%
Belgium	3812	1530	997	26,2%
Bulgaria	1302	1070	50	3,8%
Croatia	968	316	78	8,1%
Cyprus	320	205	143	44,7%
Czech Republic	2691	50	12	0,4%
Denmark	0	0	0	
Estonia	329	396	141	42,9%
Finland	2078	2128	1975	95,0%
France	19714	6940	4468	22,7%
Germany	27536	13250	8479	30,8%
Greece	0	0	0	
Hungary	1294	0	0	0,0%
Ireland	600	1152	552	92,0%
Italy	0	0	0	
Latvia	481	627	321	66,7%
Lithuania	671	1160	382	56,9%
Luxembourg	557	545	430	77,2%
Malta	131	205	148	113,0%
Netherlands	5947	2825	2442	41,1%
Poland	6182	100	0	0,0%
Portugal	2951	3218	1496	50,7%
Romania	4180	2182	728	17,4%
Slovakia	902	60	16	1,8%
Slovenia	567	579	217	38,3%
Spain	9323	2500	1279	13,7%
Sweden	3766	3777	2276	60,4%
United Kingdom	0	0	0	
Norway	0	1500	1509	
Switzerland	0	1530	1237	
Lichtenstein	0	10	10	
Total	**98255**	**47905**	**29401**	**29,9%*** **

The table is adapted from a regular update on relocation 'Member States' Support to Emergency Relocation Mechanism'

*Legally foreseen indicates the number of refugees that the Commission expect MSs to take; the figure is calculated according to the pre-defined formula explained above

**Formally pledged indicates a number of refugees EU MSs and several other European states vowed to relocate

***or rather: 27,1% in EU (without volunteers)

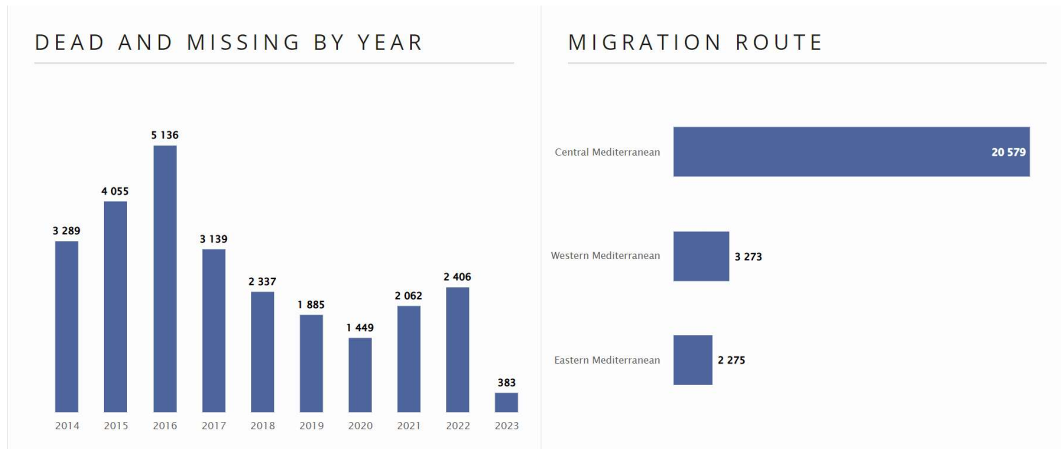
Source: European Commission

Annex V

Function of resettlement + ***example of testable hypothesis***
International solidarity and responsibility sharing : *influences host state behaviour*
Protection : *reaches the most vulnerable*
Strategic use : *leverages other durable solutions*
Public understanding : *leads to greater public support*
Addressing mass arrivals : *averts refoulement by host states*

Source: UNHCR

Annex VI



Dead and missing migrants crossing the centrl Mediterranean route by number of people and by year. Number of people doing the three different migration routes on the Mediterranean as of 2022. Source: Missing Migrants.int