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**Europe's Migration Dilemma:
Securitization, Humanitarian
Implications and Possible Policy
Changes**

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ABSTRACT

The EU failed to adequately respond to the 2015 migration “crisis”. It failed to act in accordance with the principles of solidarity and fair sharing responsibility enshrined in the TFEU, which shall govern the migration policy, and it failed to comply with its duty to protect those in need, which stems from international human rights law. This paper aims to demonstrate that these failures can be considered the outcome of both inherent deficiencies of the EU migration policy and asylum system, and the longstanding contrasting national interests and positions of the Member States in relation to this policy area. Besides, it will highlight possible policy changes and alternative solutions to future large inflows of migrants. Indeed, polarization among Member States has long prevented the EU to come up with a truly common and fair asylum system and has also been the cause of the divided and uncoordinated response provided in the face of the “crisis”. Moreover, the increased migratory pressure has seen the rise of nationalistic, anti-immigration, anti-liberal and anti-European sentiments as a reaction, which have further fed a wider process of securitization of migration in Europe through public discourses, media coverage and policies. All of this to the detriment of human rights, democracy, solidarity, cooperation and, therefore, the European project itself. In this sense, the EU is faced with a dilemma that goes far beyond the migratory issue: it has to deal with an ever-increasing trend towards disintegration while at the same time safeguarding its core values, upon which it has been built. For this reason, the time is ripe for the EU to learn from experience and act accordingly.

KEY WORDS

EU – migration – crisis – securitization – nationalism – human rights

RESUMEN

La UE no respondió adecuadamente a la "crisis" migratoria de 2015. No actuó de acuerdo con los principios de solidaridad y responsabilidad compartida consagrados en el TFUE, que deben regir la política migratoria, y no cumplió con su deber de proteger a los necesitados, que se deriva del derecho internacional de los derechos humanos. Este documento pretende demostrar que estos fracasos pueden considerarse el resultado tanto de las deficiencias inherentes a la política migratoria y al sistema de asilo de la UE, como de los intereses y posiciones nacionales contrapuestos de los Estados miembros desde hace tiempo en relación con este ámbito político. Además, destacará los posibles cambios de política y las soluciones alternativas a los futuros aumentos de la presión migratoria. La polarización entre los Estados miembros ha impedido durante mucho tiempo que la UE llegue a un sistema de asilo verdaderamente común y justo, y también ha sido la causa de la respuesta dividida y descoordinada que se ha dado ante la "crisis". Además, el aumento de la presión migratoria ha visto surgir como reacción sentimientos nacionalistas, antiinmigración, antiliberales y antieuropeos, que han alimentado aún más un proceso más amplio de securitización de la migración en Europa a través de los discursos públicos, la cobertura mediática y las políticas. Y todo ello en detrimento de los derechos humanos, la democracia, la solidaridad, la cooperación y, por tanto, del propio proyecto europeo. En este sentido, la UE se enfrenta a un dilema que va mucho más allá de la cuestión migratoria: tiene que hacer frente a una tendencia creciente hacia la desintegración y, al mismo tiempo, salvaguardar sus valores fundamentales, sobre los que se ha construido. Por ello, ha llegado el momento de que la UE aprenda de la experiencia y actúe en consecuencia.

PALABRAS CLAVE

UE – migración – crisis – securitización – nacionalismo – derechos humanos

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LISTADO DE ABREVIATURAS

CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
Eurodac	European Asylum Dactyloscopy Database
Europol	Central European Investigation Office
Frontex	European Border and Coast Guard Agency
IOM	International Organization for Migration
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

1. INTRODUCTION

The phenomenon of migration is as old as the human being itself and has ever since played a crucial role in the evolution of civilization and culture (Dokos, 2017). During the last centuries, however, unprecedented numbers of migrants have been moving worldwide for a variety of reasons. As Hyland (2015) has put it, “[m]ass migration of humans across the globe is a signature feature of the modern world”. What is more, migration moves have particularly intensified during the last decades, having tripled since 1970. At that time, 84 million people around the world lived in a State other than their country of birth, while in 2020 such figure amounted to almost 281 million (McAuliffe & Triandafyllidou, 2021, p. 23). Thus, expanding on Hyland’s statement, Dragostinova (2016) has expressed that “the issue of global human migrations may very well define the 21st century”.

Many have been the driving forces of such increased migratory flows, but it is safe to say that they fall within a wider process of globalization, which has enabled people around the world to look for a better life, including better employment opportunities and lifestyles outside of their countries of origin (Tacoli & Okali, 2001). Moreover, specific events and circumstances, such as conflicts, wars, persecution, and more recently, lack of resources, adverse weather conditions, natural disasters, famine or poverty, have also been among the direct causes of rising numbers of migration movements.

As a consequence, preferred destinations during the 20th and the 21st centuries have been generally located in the global North or the West, the winner of globalization by far, although Asia has also been receiving large numbers of migrants. In fact, Asia, including the Middle East, hosted in 2020 the 30.5% of total international migrants in the world -around 86 million-, only behind Europe, which hosted the 30.9% -around 87 million- (McAuliffe & Triandafyllidou, 2021, p. 24). The development of emerging economies in the region, with the consequent growth in the demand for manpower and favorable policies, as well as rising nationalistic and anti-immigration stances in Europe and the United States forcing restrictive migration policies, may explain the shift towards Asia as a land of opportunity (Kawate, 2018).

As for the United States, “long a destination for the adventurous, the fleeing, and slaves forcibly uprooted” (Hyland, 2015), it remains the primary country of destination for migrants (McAuliffe & Triandafyllidou, 2021, p. 24), meaning the so-called “American Dream” still attracts people from all around the world in search of new

opportunities. Moreover, it has been for years the principal recipient of Latin American migrants fleeing their countries since the 1970s because of their countries' weak economies, demographic boom, civil wars and political unrest. While they were widely welcomed after World War II, the increasing flows of South Americans crossing the southern US border in the late 1900s led to strengthened border controls and restrictive policies towards unauthorized immigrants. However, many of them have continued entering the US, giving rise to smuggling, human trafficking, dangerous journeys and harsh conditions at detention centers (Hyland, 2015). Besides, this phenomenon was recently labeled as a "crisis", justifying stricter measures with the aim of controlling migration flows, including the construction of a border fence with Mexico (Giles, 2021).

Similarly, Europe has always been an appealing destination for migrants, although, as Dragostinova has highlighted, Europe does not generally perceive itself as a continent of immigration, as "very much ingrained in the national imagination of the United States" (Breyfogle, 2021). However, it has also been the source of migration flows mainly because of conflict. Indeed, the 20th century was characterized, on the one hand, by large outflows of migrants from European countries as a consequence of World War I and II, and of different ethnic and civil conflicts throughout the continent; and on the other hand, by welcoming policies in the 1950s and 1960s towards migrant workers that would help reconstruct the continent (Behrman, 2018, p. 116). Nevertheless, during the 21st century, Europe has been a common target among migrants fleeing intensifying conflicts in Africa and the Middle East and crossing the Mediterranean. The escalation of the Syrian civil war, together with the breakdown of authority in Afghanistan, Libya, Eritrea and Iraq, pushed many out of their home countries and ahead to Europe, leading to an increasing influx that has also been described by many as a "crisis" and led to the consequent restrictive policies.

However, the situation is far from being a "crisis". Despite the fact that refugees and asylum-seekers have been growing in numbers, the top ten receiving countries are mostly underdeveloped or developing ones, with the sole exception of Germany. In fact, Turkey has long been the largest host country in the world, mainly accommodating Syrians together with Lebanon, another neighbor country. What is more, the least developed countries in the world, including Bangladesh, Sudan, Ethiopia, Rwanda or the Democratic Republic of Congo, hosted 27% of the global total refugees in 2020 (McAuliffe & Triandafyllidou, 2021). In this sense, it is paradoxical and hypocritical that

some of the wealthiest countries in the world, i.e. European countries, try to stop “massive refugee flows” into their territories (Meçe, 2020).

The so-called migration “crisis” in Europe made migration become mainstream in the politics of the European Union (hereinafter referred to as “EU”) in 2015. The deaths in the Mediterranean, the increasing migratory pressure suffered by frontline States, which were witnessing the collapse of their asylum systems, and the growingly perceived threat posed by population flows to the European economy, security and culture drew attention to the need to come up with a solution. What is more, the existence of an area without internal frontiers between Member States, i.e. the sharing of common external borders, required the adoption of a common solution. However, the EU has been faced with a dilemma: while securing its external borders, it must comply with its international human rights obligations towards migrants, namely those in need of protection. Eventually, longstanding discrepancies among Member States with regards to migration policy limited the EU ability to bring about an effective response to the “crisis”.

Built on the premise that similar migration flows occur periodically in Europe, an analysis of the EU migration policy and its response to the 2015 migration crisis is particularly relevant due to the fact that it can bring to light inherent inefficiencies of the current system and failures of the response to the “crisis” for the purpose of highlighting possible policy changes that would help to frame an authentic common system and alternative solutions to future large inflows of migrants.

Even though the Covid-19 pandemic gave a truce in the arrival of migrants during 2020 (McAuliffe & Triandafyllidou, 2021), recent events have encouraged additional migration inflows into Europe, such as the return of the Taliban rule in Afghanistan in August 2021 or the Russian invasion of Ukraine in February 2022. Taking into account that the lack of a coordinated response and the proliferation of nationalist and securitizing policies towards migrants has put at risk two of the very foundations of the EU, i.e. free movement and human rights, if these new flows are not addressed from a common response based on solidarity and the rule of human rights, the European project risks suffering a further setback. The EU should therefore learn from its experience of the 2015 migration “crisis” to prevent what could be an irreversible regression of its integration.

2. STATE OF AFFAIRS

In the zenith of the migration “crisis”, when thousands of migrants attempting to cross the Mediterranean to reach Europe had already died in the journey, President of the European Council Donald Tusk addressed Member States in a special meeting calling on “a common responsibility to help solve it” and referred to the most challenging need of discussing “how to reinforce European solidarity” (European Council, 2015). A few days later, President of the Commission reiterated the need for “shared solidarity” (European Commission, 2015a). With these words, the EU leaders were acknowledging that the task they faced to give a common response was not going to be easy.

The fact that the migration “crisis” exposed the deficiencies of the EU migration policy and asylum system has been asserted by many. A scholar that has profusely studied the EU response to this “crisis” is Bačić (2015), whose analysis led to the overall conclusion that “the EU could have done it differently, and could have done it better” (p. 110). According to this author, an already flawed asylum system was merely “patched up” with insufficient measures that were never intended to be permanent. In his own words, “[a]s a result of Union inaction, it was the Member States who took the wheel and placed themselves in charge of handling the crisis” (p. 107), leading to polarization and divergent responses. Similarly, Eylemer & Söylemez (2020) compared “policy versus praxis” and identified a generalized classical realist stance among Member States in relation to migration, which prevented the EU to adopt a common response to the “crisis”. Hampshire (2015) talked about a fundamental inequity on the basis of the European asylum system, and Havlová & Tamchynová (2016), for their part, also highlighted the unwillingness of Member States to cooperate in this policy area.

This lack of cooperation and obstacle to European integration has been linked by Huysmans (2000) to a wider process of securitization of migration at the EU level. In his view, since its early years, the development of the EU migration policy has negatively framed this issue, both through discourses and policies, as a danger to European society and stability. Indeed, according to him, the “Europeanization of migration policy” would have connected this issue to security-related problems and favored “the privileging of nationals of Member States in the internal market, [...] welfare chauvinism and the idea of cultural homogeneity as a stabilizing factor” (p. 770).

Moreover, in the specific context of the 2015 “crisis” other authors have talked

about the rise of nationalism and politics of fear (Postelnicescu, 2016), about nationalism and resentment of cosmopolitanism (Krastev, 2017), about a “deadly system of political analogy” between migration, barbarism and terrorism (Nail, 2016). In line with this, many have carried out discourse analyses, both at EU and State level, that have identified widespread Islamophobic, anti-immigration, anti-liberal and anti-European stances related to the increasing influx of migrants (Mészáros, 2016; Hafez, 2015; Güler, 2019). Besides, some have connected those attitudes with media coverage of the migration “crisis”, which has reflected growing mistrust towards the EU (Brosius et al., 2019) and systematic securitization of the migrants (Havlová & Tamchynová, 2016). According to others, these sentiments have been particularly present during the 2015 “crisis” because European economies were already recovering from the 2008 economic crisis that had so badly affected the Eurozone (Metcalf-Hough, 2015; Hammond, 2015).

In addition, some have warned of the risks of framing migration as a “crisis” or as a threat. For instance, Aleinikoff (2017) points out that such negative construction could “provoke extreme and ill-thought-out proposals to end the declared crises” (p. 3), which would not address real serious problems that arise from these situations, such as trafficking, smuggling and other kinds of human exploitation and abuse. In the same vein, Gatta (2019) asserted that the securitizing practices in response to the migration “crisis” were feeding a wider process of “rule of law backsliding”, reflecting a crisis of the rule of human rights law, and Behrman (2018) went even further to assure that international refugee law has always been elaborated as a response to a crisis of order but has never reflected a humanitarian concern.

Leading to the same conclusions, other academicians have studied the particular humanitarian issues that have been raised as a consequence of the European divided response to the “crisis”. In this sense, Barbulescu (2017) has carried out an analysis of the temporary measures adopted by the EU from a human rights perspective, and Gatta (2019) has examined procedures of collective expulsion of aliens, *refoulement* and illegal detentions, while Webber (2017) has focused on the agreements the EU reached with several transit and origin countries, and Meçe (2020) has presented the poor conditions and human rights abuses in the context of the refugee camps, paying special attention to human trafficking.

In view of the above, the need for a reform of the EU migration policy and to come up with alternatives of effective responses to future migrations “crisis” became apparent

to many. The European Commission was the first to acknowledge that the current system of asylum required changes to ensure compliance with the principles of solidarity and fair sharing of responsibility among Member States, and to prevent further deaths of migrants during their journeys in future large flows into Europe. Accordingly, it launched a package of legislative proposals to improve the asylum system (Schmid-Drüner, 2021a). Furthermore, in order to ensure migrants' protection at the same time as solidarity is granted, Bačić (2015) and Panebianco & Fontana (2018) reminded the existence of the temporary protection mechanism, designed for the event of a mass influx of migrants. For similar reasons, Havlová & Tamchynová (2016) have supported the idea of creating tradable refugee quotas that may enable an efficient migration management and the satisfaction of the needs and interests of all sides.

Nevertheless, voices have been raised warning of the difficulties such agreements may face, due to the longstanding divisions among Member States in relation to the migration policy. In this sense, some have even denied the "critical" nature of the increased migratory pressure in Europe while expressing their concerns that the migration "crisis" could have brought to light a real crisis, a crisis of faith and morality (Aleinikoff, 2017), of European values (Borg-Barthet & Lyons, 2016) and of the European project itself (de Lucas, 2015).

3. OBJECTIVES AND METHODOLOGY

Building on the theoretical framework laid down in the works referred to in the previous section, this paper aims to analyze the EU migration policy and its response to the 2015 migration "crisis" with the aim of identifying the causes that have prevented Member States to further integration in relation to migration management and to come up with an effective common response. In particular, it is intended to study the rise of nationalist sentiments throughout the EU as a booster of a wider process of securitization of migration that has constructed this issue as a threat to the European society. Moreover, it will focus on the lack of solidarity and fair sharing of responsibility among Member States, core principles of the common asylum system, and on the humanitarian consequences that have derived from the administration of the "crisis".

Therefore, it will try to answer to the following questions: what did the EU do in response to the so-called migration "crisis"? Was it a common and an effective response?

Did it ensure the principles of solidarity and fair burden sharing? What are the reasons for EU Member States to be reticent to cooperation in migration policy? Is there a securitization of the migration issue in Europe? Is it linked to the rise of nationalism? What have been the consequences of the divided response in humanitarian terms? What alternatives could be proposed in order for the EU to be able to effectively respond to future migration “crisis”? Is there a need for a wider reform of the EU migration and asylum policy?

In line with it, the analysis will aim to demonstrate that the EU response to the specific 2015 migration “crisis” was inadequate as it failed to guarantee the principles of solidarity and fair sharing of responsibility among Member States, which acted as separated actors and showed a lack of willingness to cooperate due to longstanding discrepancies in relation to the management of migration. Moreover, it will attempt to illustrate that, as a result of the divided response, the EU also failed to comply with its human rights obligations towards migrants under international law, leading to shameful humanitarian issues for which the EU should be deemed responsible. Finally, it will draw attention to the need for the EU to learn from the experience and act accordingly in order to address the real crisis that has emerged from this situation: a crisis in the core of the European integration project.

All of this by means of the examination of official documents of EU institutions and agencies, as well as opinions of renowned scholars in the related disciplines, by carrying out discourse analyses and of the media coverage, and by focusing on numbers and figures officially published by international organizations, notably by the United Nations High Commissioner for Refugees (hereinafter referred to as “UNHCR”) and the International Organization for Migration (hereinafter referred to as “IOM”).

4. AN OVERVIEW OF THE EU MIGRATION POLICY¹

The 1999 Treaty of Amsterdam incorporated the previously intergovernmental Schengen Agreement (1985), which created an area of free movement without internal borders between its member States, to the EU framework. The creation of an area of freedom,

¹ See Schmid-Drüner, M. (2021a). Asylum Policy. *European Parliament*. <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy> and Schmid-Drüner, M. (2021b). Immigration Policy. *European Parliament*. <https://www.europarl.europa.eu/factsheets/en/sheet/152/immigration-policy>

security and justice without internal frontiers which aims to ensure the free movement of people within the European Union, as reflected by Articles 3 (2) of the Treaty on European Union (hereinafter referred to as “TEU”) and 67 (2) of the Treaty on the Functioning of the European Union (hereinafter referred to as “TFEU”), required the adoption of a common policy on external border control, immigration and asylum.

However, before the Treaty of Lisbon entered into force in 2009, the EU migration policy was basically conditional on intergovernmental cooperation, although the co-decision procedure was set up in 2004 pursuant to a Council decision. The priority in those early years was to come up with a Common European Asylum System (hereinafter referred to as “CEAS”). The 1999 Tampere Programme established a two-phase implementation of the CEAS according to which in the short term, the EU would adopt common minimum standards that, in the long term, would lead to a common procedure and a uniform status for those granted asylum in any Member State.

During the first phase, which finished in 2004, the Dublin II Regulation² established the criteria and mechanisms for the determination of the Member State responsible for examining asylum applications, which included the creation of the European Asylum Dactyloscopy Database, also known as Eurodac, with the aim of storing and comparing fingerprint data. Moreover, common minimum standards were fixed on the reception of asylum seekers, the qualification for international protection, the nature of the protection granted and the procedure for granting and withdrawing the refugee status.

Nonetheless, the second phase, which was to be concluded in 2012 with a common asylum procedure, was interrupted by the Treaty of Lisbon. It brought the Community method for decision-making, thus generalizing the ordinary legislative procedure on migration policy, so that the Council would adopt decisions by qualified majority and the Parliament would be co-legislator. Moreover, since this treaty was adopted, the TFEU has clearly stated the EU’s powers in terms of immigration and asylum policy.

Under Article 79 TFEU, the EU is competent to establish the common conditions

² The Dublin II Regulation (2003) replaced the intergovernmental 1990 Dublin Convention and was later repealed by the Dublin III Regulation (2013). These instruments regulate the determination of the Member State responsible for the examination of an asylum application, based on the principle of the “first country of entry”, meaning the Member State the asylum seeker first enters the EU is the one responsible for the examination of its application of asylum. Together with the Eurodac, they constitute the Dublin system.

of entry and legal residence in Member States, to define the rights of third-country nationals residing legally within the EU, to combat irregular immigration through a return policy consistent with human rights, to counter smuggling and human trafficking, and to conclude agreements with third States for the readmission to their countries of origin of third-country nationals who do not fulfil or no longer fulfil the conditions for entry into, or presence or residence in, a Member State. Moreover, the EU may provide incentives and support for Member States to promote the integration of third-country nationals residing legally in their territories. In addition, by virtue of Article 78 TFEU, the EU is competent to develop a common policy on asylum, subsidiary protection and temporary protection with the aim to offer an appropriate status to third-country nationals requiring international protection and to ensure compliance with the principle of non-refoulement.

More importantly, the Lisbon Treaty emphasized the need for the principles of solidarity and fair sharing of responsibility to govern EU migration policy, and so was explicitly set up on Article 80 TFEU. Accordingly, the 2009 Stockholm Programme came up with the new European Asylum Support Office (hereinafter referred to as “EASO”), which would be in charge of promoting and ensuring effective solidarity especially with Member States facing particular pressures.

From then onwards, the second phase of the CEAS progressed through a series of legal instruments adopted at the EU level, including the Qualification Directive, which entered into force in 2012, and the Eurodac Regulation, the Dublin III Regulation, the Reception Conditions Directive, and the Asylum Procedure Directive, which came into effect in 2013. However, the 2015 refugee “crisis” served as a wake-up call to the EU in relation to the direction its migration policy was heading. Indeed, as will be discussed later in this document, Member States have always been reticent to cede power in relation to immigration, as not only economic, but also security and cultural issues and threats have been linked to this phenomenon. Mostly non-frontline and Eastern countries in the EU have been blocking legislative initiatives in the Council.

Finally on this point, it is worth mentioning the role other European agencies play in the EU migration policy. In particular, the European Border and Coast Guard Agency (hereinafter referred to as “Frontex”) is competent for the promotion, coordination, and development of European border management. In this sense, this agency carries out assessments with the aim to identify migratory patterns and to examine Member States’ capacity to face migration pressure. Furthermore, it assists frontline Member States in

border surveillance, in humanitarian emergencies, in rescue-at-sea operations, with the identification and fingerprinting of migrants in cooperation with EASO and in returns of illegal migrants. For its part, the Central European Investigation Office (hereinafter referred to as “Europol”) has an important function in the fight of terrorism, smuggling, human trafficking and other cross-border crimes in cooperation with Frontex (Frontex, n.d.).

5. THE RESPONSE TO THE 2015 MIGRATION “CRISIS”

The migration “crisis” that afflicted Europe in 2015 brought to light the inefficiencies of the European migration policy and challenged the effectiveness of the principles enshrined on Article 80 TFEU. For that reason, it is now convenient to analyze the policies adopted in response to the “crisis” and the reason why Member States failed to implement them in compliance with the principles of solidarity and fair responsibility sharing.

5.1. Policies adopted in response to the 2015 refugee “crisis”

2015 was a historical year for Europe in terms of migration. At least 1,8 million illegal border crossings were detected, more than five times the figure of the preceding year, which amounted to less than 283,000 illegal entries at Border Control Posts in Europe (Frontex, 2016, p. 63). Besides, thousands died throughout the year when trying to reach Europe across the Mediterranean, leaving us with images such as that of Aylan Kurdi, the Syrian little boy whose dead body appeared in a Turkish beach after failing to reach Greece (Spindler, 2015).

In the face of this worrying picture, the European Council was the first EU institution to draw attention to the new migratory pressures in the Mediterranean Sea. During a special meeting that took place on 23 April 2015, President Donald Tusk stated that “saving the lives of innocent people [was] the number one priority” (European Council, 2015). Besides, he highlighted the need to focus on four main areas of action: fighting smuggling and human trafficking, allocating more resources for Frontex sea operations, cooperating with countries of origin and transit, and specially reinforcing solidarity among Member States. In the same vein, just a few days later, the European Parliament issued a resolution which called on Member States to “do everything possible

to prevent further loss of life at sea” (European Parliament, 2015, para. 1), stressing the need to respect the principles of solidarity and fair sharing of responsibility.

Soon after, on 13 May, the Commission published the European Agenda on Migration, which was “a cornerstone of the Union’s actions for tackling the refugee crisis” (Bačić, 2015, p. 76). It proposed a plan for immediate action “in response to the human tragedy in the whole of the Mediterranean” (European Commission, 2015b, p. 3), which included a set of temporary measures aimed at stopping the influx of migrants and making the principles of solidarity and fair responsibility sharing effective. Moreover, it included some initiatives aiming to reach a “fair, robust and realistic” (European Commission, 2015b, p. 7) EU migration policy in the long term, which, however, have not yet materialized due to insurmountable differences between the Member States, some of which are not willing to give up more power in favor of the EU in migration matters. The reasons will be explained later.

Within the package of short-term measures to be undertaken in order to tackle the refugee “crisis”, the Commission first proposed to triple the budget for the Frontex sea operations Triton and Poseidon in an effort to save lives at the Mediterranean, and so agreed the Council and the Parliament for 2015 and 2016³. For the purpose of fighting criminal smuggling and human trafficking, the Commission encouraged actions to identify, capture and destroy smugglers’ vessels, and to improve the use of information. The result was the formal establishment by the Council of the EUNAVFOR Med⁴, an EU military operation, later renamed as Operation Sophia (Council of the European Union, 2015). Besides, it highlighted the need of strengthening cooperation with countries of origin and transit by offering them humanitarian and financial assistance in order to prevent migrants from undertaking hazardous journeys and to control irregular migration. The assistance of Lebanon, Jordan, Turkey and other States in dealing with the Syrian refugee crisis and the increase of the funding for the UNHCR and the World Food Programme⁵, as well as the EU-Turkey Joint Action Plan and Statement, were the main actions taken to this end (Bačić, 2015, p. 81).

³ European Parliament Resolution of 7 July 2015 on the Council position on Draft amending budget No 5/2015 of the European Union for the financial year 2015 – Responding to migratory pressures (09768/2015 – C8-0163/2015 – 2015/2121 (BUD)).

⁴ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED).

⁵ European Council Meeting (25 and 26 June 2015) – Conclusions EUCO 22/15.

Furthermore, in an effort to alleviate the pressure posed on frontline States that received the bulk of migrants and with the aim of ensuring the principles of solidarity and fair sharing of responsibility among Member States, the Commission suggested using three types of mechanisms: the ‘hotspot’ approach, the relocation system and the resettlement mechanism.

First, the *‘hotspot’ approach* was conceived as a coordinated work from the European Asylum Support Office (hereinafter referred to as “EASO”), Frontex and Europol to help frontline States deemed hotspot areas “to swiftly identify, register and fingerprint incoming migrants” (European Commission, 2015b, p. 6). Although it was thought to be applied to Greece, Italy, Hungary and Croatia, finally it was only rolled out in Italy and Greece⁶, while Hungary, Croatia and Slovenia received other forms of support from Frontex (Bačić, 2015, p. 80).

Second, a *relocation system* based on Article 78 (3) TFEU should be activated as an emergency measure consisting of a “temporary distribution scheme for persons in clear need of international protection” (European Commission, 2015b, p. 4). According to this system, any person that arrives at a Member State facing a mass influx of migrants and who applies for such protection would be transferred to another Member State, which will be responsible for the examination of the application. Thus, it functions as an exception to the Dublin system, which stipulates that the country of first entry is responsible for the examination of asylum applications (Bačić, 2015, p. 86). Moreover, the proportion of asylum seekers that each State shall receive would depend on a “redistribution key based on criteria such as GDP, size of population, unemployment rate and past numbers of asylum seekers and of resettled refugees” (European Commission, 2015b, p. 4).

The Commission issued a first proposal for the relocation of 40,000 asylum seekers from Italy and Greece on 27 May 2015⁷, and on 9 September it came up with a second proposal to relocate another 120,000 asylum seekers from Italy, Greece and

⁶ European Commission “Managing the refugees crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration” (Communication) COM/2015/0490 final – Annex II: Migration Management Support Teams working in ‘hotspot’ areas.

⁷ European Commission “Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece” COM/2015/0286 final – 2015/125 (NLE).

Hungary⁸. However, the requirement of a consensus for the approval of the first proposal delayed the Council Decision until 14 September⁹, while the second one was adopted by a qualified majority vote on 22 September¹⁰, just a few days after the proposal. It should be noted that Hungary voted against the relocation even for its own benefit, which is why its numbers were designated for relocations to Italy and Greece proportionally (Bačić, 2015, p. 88).

Finally, for the purpose of showing solidarity with third countries and following the recommendations of the UNHCR, the Commission suggested a *resettlement scheme* of 20,000 places, which would be covered by all Member States in accordance with a distribution key based on criteria “such as GDP, size of population, unemployment rate and past numbers of asylum seekers and of resettled refugees, and [taking account] of the efforts already made on a voluntary basis” (European Commission, 2015b, p. 5). Consequently, on 25 June 2015 the European Council agreed¹¹ on this measure, which was further detailed on a meeting on July¹², and 32 EU Member States finally decided to offer 22,500 places for resettlement.

In addition to the above, it is worth mentioning that the Commission announced two important legislative proposals for making the relocation and resettlement mechanisms permanent, mandatory and of automatic trigger in case of a mass influx of migrants. Indeed, the refugee crisis and the need to adopt some of the aforementioned measures uncovered some inefficiencies of the EU migration policy, namely of the Dublin system and its ‘first country of entry’ principle. As pointed out in the European Agenda on Migration, as a result of the application of the Dublin system, “in 2014, five Member States dealt with 72% of all asylum applications EU-wide” (European Commission, 2015b, p. 13), which does not seem to comply with the principle of fair sharing of responsibility neither to fit within the concept of the Area of Freedom, Security and

⁸ European Commission “Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary” COM/2015/0451 final – 2015/0209 (NLE).

⁹ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (L239/146).

¹⁰ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (L248/80).

¹¹ European Council Meeting (25 and 26 June 2015) – Conclusions EUCO 22/15.

¹² Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20,000 persons in clear need of international protection, 22 July 2015 (OR. en) 11130/15.

Justice. Thus, in order to achieve a fairer distribution of asylum seekers, the Commission also proposed an evaluation and possible revision of the Dublin system.

Nevertheless, despite EU policy efforts to come up with a solution to the increasing migratory pressure that Europe experienced in 2015 based on solidarity and fair sharing of responsibility, the reality shows not only that solidarity and a fair distribution of responsibility in terms of migration was not achieved, but also that even polarization among Member States increased. As will be discussed in the next point, this could be considered an outcome of both inherent inefficiencies of EU migration and asylum policy, and the different national interests and positions in relation to migration.

5.2. Policy versus practice: the implementation of the policies adopted in response to the 2015 refugee “crisis”

Based on the 1951 Geneva Convention on Refugees and its protocols, and on other international human rights instruments to which it is part, the EU has a responsibility to protect those in need. Moreover, according to Article 80 TFEU, policies on border checks, asylum and immigration, as well as their implementation, shall be governed by the principles of solidarity and fair responsibility sharing among Member States. However, the already existent deficiencies of the CEAS could not be overcome by simply patching up them with the temporary measures proposed by the European Agenda on Migration, which were referred to as policy “band aids” (Eylemer & Söylemez, 2020, p. 336).

These measures were at least partially successful. Indeed, the main priority to save lives at the Mediterranean was achieved. Amnesty International (2015) showed a reduction of the death rate from 6.2% to 0.23% in a few months as a result of the naval operations deployed by the EU. Furthermore, the EU-Turkey Statement helped to reduce irregular migration from Turkey to Greece by 97%, and within the framework of the agreement more than 20,000 Syrians in need of international protection were resettled in EU Member States (European Commission, 2019). Nonetheless, although irregular border crossings in the whole of the EU also experienced a decrease of 72% in 2016 in comparison to those of 2015 (Frontex, 2017, p. 47), deaths in the Mediterranean increased on average in 2016 (Missing Migrants Project, 2022).

The most important failure, however, was that of the mechanisms to ensure compliance with solidarity and fair sharing of responsibility. Before the “crisis”, within

the CEAS, the Dublin system, which determines the State responsible for examining asylum applications based on the principle of ‘first country of entry’, was already inherently contrary to the fair burden sharing amongst EU Member States. Moreover, as Lendaro (2016) puts it, it is an “example of the discretionary power of European States to open their borders to some and close them to others [...], randomly and in violation of international law” (p. 151). In fact, both the European Court of Human Rights (hereinafter referred to as “ECtHR”) and the Court of Justice of the EU (hereinafter referred to as “CJEU”) have ruled several times that the deportation of asylum seekers from non-frontline countries, such as Belgium or Austria, to their first country of entry, such as Greece, Italy or Hungary, in accordance with the Dublin system violates human rights, namely the prohibition of a degrading treatment and the right to an effective remedy¹³.

For their part, the temporary solutions suggested by the Commission in the face of the 2015 “crisis” were nowhere near to the solidarity and fair burden sharing required by the situation. Remember that these initiatives aimed to reach a quick response to the crisis, without a vocation for permanence and without the aim of homogenizing differences between the Member States that were reluctant to empower EU in migration competences.

Within the package of short-term measures to be undertaken in order to tackle the refugee “crisis”, With regard to the ‘hotspot’ approach, although the processing capacity of Italian and Greek authorities improved thanks to EASO, Frontex and Europol assistance, pending cases and processing time increased throughout the years at least until 2018, further overloading these countries’ asylum systems (European Court of Auditors, 2019, p. 65).

Concerning the resettlement scheme, even though the quantitative target -only 22,500 places- was very low if taking into account the millions of people in clear need of international protection, it was not reached, given that just 18,000 people had been resettled by EU Member States from third countries in 2017.

Finally, in relation to the relocation mechanism put in place as an emergency temporary measure, it did not achieve its objectives. From the initial targets of 40,000 and 120,000 relocations, Member States finally legally committed to relocate only 98,256

¹³ For the ECHR, see *M.S.S. v. Belgium and Greece*, of 21 January 2011 (application no. 30696/09) or *Mohammed v. Austria*, of 6 June 2013 (application no. 2283/12). For the CJEU, see Cases C-411/10 and C-493/10, of 21 December 2011.

migrants, as 7,744 places were never allocated to any Member State, and 54,000 were made available for the resettlement of Syrian refugees from Turkey after the EU-Turkey agreement. Besides, in order to be eligible for relocation, migrants needed to have a nationality with an average EU asylum recognition rate of at least 75%. As a result, only 41,767 migrants of all of the arrived at Italy and Greece from 2015 to 2017 were deemed eligible, from whom 34,705 were finally relocated to 22 Member States, Liechtenstein, Norway and Switzerland, while Denmark and the United Kingdom had exercised their opt-out rights, and Hungary and Poland did not relocate any migrants (European Court of Auditors, 2019, p. 20-22).

The failure to implement the relocation scheme is of particular concern due to the implications it has in relation to solidarity and fair sharing of responsibility among Member States. The initial target proposals for the relocation of 160,000 migrants were insignificant given the fact that between 2015 and 2017 2,5 million irregular border crossings took place in the EU (Frontex, 2017, p. 43). Furthermore, the total asylum seekers actually relocated only amounted to 4% of all asylum seekers in Italy and 22% of all migrants arrived at Greece (European Court of Auditors, 2019, p. 22), which leaves the bulk of the burden on these countries.

In view of the above, the EU did not succeed in developing a coordinated action in accordance with the principles of solidarity and shared responsibility. Such a common response was urged by the European Agenda on Migration in order for the EU to uphold its international commitments and values while securing its borders and creating the right conditions for its prosperity and societal cohesion (European Commission, 2015b, p. 2). The outcome of the measures set up there, however, was polarization among Member States, as they meant “the EU stepped aside as the main actor of refugee crisis management, creating the perfect ground for Member States to invoke their own political particularities and national interests” (Bačić, 2015, p. 107).

As a consequence, some have emphasized the need to promote “solidarity not as a mere moral commitment but as a principle with legal implications for states” (Karageorgiou, 2016, p. 210). In line with this idea, as mentioned before, the Commission proposed the creation of permanent relocation and resettlement systems, as well as a set of legislative initiatives aimed to come up with a reform of the flawed CEAS based on compliance with solidarity and responsibility sharing. However, none of these changes have yet been successfully adopted (Schmid-Drüner, 2021a), meaning differences among

Member States on migration matters still persist.

In this sense, the so-called migration “crisis” exposed major and interconnected challenges in the core of the EU. First, a lack of convergence of interests and values, and second, a crisis of the principle of solidarity (de Lucas, 2015). Indeed, prevailing a classical realist stance, Member States “acted as unitary actors instead of members of a supranational whole facing a politically devastating crisis in common” (Eylemer & Söylemez, 2020, p. 336). Based on political interests and invoking national security, some of them either blocked their borders, refused the relocation of migrants or they agreed to participate in those “solidarity” mechanisms but taking the minimum risks possible, as will be addressed in the next section.

This internal division and lack of willingness to cooperate among Member States prevented the EU from effectively addressing the situation and from complying with its duty to protect those in need (Havlová & Tamchynová, 2016, p. 100), and will still make it impossible for the EU to tackle future migration impasses and to succeed in the development of a true common European migration and asylum policy (Mészáros, 2016, p. 116). More importantly, it threatens the European project itself by violating some of its fundamental values, such as human rights protection, and by precluding further integration.

6. NATIONALISM AND SECURITIZATION OF MIGRATION IN THE EU

Polarization among Member States was both the cause and a consequence of the failed EU’s response to the 2015 migration “crisis”. The lack of consensus prevented the EU to come up with an efficient strategy as some Member States were unwilling to share responsibilities and showed little solidarity with others. Indeed, the measures adopted at an EU level were of little impact on the alleviation of the burden borne by frontline countries. As a result, each State implemented different policies regarding their own national interests, ranging from full welcoming to building new fences, revealing “profound discrepancies in internalizing core European values and a different degree of attachment to the European project and idea” (Postelnicescu, 2016, p. 207).

Today, these issues continue to be the main obstacles to advance in a common migration policy and in the consolidation of the EU competences in this field. Even though the crisis in Ukraine has made some Member States rethink some of these

impediments and the EU has quickly reacted showing unity and full solidarity both at a civilian and at an official level, this reconfiguration of the European policy and approach to migration in the case of the Russian invasion is also linked to an internal security issue in the EU in the face of a common threat, and not only to the defense of common democratic values in Europe (International Crisis Group, 2022).

6.1. Polarization among Member States

During the 1950s and the 1960s, European States in general showed a welcoming attitude towards immigration, even failing to recall the distinction between “economic migrants” and “refugees”, as the economic boom that followed World War II required a larger workforce. However, the oil crisis of the 1970s and the consequent economic recession ushered a new eagerness to control migration flows to the continent (Behrman, 2018, p. 116). Similarly, the 2015 migration “crisis” came at a time when most EU Member States were still recovering from the 2008 economic crisis which seriously affected the Eurozone. Ever since, the phenomenon of immigration has been regarded from an economic perspective, so that Member States have been increasingly fearful of the financial cost the integration of migrants may imply and forgetting about the long-term gains they can bring, such as “skills, entrepreneurial expertise and capacities that may help address the labour market and income gaps that many EU states face as their populations and age and birth rates decline” (Metcalf-Hough, 2015, p. 4).

In these contexts, the configuration of the EU migration policy has been a relevant factor in the polarization of Member States, since the Dublin system of asylum imposes an unequal burden-sharing in relation to migration. In this sense, it has always benefitted Northern countries to the detriment of frontline ones, which have to cope with the examination of the asylum application of each migrant that first enters in the EU through their territory. As a consequence, Southern States have long been trying to change this system, while Northern countries have been reticent. Indeed, although some “solidarity” mechanisms have been put in place, such as financial transfers and technical assistance delivered by Frontex and the EASO to these frontline States, they have not been effective at all for addressing the underlying inequity of the Dublin system (Hampshire, 2015, p. 9). Even worse, when Southern Member States have faced increased migratory pressure, redistribution mechanisms have met with reluctance from Northern Europe as they tend to perceive this issue “as a primarily southern concern” (Hammond, 2015, p. 8).

Moreover, even though European integration in this area has developed over the years, giving up on the intergovernmental system to make room for the Community method and extending EU's competences, the migration policy has always kept a substantial national component. In fact, asylum laws differ from State to State, meaning there are "significant discrepancies between standards of protection and assistance" (Metcalf-Hough, 2015, p. 4) inside the EU, which further complicates an agreement on a real common asylum system.

Notwithstanding the traditional North-South split, in the face of the migration "crisis", the most important division within the EU was framed between Western and Eastern EU countries (Krastev, 2017) or, in other words, between "old" and "new" EU Member States (Havlová & Tamchynová, 2016). While the former, led by Germany, tended to adopt a welcoming and openness stance towards migrants and refugees, the latter, namely the Visegrad countries -Hungary, Poland, Slovakia and Czech Republic-, leaned toward stricter border and immigration controls.

Indeed, with the aim of protecting migrants from the consequences of the collapse of the asylum systems of the frontline Member States, Germany decided to stop implementing the Dublin system, thus allowing Syrian refugees to apply for asylum there instead of in the country of first entry (Havlová & Tamchynová, 2016, p. 90). Moreover, Chancellor Angela Merkel adopted a welcoming policy, opening the doors of the country to immigrants and promoting their fast integration. This *Willkommenskultur* was supported by the idea, as expressed by Merkel, that "countries have always benefited from successful immigration, both economically and socially" (Agence France-Presse, 2015). Even German citizens on their own adhered to this new public culture, as evidenced by the near 10% of the population that "took part in various volunteer initiatives aimed at helping the asylum seekers" (Krastev, 2017, p. 293).

On the contrary, Eastern EU Member States, specially the Visegrad countries, disapproved the implementation of the relocation and resettlement schemes. As mentioned before, even against their own benefit, Poland and Hungary, which are frontline countries, refused the relocation of any migrants (Havlová & Tamchynová, 2016, p. 90). Others infringed the agreed systems by limiting the number of migrants welcomed to their territories and by establishing border controls, thus suspending the Schengen agreement, as was the case of Austria (Schengenvisainfo News, 2016), Denmark and Sweden (Crouch, 2016).

The reasons why these countries are so reluctant to welcome migrants, even those in need of international protection, are not at all clear. Krastev (2017) points out to the historical experiences of these Eastern European countries, which emerged in the nineteenth century following the disintegration of old empires and were afterwards subjects of ethnic cleansing, as they were built on “the idea that citizenship means common descent and shared culture” (p. 294). Moreover, he claims the importance of the Communist legacy, which made them mistrustful of public institutions, meaning that “[f]aced with an influx of migrants and haunted by economic insecurity, many [...] feel betrayed in their hope that joining the European Union would mean the beginning of prosperity and life without crises” (p. 294). Finally, the author talks about a “demographic panic” which is shared by these countries as they fear “ethnic disappearance” or at least the “destruction of their Christian identity” (p. 294).

Havlová & Tamchynová (2016) also highlight that “the unemployment rate and the readiness of industry to educate and accept unskilled workers” (p. 91), as well as the cultural difference, might influence these countries’ stance. Indeed, most of these countries sense they are “too poor to offer substantial support to immigrants” (Lyman, 2015). In addition, citizens of these countries tend to adopt rejecting stances too and even show indifference towards the tragedy of the refugees and asylum seekers (Krastev, 2017, p. 293), surely in part also because the arrival of migrants willing to accept cheap labor provokes general reduction of wages and job security (Roberts *et al.*, 2016, p. 3).

Nevertheless, divisions did not only arise between Member States, but also within countries and among the population. While volunteers and NGOs showed their support for refugees and asylum seekers regardless of their government official position (Havlová & Tamchynová, 2016, p. 94), a surge of nationalist, anti-immigration, anti-liberal and anti-European parties was experienced all along the EU (Postelnicescu, 2016).

6.2. Securitization of migration

The adoption of restrictive measures on migration and the rise of the political support to far-right nationalist, anti-immigration and anti-liberal parties, however, did not appear overnight. They had to be legitimized, and it was achieved through a process of securitization of migration.

Within the framework of the constructivist theory, the Copenhagen School of

Security Studies has defined the process of securitization as “presenting an issue as an existential threat to the “referent object”, i.e. the state, society, etc., so as to justify the use of extraordinary measures including the use of force when necessary to handle it” (Buzan *et al.*, 1998, p. 21). In other words, it is a

discursive process by means of which an actor (1) claims that a referent object is existentially threatened, (2) demands the right to take extraordinary countermeasures to deal with the threat, and (3) convinces an audience that the rule-breaking behavior to counter the threat is justified (van Munster, 2012).

In the same vein, “political discourses frame the issue of migration and influence how and when it enters into the public consciousness” and “they have an impact on both the general public’s perception of migration and the elaborated policies by the decision-makers” (Mészáros, 2016, p. 116). According to the theory, the securitization of migration would mean those discourses and the media portraying security issues in connection with migration, which “then has further implications –such as the reluctance of some states to accept the refugees” (Havlová & Tamchynová, 2016, p. 92).

According to Huysmans (2000), the “Europeanization of migration policy” directly and indirectly contributed to the securitization of migration. As this policy area was institutionalized in the 1980s, it was done within the framework of Schengen and the protection of the internal security. Indeed, with the elimination of internal borders, a “security continuum” was constructed, “connecting border control, terrorism, international crime and migration” (p. 760). Migration was thus portrayed as a danger to the security of society which required restrictive measures. Moreover, migrants have long been described as “cultural aliens” who “challenge the desire for coinciding cultural and political frontiers” (p. 762) underpinned by nationalism. As a result, border controls have been reflecting a differentiation of individuals on grounds of cultural belonging. Finally, this author pointed out the surge of an attitude of “welfare chauvinism, or the privileging of national citizens in the distribution of social goods” (p. 767) and the consequent delegitimization of immigrants to access the provisions of the welfare state. In fact, granting them such access has been widely perceived as a “magnet pulling migrants into the EU” (p. 767), thus leading to policies curtailing immigrants’ social rights with the aim of limiting the influx.

In the same vein, when having a look at political discourses and the media

coverage in relation to the 2015 migration “crisis”, it can be concluded that there was a general trend towards framing immigration as a security, economic or even cultural threat.

The most outstanding anti-immigration rhetoric and the most successful act of securitization of migration in Europe was that of Hungary, led by the right-wing Prime Minister Viktor Orbán. Migrants were framed in this country as economic, security and cultural threats. In this sense, Antal Rogán, an important Minister to his government, stated that they would “take the jobs of the people” and that Hungarians would “have to pay for their stay” (Mészáros, 2016, p. 108-109). Moreover, in a speech delivered on Hungary National Day in 2016 Orbán himself explicitly said that “immigration [brought] crime and terror” and that “people coming from different civilizations [represented] a threat to our lifestyle, culture, customs and Christian traditions”. Furthermore, he referred to the migration influx as a “colonization” whose purpose was “to reshape Europe’s religious and cultural pattern, to rebuild its ethnic pillar” (Cabinet Office of the Prime Minister, 2016).

In addition to political discourses, the Hungarian government used nonverbal forms of securitization. Indeed, it carried out a “National consultation on migration and terrorism” asking citizens whether they considered the EU’s immigration policy a failure and if they would agree with stricter regulations, and it launched an anti-immigration billboard campaign which criminalized migrants using an aggressive language. As a result, Hungary was legitimized by its own citizens to adopt measures that could be categorized as draconian, such as the building of temporary fences at the borders with Serbia and Croatia, the strengthening of the police or the labelling as criminal offences of the illegal crossings of the border or the damages to the fences (Mészáros, 2016, p. 110).

Similarly, the Polish government closed its borders to the arrival of Muslim migrants, even refugees and asylum seekers, and the media in the country frequently portrayed Muslim immigrants “invaders, rapists and murderers” (Narkowicz, 2018, p. 369). Its then Prime Minister Ewa Kopacz, stated that “Poland, “as a Christian country”, has a special responsibility to protect Christians” (Rettman, 2015). In a softer way, Slovakia also rejected Muslim migrants justifying its decision by the assertion that the country had such a Muslim community that it did not even had mosques, and Ireland as well as the Czech Republic drew attention to the difficulties Muslims migrants would face to integrate in the country (Rettman, 2015).

In the process of the securitization of migration in Europe, the European Parliament was also an important actor. Mostly right-wing members tried to “persuade the audience or public opinion to control the public discourse and mind in order to construct an anti-immigration Europe” (Güler, 2019, p. 352). Ranging from moderate to hostile discourses, they categorized migrants as security (directly or indirectly relating them with intolerance or terrorism or referring to an invasion and a problem that needed to be addressed), economic (differentiating between “genuine” refugees and economic migrants, referred to as “fake” refugees who did not flee from war or political persecution) and cultural (calling upon the protection of European Christianity, identity and values) threats (Güler, 2019).

Of particular concern is the construction of migrants -namely, Muslim ones- as terrorists and invaders that threaten the European Christianity and identity. Appealing to the masses and to emotions (Postelnicescu, 2016, p. 206), Islamophobic discourses became mainstream, used either by right-wing or centrist parties as a tool for mobilizing people in order to win their support through “[s]tirring hatred and dividing people against an imagined threat” (Hafez, 2015, p. 21). In this sense, the preference for Christians played an important role in discourses, as seen namely in the case of Eastern European countries (Hafez, 2015). Moreover, according to Nail (2016), “Europe’s anti-immigration rhetoric equates migrants to terrorists through the language of barbarism and the threat to security” (p. 160), especially after the terrorist attacks in Paris and in Brussels (Postelnicescu, 2016, p. 207).

Some examples may help to illustrate this tendency. For instance, right-wing political activist Pamela Geller wrote that Muslim “refugees” came from “the jihad hotspots of Syria, Afghanistan and Iraq” and had “grown increasingly violent” (Geller, 2015). Similarly, member of the European Parliament representing the right-wing group EFDD Gerard Batten alleged Islam had always “been propagated by force and violence”, therefore insisting on ending “any more mass immigration from Islamic countries” (Batten, 2015). Besides, right-wing French candidate for Presidency Marine Le Pen referred to the arrival of immigrants as “madness” and said the migratory influx would “be like the barbarian invasion of the 4th century” (Kent, 2015), and even the President of the European council Donald Tusk referred to it as a “campaign of hybrid warfare”, meaning neighbor countries would be using migration as a weapon to obtain concessions (Holehouse, 2015).

6.3. Consequences of the securitization of migration in Europe

What can be derived from this process of securitization of migration is the surge of an “ideology of fear”, as pointed out by Postelnicescu (2016), which is put into practice in the form of a hate speech that evokes fear from a real or imagined enemy that poses a threat on security. It was a “return to instinctive national sentiments” (p. 204), a rise of the “politics of fear” (p. 203), the adulation of hate as “a unifying factor” of the masses (p. 206). The hate towards migrants, the “others”, who threaten Europe and its Member States, the “self”, and which may not be so different from “Hitler’s anti-Jewish hate” (Postelnicescu, 2016, p. 206).

Migration has been framed as what Huysmans (2000) calls “meta-issue, that is, a phenomenon that can be referred to as the cause of many problems” (p. 761), namely security, economic and cultural problems. In this sense, “the openness and humanity that stood as core European values [were strained] in the new political climate dominated by fear and lack of security” (Postelnicescu, 2016, p. 207), which paved the way for the rise of nationalistic, anti-immigration, anti-liberal, anti-European and extreme right parties and movements. These surged to the detriment of human rights, democracy, solidarity, cooperation and the European project itself.

Indeed, in the name of security, many Member States “failed to implement their obligations under international law to protect refugees” (Roberts *et al.*, 2016, p. 2). Even worse, migrants that have been able to secure their stay in the EU were “subject to a permanent structural inequality – the lack of voting and labour rights, possible deportation, and other deprivations” (Nail, 2016, p. 159). Moreover, the claim for safety and security led to the advance of “populist demagogues” who promised protection, weakening democracy and setting the ground for tyranny (Postelnicescu, 2016, p. 206).

Furthermore, according to Brosius *et al.* (2019), “[a]ttitudes towards immigration are among the core predictors of attitudes toward the European Union” (p. 447). Thus, the fact that an anti-immigration rhetoric prevailed during the 2015 “crisis” leads to the conclusion that trust in the EU decreased among the EU population. In fact, Krastev (2017), acknowledging that the migration “crisis” was a turning point in attitudes towards the EU, stated that “if previously central Europeans’ mistrust towards their own corrupt elites and governments was a source of trust in the EU, after the refugee crisis publics in the region are more likely to trust their own governments [...] rather than Brussels” (p.

296).

All of the above shows that Member States privileged “their interests at the expense of a genuine commitment to solidarity” (Eyelemer & Söylemez, 2020, p. 320). The proposals of a “two-speeds” or “a la carte” Europe (Postelnicescu, 2016, p. 207) in order for some Member States to prevent further cooperation in migration and other matters illustrate this idea. As a consequence, as Krastev (2017) perfectly expressed, “the assumption that the convergence fueled by integration is irreversible” (p. 292) has been defeated. On the contrary, enhanced by the migration “crisis”, Europe has been dealing with the risk of disintegration, bringing to light the real crisis facing Europe: a crisis of the whole European project (de Lucas, 2015).

Simply put, the EU was “at a crossroad, divided between the need to remain faithful to its core democratic values and freedoms [...] and the rise of nationalistic leaders and parties that require less Europe and more power back to the nation states” (Postelnicescu, 2016, p. 203). The advocates of the latter appear to have been predominant at least during the upsurge of the migration “crisis”. However, they seem to have forgotten that “within living memory, their own citizens were fleeing oppression” (Roberts et al., 2016, p. 2); that the same migrants they refer to as “potential terrorists” are most of the times fleeing the same terror they say to be afraid of; and that fear, hate, xenophobia and criminalization against them could precisely be one of the causes of the increase of the risk of radicalization (Vega Pascual, 2015, p. 75).

7. HUMANITARIAN CONSEQUENCES

The EU, as a “political union of democracies which protects human rights and presents itself as a beacon of human rights on the global scale” (Barbulescu, 2017, p. 301), must comply with human rights obligations under international law. In particular, it is compelled to defend specific rights of migrants, refugees and asylum seekers by several international human rights instruments, namely the European Convention on Human Rights (1950), the UN Convention on the Status of Refugees (1951) -also known as the Geneva Convention-, and its 1967 Protocol, the UN Convention on the Rights of the Child (1989) and the EU Charter of Fundamental Rights (2007). However, the so-called migration “crisis” jeopardized EU’s compliance with its commitment to human rights.

It should be noted, though, that, despite the fact that Member States are explicitly

bound by international human rights law as they are part to international instruments on human rights and such commitment is even required to enter the EU under Article 2 TEU, EU's commitment to human rights has given rise to a heated debate. It is discussed whether it has a mere negative obligation to not violate them, i.e. to respect them, during the course of its actions, or rather it is also obliged to fulfil them, which would require a positive action (Ahmed & Butler, 2006; Blake, 2010; Gatto, 2011; Bengoetxea, 2012; Greer *et al.*, 2018). As Ahmed & Butler (2006) explain, the latter option implies the assumption that the EU, as an international governmental organization, is bound by international law, namely by customary international law, by human rights treaties to which it may be part, indirectly by pre-existent human rights obligations of Member States, and by succession to international human rights obligations incurred by Member States after their accession to the EU.

As the EU has accessed the ECHR, which became a legal obligation under the Treaty of Lisbon, there is no doubt that it committed itself to compliance with this instrument, supervised by the ECtHR (European Court of Human Rights, n.d.), including to its specific provisions on migrants' human rights. However, the discussion still lives in relation to international human rights obligations incurred by Member States, and particularly with regards to economic and social rights, which especially affect migrants.

Despite this clarification, by securitizing migration and adopting measures aimed at controlling the influx of migrants to their territories, EU Member States failed to “fully implement human rights standards and norms avoiding their obligations to refugee protection” (Meçe, 2020, p.). Indeed, they disregarded the principle of the rule of law, including human rights duties, in the face of what they perceived as a threat to their security, their economy, their identity and their culture. As Panebianco & Fontana (2018) put it, when the increasing arrival of migrants to Europe is “evaluated from the point of view of states' own security – rather than from the point of view of those seeking and needing support – the *raison d'être* behind the R2P refugees is hampered” (p. 10).

According to Behrman (2018), it has been over the last 100 years that the phenomenon of immigration “has been framed as a problem of law, of the need to extend further or renew law as a means by which the refugee mass can be controlled and resisted” (p. 109). In other words, it has been generally portrayed as a threat to the host countries, rather than a humanitarian threat to those people in seek of protection.

For instance, the Geneva Convention of 1951 set up a very narrow definition of refugee, which included those fleeing events taking place in Europe before 1951 and facing direct persecution for a concrete set of reasons, leading some to state that the process of negotiations seemed “a conference for the protection of helpless sovereign states against the wicked refugee” (General Assembly, 1951). Moreover, even though the 1967 Protocol extended protection to refugees at a universal level, it “was not so much a universal humanitarian approach *towards* the refugee, but rather a universal claim of the refugee law regime *over* the refugee” (Behrman, 2018, p. 115).

In addition, the EU, based on international refugee law, has long made a distinction between voluntary and forced forms of migration, only granting protection and *non-refoulement* to those falling within the latter concept. Accordingly, asylum applications are assessed on a case-by-case basis and those who fail to meet the requirements for international protection are returned to their country of origin. However, the 2015 “crisis” showed an increase of irregular migrants travelling to Europe for varied reasons, such as not only war and persecution, but also poverty, famine, draughts, adverse weather conditions or lack of resources. This phenomenon has been referred to as “mixed migration”, although this term was traditionally used to designate economic migrants, asylum-seekers and refugees (Attinà, 2016, p. 16).

Mixed migration has complicated the distinction between voluntary and forced forms of migrations, raising the question that “[a]t what point, exactly, are conditions deplorable enough that emigration is no longer a voluntary option but a necessity?” (Hammond, 2015, p. 4). This issue is of particular relevance, as the failure to recognize the condition of a person who is in need of international protection -regardless of the reason-, which tends to be common in an environment of restrictive and control-oriented asylum policies, could lead to regrettable humanitarian consequences. In fact, as Attinà (2016) points out:

the more the natural and other causes of the migrant flows across the borders of Europe are not the object of shared recognition by the European population and leaders, the more the policy-makers face serious problems in deciding how to manage the crisis with appropriate collective means (p. 16).

Similarly, the different measures adopted by the EU in response to the increasing arrival of migrants to Europe seemed to be “completely focused on controlling numbers of

migrants / asylum seekers reaching Europe, whatever the financial cost and the cost in terms of human rights” (Webber, 2017, p. 47-48). That is why values upheld by the EU, such as human dignity, human rights, solidarity and the rule of law were said to be “seriously wanting” during the migration “crisis” (Borg-Barthet & Lyons, 2016, p. 234). Even worse, Gatta (2019) has pointed out that this “crisis” accelerated what he referred to as a phenomenon of “rule of law backsliding”, which would have been reflected in a series of controversial measures and practices undertaken by Member States in different areas since 2010 (p. 100). He mentions the examples of Hungary and Poland, where issues have been raised in relation to the electoral system and the independence of the judiciary; Romania and Bulgaria, which have faced increasing cases of corruption and conflicts of interest; and Malta and Italy, where freedom of expression has been threaten (Gatta, 2019, p. 101).

In this sense, the EU has further breached the principle of the rule of law through the “securitization” and “externalization” of borders strategies used to face the migration “crisis” (Gatta, 2019, p. 99). In particular, different measures have been adopted by Member States to the detriment of the rule of law from both a formal and a substantive point of view. Indeed, most have lacked “respect of legal and procedural requirements, transparency, accountability to the law, democratic control and participation in the decision-making process, legal certainty [and] avoidance of arbitrariness” (Gatta, 2019, p. 102). Of particular concern, however, has been the manifest violation of “fundamental rights of the individual, such as those to life and safety, personal liberty [and] protection against torture and inhuman and degrading treatment” (Gatta, 2019, p. 103).

In short, even though the EU must ensure the protection of human rights under the ECHR, it has failed to do so during the migration “crisis”. As argued by Grigonis (2016), “absence of comprehensive EU-level migrant policy restricted the EU’s ability to prevent the crisis and to mitigate its consequences as well as human rights violations” (p. 93). Moreover, the protection of human rights has been further complicated due to the fact that the protection system is oriented to an *ex post* defense, which comes when the rights have already been violated. Not to mention that this system has been “hardly accessible for an asylum seeker” (Grigonis, 2016, p. 96).

Examples of human rights violations and humanitarian consequences derived from “securitization” and “externalization” of borders strategies are presented below.

7.1. Human rights and the securitization of borders

Even if once immigrants were openly welcomed and cheered to come to Europe, namely during the economic boom that took place after World War II, the arrival over the last few decades, coinciding with the 2008 economic crisis, of poor migrants and from other cultures gave rise to the so-called “Fortress Europe” policy, as mentioned before. This broad policy put migrants on the difficult situation “between danger at home and a legal barrier at the point of arrival” (Behrman, 2018, p. 110). Indeed, the large number of persons that leave their country of origin is the response of individuals and groups to the crisis in their society and State that has been triggered by domestic economic conditions linked to the globalization. Since their governments are unable, or unwilling, to respond to the breakdown of the life-sustaining systems of the country, people choose to escape the crisis and leave for a foreign country. At the same time, the European citizens of the countries of destination perceive the immigrants as a threat to their values and life-sustaining systems and oppose to their admission. As this occurs, a crisis erupts in both origin and destination countries.

The set of measures put in place by Member States, together with the EU immigration and asylum policy, made it “virtually impossible” for migrants to reach Europe in safe and legal ways (Costello, 2016, p. 12), thus encouraging them to undertake more precarious and perilous journeys “through the Mediterranean on dingy boats, and in the back of lorries” (Behrman, 2018, p. 118). Indeed, news covering the death of over 600 migrants whose boat drowned in the Mediterranean on 20 April 2015, or of 71 migrants in a refrigeration truck which had been abandoned on 28 August 2015, shocked the whole Europe (Spindler, 2015), and evidenced that something was wrong with the EU migration policy. Besides, these irregular journeys are often offered by smugglers who take advantage of the vulnerability of migrants and put them at a high risk of exploitation. As Costello (2016) puts it, “the refugees [...] often deplete their life savings, sell all their assets, or leave behind family members in deep and dangerous debt to smugglers”, and even worse, “[w]hen money runs out, those travelling, including the many unaccompanied children and young people, have little to sell but themselves” (p. 12).

For its part, the EU failed to properly address these issues. For instance, the increased funding of Frontex sea operations, although it helped to save lives at the Mediterranean, was limited both temporarily and geographically. Therefore, this measure was restricted to saving lives in a concrete period of time and without including territories

“far from the central Mediterranean or the Libyan shore where most deaths occur” (Barbulescu, 2017, p. 303). Furthermore, the military interventions launched to fight smuggling only contributed to the framing of “*civilian* vessels carrying other civilians” as the “enemy” and to the elimination of the only routes available to migrants to reach Europe (Barbulescu, 2017, p. 304).

However, the suffering and the violation of the human rights of the migrants do not end at their arrival to European territory. On the contrary, once they cross the external borders of the EU, they are accommodated on refugee camps until a proper solution is found for them. There they may face what Meçe (2020) has referred to as “dehumanizing practices” such as overcrowding and the lack of appropriate infrastructure to satisfy their needs. Moreover, they may have to deal with “gendered and age dimensions of vulnerability”, as especially young women, girls and unaccompanied minors are exposed to sexual abuse, lack of educational opportunities, poor financial means, sex for survival, petty crimes or drug smuggling, among other things (p. 182). Not to mention that those places are breeding grounds for human trafficking and other forms of exploitation, crime and unlawful activities (p. 182-183), which are further exacerbated by “corruption, neglect and complicity of authorities” (p. 178).

Apart from that, Gatta (2019) highlighted the manifest violation of the EU Member States international human rights obligations towards migrants derived from illegal practices “such as the collective expulsions of aliens, push-back and *refoulement* operations, [and] unlawful and prolonged detention” (p. 113).

The international principle of *non-refoulement*, linchpin of and fundamental guarantee for the protection of migrants with an absolute character, forbids States to expel, extradite or return migrants to another State where they may face substantial risks for their personal safety or life (Gatta, 2019, p. 115). In contrast to this principle, several Member States rejected migrants arriving at their territory. In this sense, the ECtHR found these rejections to violate Article 3 of the European Convention on Human Rights (hereinafter referred to as “ECHR”) when States sent migrants back to countries where they risked suffering torture or inhuman or degrading treatment or punishment, as prohibited by such Article¹⁴. These practices were notably seen among frontline Member

¹⁴ See *Hirsi Jamaa and Others v. Italy*, of 23 February 2012 (application no. 27765/09) and *M.A. and Others v. Lithuania*, of 11 December 2018 (application no. 59793/17).

States, such as Italy, Greece, Croatia, Hungary and Poland. However, according to the ECtHR, States which automatically returned migrants to intermediate countries which could send them to a country where they could risk such treatment, also could infringe such Article¹⁵. This was the case of countries such as Austria, France or Belgium, which sent migrants back to Italy or Greece pursuant to the Dublin system, without a previous examination of the conditions they would face in the receiving country (Gatta, 2019, p. 117-121).

In the same vein, the proscription of the collective expulsion of aliens is an absolute prohibition enshrined in Article 4 of the Protocol No. 4 of the ECHR, which prevents States from expelling migrants without a previous assessment of their individual circumstances. According to Gatta (2019), the ECtHR has even recognized the extraterritorial applicability of the Article at issue, considering it is “potentially applicable also when aliens have not concretely ‘touched’ the national territory of the State” (p. 124). Taking this into account, the ECtHR has been dealing with an increasing litigation on collective expulsions¹⁶, especially since 2010 and “in parallel with the growing migratory pressure in the Mediterranean and the consequent responses put in place by EU frontline Member States” (p. 123). Precisely, these cases have involved frontline Member States, such as Italy, Greece, Spain, Hungary, Poland, Croatia, Slovakia or Latvia (Gatta, 2019, p. 123-125).

It is worth mentioning that cases of individual or collective rejections of migrants may be problematic in terms of human rights protection even when those decisions are based on a common list of safe countries elaborated by the EU. Indeed, as Barbulescu (2017) points out, this list can be discriminatory towards migrants who come from countries considered as “safe”, as they could even be expelled without a proper examination of their individual situation. Moreover, he highlights the fact that this measure is of little assistance when the bulk of the migration influx consists of people from Syria, Afghanistan and Iraq, which are not included in the list (p. 306).

Finally, in relation to illegal detentions and deprivations of liberty of migrants, the ECtHR has found countries such as Italy, Greece or Hungary liable for the violation of

¹⁵ See *M.S.S. v. Belgium and Greece*, of 21 January 2011 (application no. 30696/09).

¹⁶ See *Hirsi Jamaa and Others v. Italy*, of 23 February 2012 (application no. 27765/09); *Sharifi and Others v. Italy and Greece*, of 21 October 2014 (application no. 16643/09), and *N.D. and N.T. v. Spain*, of 3 October 2017 (application no. 8697/15).

Article 5 of the ECHR¹⁷, which embodies the right to liberty and security. Together with prolonged forms of detention, the lack of transparency, information, legal assistance, protection against arbitrariness or legal remedies and appeal possibilities was also denounced to raise awareness of the difficulties facing migrants to access international protection (Gatta, 2019, p. 129-131).

7.2. Human rights and the externalization of borders

But EU's human rights obligations do not stop within its own territory. In the same manner as the EU exports its border control geographically through agreements and partnerships with origin and transit countries (Behrman, 2018, p. 117), it may also be considered "complicit in, or even the instigator of [...] violent and repressive policies with horrific human rights implications" (Webber, 2017, p. 37) carried out by those third countries. Certainly, with the aim of controlling the arrival of migrants even before they reach European soil, the EU signed several deals with key origin and transit countries according to which, in exchange for financial or humanitarian aid apparently intended to help those countries develop and manage migration with respect to migrants' human rights, they would prevent people from leaving their territory and heading for Europe. However, the reality is that in these agreements, as Webber (2017) expressed, "bribery and blackmail replace human rights" (p. 49). The problem is that the EU cannot guarantee the protection of the rights of the migrants who are in a territory far from its reach, nor seems it would be willing to ensure such compliance by monitoring or sanctioning the use of the funding if that would put the agreement at risk (Barbulescu, 2018, p. 307).

The EU-Turkey Statement was one of the most paradigmatic examples in this regard and was paradoxically quite successful in practice. According to the deal, the EU would offer some concessions if Turkey, denominated as "safe country", strengthened its border controls, and took the migrants intercepted in its waters as well as those that were returned from Greece. However, Webber called attention to the fact that Turkey had made a reservation to the Geneva Convention of 1951 that it would only recognize refugees from Europe. As a consequence, the more than two million Syrian refugees Turkey hosted at that time suffered marginalization, poverty and a constant risk of arbitrary detention

¹⁷ See *Khalifia and Others v. Italy*, of 1 September 2015 (application no. 16483/12); *O.M. v. Hungary*, of 5 July 2016 (application no. 9912/15), and *Kaak and Others v. Greece*, of 3 October 2019 (application no. 34215/16).

and deportation. Moreover, continuing human rights abuses against “perceived opponents” were being reported. Thus, Turkey was far from being a “safe” country for migrants, but “neither the criticism and protests, nor the lack of clarity on the treatment of returnees, nor the ongoing repression and human rights violations in Turkey, [...] threatened the existence of the deal” (Webber, 2017, p. 42).

Other cases in point were more explicit in terms of human rights violations. For instance, an agreement with Afghanistan was characterized as “the first to stipulate return of citizens whose country is in the grip of an intensifying war” (Webber, 2017, p. 40). In 2016, when the deal was signed, the Taliban terrorist group intensified its activity, causing thousands of casualties all over the country. Moreover, most people there had to deal with other humanitarian issues, such as malnutrition, lack of basic infrastructure and housing, unemployment, overcrowding or insufficient medical assistance. Even though the EU acknowledged the existence of this situation, it was only portrayed as a cause of soaring migration towards Europe which required intensified cooperation in order to stop it (Webber, 2017, p. 37-38). Similarly, the EU came to an agreement with Libya, despite the fact that it was a war-torn and failed state and that it accommodated migrants in detention centers where reports of racism, torture, slavery, sexual abuse, forced prostitution, forced labor and other unlawful practices were common (Webber, 2017, p. 43-44).

As Webber (2017) pointed out, these deals, together with others signed with different African countries such as Niger, Eritrea, Sudan, Nigeria, Mali or Ethiopia, have prevented “citizens leaving some of the most repressive and conflict-ridden states in Africa” (p. 46). The EU, however, has failed to comply with its humanitarian and protection obligations towards migrants, even outside of its territory, as they have taken a back seat to “the absolute priority of stopping migration from Africa” (p. 46), which was crucial in an EU which was witnessing the rise of nationalism and radicalization (Havlová & Tamchynová, 2016, p. 99).

In short, migrants have been treated as commodities in political negotiations (Meçe, 2020, p. 182). Moreover, according to Hannah Arendt’s paradox of human rights, which entails that they are often reduced to “paper rights” (Arendt, 1973, as cited in Lendaro, 2016, p. 155), the situation of migrants as shown has often implied that “a piece of paper with a stamp on it is the difference between life and death” (Thomson, 1938, as cited in Behrman, 2018, p. 110).

But the humanitarian consequences outlined in this section have not stemmed directly from the so-called migration “crisis”. Rather, they have been the result of the EU’s response to such phenomenon. Indeed, the EU faced the challenge of “providing international protection to those in need while simultaneously securing its external borders”, which would be “a yardstick by which to judge its human rights commitment” (Barbulescu, 2017, p. 308). In this sense, and with regards to the above, it is possible to state that the EU prioritized security over human rights and the rule of law. That is why the EU’s response has been described as “a crisis of European values, a stark exposé of shortcomings in the application of European fundamental rights, humanitarian law, and neighbourhood policy” (Borg-Barthet & Lyons, 2016, p. 230).

8. PROPOSALS FOR ALTERNATIVES AND POLICY CHANGES

If anything has become clear from the last sections, it is that the EU failed to provide an adequate response to the 2015 migration “crisis”. Divisions and discrepancies among Member States concerning the migration policy, bolstered by the surge of nationalist sentiments against a perceived threat, have long diffculted an agreement on a real common approach to migration based on the principles of solidarity and fair sharing of responsibility. Even worse, the securitization of migration in the EU has led to worrying humanitarian consequences that have affected migrants both inside and outside the EU territory.

Indeed, having tried four different scenarios in the management of the migration “crisis” as framed by Attinà (2016), the EU was not able to effectively tackle the issue. A first scenario governed by indifference towards migrants, concerns focused on the 2008 economic crisis and a restrictive migration policy was followed by a humanitarian response from Italy, without the EU support, which launched the rescue operation called Mare Nostrum in an attempt to reduce deaths at sea. However, the poor management of the reception and identification of migrants drove many of them out of the country and ahead of Northern countries, namely Germany. Soon after, the intensification of migrants’ arrivals and tragedies at sea turned the EU towards a comprehensive approach based on the consideration of both the humanitarian and migratory dimension of the “crisis”, and it offered assistance to frontline States, although with the stark opposition of mainly Central European countries, which far diffculted the agreement on and implementation of effective measures. As a result, the EU ended up reinforcing and externalizing borders

again (Attinà, 2016, p. 25-27).

In view of the above, it is particularly important to come up with alternatives that could effectively address future increases of the migratory pressure in Europe in accordance with EU's fundamental values, and to bring about policy changes in the area of migration that would ensure a fair distribution of the burden posed by the migratory phenomenon and full respect to human rights.

In relation to short-term solutions to mass influxes of migrants to the continent, the EU could assess the possibility of implementing the temporary protection mechanism provided by the CEAS¹⁸. This system, which aims to “reduce disparities between the policies of the Member States on reception and treatment of displaced persons” (Schmid-Drüner, 2021a), implies the granting of a homogeneous international protection to groups of migrants coming to the EU in a mass influx on a temporary basis. Unlike the general asylum procedure, which require a case-by-case assessment of each asylum application and makes protection conditional on the compliance with a series of requisites, the temporary protection is immediately recognized to those who fall within the group designated by the Council decision at issue, i.e. it provides an immediate and collective protection, but without prejudice to the recognition of the refugee status under the Geneva Convention. Moreover, contrarily to what happens under the Dublin system, beneficiaries would not have to claim asylum in the country where they first enter the EU, but rather they would be distributed among the Member States based on a proportionate system of transfers. In this sense, Bačić (2015) has referred to it as a “Dublin alternative” (p. 99).

The temporary protection mechanism was activated on 4 March 2022 as a response to the Russian invasion of Ukraine, which has pushed more than 7 million people to flee their country (UNHCR, 2022) at the date of writing. Therefore, millions of Ukrainians are being granted across Europe the right to residence, to housing, to access the labor market, to social welfare assistance, to healthcare and to education in the case of children (European Council & Council of the European Union, n.d.). In such way, this instrument allows Member States to comply with their responsibility to protect those in need as well as with the principle of solidarity (Bačić, 2015, p. 94). Besides, it could please all sides, by “offering protection but not full membership, permitting the

¹⁸ See Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

individuals to seek and receive protection, but without hastily or unacceptably transgressing the boundaries of State sovereignty” (Thorburn, 1995, as cited in Panebianco & Fontana, 2017, p. 13).

Nevertheless, this option requires unanimity in the Council to be adopted, which is why it was not even put on the table in the face of the 2015 migration “crisis”, due to insurmountable discrepancies among Member States. In this sense, it seems no mere coincidence that Ukraine is a European country which is culturally similar to EU Member States, and which is facing a war that also poses a direct threat to the security and economy of the whole continent.

Another solution proposed to avoid this lack of solidarity among Member States and protection of those in need in the case of an upsurge of the migration flows is the system of “tradable refugee quotas”, also known as the “TRQ system”. As Havlová & Tamchynová (2016) highlight, there are different versions of this system. The basic idea is that it would allow Member States to fairly share their responsibility in the case of a migration “crisis”. They would directly bear the financial costs or grant asylum, or even the system may be designed to match migrants to their desired destinations and enable Member States to select their desired type of refugees on the basis of categories such as skills, education or legal status. According to these authors,

such a system could allow for a plausible calculation of the country-specific costs of accommodating asylum seekers and refugees, and thus generate a cost-effective solution of the refugee crisis by minimizing the total costs for a given number of refugees or by maximization of the number of refugees for a given budget constraint. Such a system would also take into account refugees’ preferences concerning destinations and simultaneously take into account countries’ preferences (p. 88).

Apart from these mechanisms outlined for an eventual response to a mass influx of migrants, the EU has realized in the face of the 2015 migration “crisis” that the current migration policy, and especially the common asylum system, is inefficient. It thus shall act consequently and carry out a long-term reform of the CEAS, as proposed by the Commission in 2015 within the European Agenda on Migration. In particular, with the aim of enhancing solidarity and fair sharing of responsibility and taking a more humanitarian approach towards migration, the EU should improve the Qualification Directive in order to achieve a greater convergence on the recognition requirements and forms of protection, as well as replace the minimum standards included in the Reception

Conditions Directive for more specific dignified and harmonized standards. Moreover, including a permanent relocation mechanism within the Dublin Regulation would be a key move in the road to a fair CEAS upholding fair-burden sharing within the EU, and the creation of a Union Resettlement Framework, making this mechanism permanent too, would be a cornerstone of a more humanitarian CEAS (Schmid-Drüner, 2021a).

Furthermore, as academicians have raised the issue that the humanitarian consequences related to the 2015 migration “crisis” depend to a large extent on the lack of safe and legal ways of entry to the EU (Costello, 2016; Barbulescu, 2017; Behrman, 2018), some have proposed to reverse this situation. Indeed, issuing humanitarian or other short-term visas to allow refugees to travel normally” (Costello, 2016, p. 12) would improve the security and safety of the journeys, thus preventing deaths and curtailing smuggling and human trafficking.

In short, in view of the disastrous EU’s response to the 2015 migration “crisis” both in terms of humanitarian assistance and of solidarity among Member States, the EU should consider the implementation of different mechanisms in the face of future migration “crises”, such as those of temporary protection or tradable refugee quotas. What is more, it needs to come up with a durable, fair and truly common asylum system which is respectful to human rights and to the principles enshrined in Article 80 TFEU as core values of the EU. However, it “might be a challenge hard to face, because of the different voices in the EU not being able to agree on a common stance” (Havlová & Tamchynová, 2016, p. 101).

9. CONCLUDING REMARKS

The analysis carried out in this paper makes it possible to conclude that the EU failed to effectively respond to the 2015 migration “crisis”. It failed to act in accordance with the principles of solidarity and fair sharing responsibility enshrined in the TFEU, and it failed to comply with its duty to protect those in need.

This failure can be considered the outcome of both inherent deficiencies of the EU migration policy and asylum system, and the longstanding contrasting national interests and positions in relation to migration, which have prevented the EU to come up with a coordinated response. Indeed, cooperation has been pretty much absent in the history of the EU migration policy. Besides, there is a fundamental inequity ingrained in the Dublin

system, which privileges non-frontline States. As a result, an insurmountable division of interests among Member States stands as the main obstacle to EU integration in this policy area. Moreover, even though the EU came up with a plan for immediate response to the “crisis”, it was not without difficulty, and it proved to be certainly insufficient, being the cause of recurrent humanitarian issues that have been reported in relation to the “crisis”.

These failures have brought to light a wider process of securitization of migration in the EU since its early years. Migration has been generally portrayed as connected to security, economic, cultural and identity-related issues through public discourses, media coverage and policies themselves. In line with this, an intensification of the migratory pressure has further fed nationalist sentiments calling on the defense of their citizens against the threat of migration. As a result, some have given preference to their national interests before anything else, while others have tried their best to keep a stance consistent with international human rights law, although with limitations.

In view of the above, the so-called migration “crisis” exposed major and interconnected challenges in the core of the EU, namely a lack of convergence of interests and values, and a crisis of the principle of solidarity. The rise of nationalistic, anti-immigration, anti-liberal, anti-European and extreme right parties and movements have surged to the detriment of human rights, democracy, solidarity, cooperation and, therefore, the European project itself.

In this sense, the EU is faced with a dilemma that goes far beyond the migratory issue. It has to deal with an ever-increasing trend towards disintegration and the return of nationalistic divisions, while at the same time safeguarding its core values, upon which it has been built. Thus, the EU has to decide whether it will be willing to further integration or rather to give powers back to Member States. For this reason, the time is ripe for the EU to be reminded of what it has learned from past experience and to act accordingly.

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