Focus on International Migration nº 5

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

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

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

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

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

Elaborated by:
Alisa Petroff, Georgios Milios, Marta Pérez (eds.)

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

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3.1 Introduction

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

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

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

* This paper was submitted by April, 5, 2017

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5 Conclusive reflections: towards a crisis of international protection

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

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

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

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

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

References

Amnesty International (2017). *Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights*. Retrieved from https://www.amnesty.org/en/latest/campaigns/2016/11/hotspot-italy/

Asylum in Europe. (2016). Mapping asylum procedures, reception conditions and detention in Europe [Advertisement]. Retrieved March 23, 2016, from http://www.asylumineurope.org

Baldaccini, A., Guild, E. and Toner, H. (2007). *Whose freedom, security and justice? EU immigration and asylum law and policy*. Bloomsbury Publishing.

Bloch, A., and Schuster, L. (2002). Asylum and welfare: contemporary debates. *Critical Social Policy*, *22*(3), 393-414.

Council of the European Union. (2016). EU-Turkey Statement, of the 18.3.2016. Retrieved January 25, 2016, from http://www.consilium.europa.eu/it/press/press-releases/2016/03/18-eu-turkey-statement/

Council of the European Union. (2015). Council Decision no. 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1523&from=EN

Council of the European Union. (2015). 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. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=EN

Council of the European Union. (2015). Decision (2015/1601). Provisional measures in the area of international protection for the benefit of Italy and Greece, of 14 and 22 September 2015. Retrieved February 3, 2017, from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=EN

Denaro, C. (2015). How to Re-Conceptualize the Right to Asylum in the Lethal Sea-Crossing Age? *Refugee Review: Re-conceptualizing Refugees and Forced Migration in the 21st Century*, *2*(1), 199-201.

Düvell, F., and Jordan, B. (2002). Immigration, asylum and welfare: the European context, *Critical Social Policy*, *22*(3), 498-517.

European Commission. (2016). Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0270(01)&from=IT

European Commission. (2015). Common European Asylum System. Retrieved from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

European Commission. (2015). Communication "A European Agenda on Migration". Retrieved March, 3, 2017 from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

European Parliament and Council of the European Union (2013). Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. Retrieved from http://eur-lex.europa.eu/legal-content/IT/TXT/?qid=1473073648723&uri=CELEX:32013R0604

Human Rights Watch. (2017). World Report 2017. Retrieved March 10, 2017, from https://www.hrw.org/world-report/2017

Klepp, S. (2010). A contested asylum system: The European Union between refugee protection and border control in the Mediterranean Sea. *European Journal of Migration and Law*, *12*(1), 1-21.

Langford, L. M. (2013). The Other Euro Crisis: Rights Violations under the Common European Asylum System and the Unraveling of EU Solidarity. *Harvard Human Rights Journal, 26*(1).

Mori, P. (2016). La proposta di riforma del sistema europeo comune d'asilo: verso Dublino IV? Eurojus.it *rivista*. Retrieved April 01, 2017, from http://rivista.eurojus.it/la-proposta-di-riforma-del-sistema-europeo-comune-dasilo-verso-dublino-iv/

Sciurba, A. (2014). Dopo Lampedusa: la nuova sfida del diritto d'asilo allo spazio europeo e mediterraneo. *Le frontiere mobile del Mediterraneo – Convegno Internazionale,* Università di Palermo, November 3-4.

Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, art. 20 (2014).

Toelgyes, C.I. (2017). Sudan, accordo sui migranti: Europa e Italia complici delle violazioni dei diritti umani. *Associazione Diritti e Frontiere-ADIF.* Retrieved March 28, 2017, from http://www.a-dif.org/2017/03/01/sudan-accordo-sui-migranti-europa-e-italia-complici-delle-violazioni-dei-diritti-umani/

UNHCR. (2016). Operational Portal. Retrieved May 29, 2017, from http://data.unhcr.org/mediterranean/regional.php

Vassallo, P. F. (2017). La proposta di riforma del Regolamento Dublino, nel quadro del Sistema europeo dell'asilo (CEAS): al peggio non c'è fine. *Associazione Diritti e Frontiere-ADIF.* Retrieved March 29, 2017, from http://www.a-dif.org/2017/03/05/la-proposta-di-riforma-del-regolamento-dublino-nel-quadro-del-sistema-europeo-dellasilo-ceas-al-peggio-non-ce-fine/