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*Controlling Irregular Immigration at the European Union's  
Southern Maritime Border.  
An Emerging System Driven by "Migration Emergencies"*

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**Abstract**

Over the last 25 years the southern maritime border of the European Union witnessed the interaction of considerable and increasingly complex irregular migration flows in the Mediterranean with the progressive construction and implementation of restrictive migration control policies by the European Union and its member states at their external borders. The article describes the evolving migration patterns and changes in migration routes both as a stimulus and as consequence of locally stepping up migration control at the emerging hotspots at different parts of the border, creating deviation effects in migration routes with alternative points of entry and higher costs and risks for migrants. Special attention is given to the impact of the 2015 refugee crisis on border management and the new challenges it poses to the asylum system and the protection of fundamental rights.

**Keywords:** European Union; Integrated Border Management; Irregular migration; Migration control policy; Refugee crisis.

*Introduction*

Containing irregular immigration has become a priority on the European political agenda over the past two decades. The signing of the Schengen Agreement at the start of the 1990s initiated the gradual creation of a common border policy, which has advanced a great deal over the last few years through institutional and instrumental development, combining national actions with supranational and multilateral initiatives that have resulted in what is known as Integrated Border Management (IBM). These initiatives have mostly focused on actions taken at what is referred to as the "external southern blue borders" in the European Union.

The southern maritime border of the Schengen Area has a longitude of just over 35,000 kilometers, extending from the Portuguese coast to the Greek islands near the coast of Turkey. Spain, Italy, Greece and Malta have become the main destinations for irregular migration flows arriving by sea to Europe, mostly due to their geographical proximity to countries in the Southern Mediterranean Riviera and Turkey. The main European routes for irregular immigration through the Atlantic and Mediterranean (which includes the Alboran, Ionic and Aegean seas) are primarily directed towards these four countries, more specifically, the Western Atlantic route, the Western Mediterranean route, the Central Mediterranean route and the Eastern Mediterranean route<sup>1</sup>. These are routes that have experienced fluctuations in inflows over the last 25 years and have been subjected to selective (im)permeability practices for unauthorized migration heading to Europe.

For more than a decade these routes have sparked the interest of public opinion and political authorities due to their volumes, the danger involved in using them and because they have served as “test benches” to develop European policies on maritime migration control, concentrating a large number of initiatives and European and national resources.

The dynamics of maritime migration have been conditioned by changing geopolitical contexts, especially in African or Middle-Eastern countries, and by the migration control actions that have been implemented at different parts of the border around Europe’s perimeter. The development of these control actions during the construction of a common policy has been influenced by the diverging interests of the European countries whose geographical positions lead to much different reception frequencies. Because the creation of this common border policy is a delicate process involving asymmetrical state and supranational interests and actions, it has generated serious political tensions among member states during the different migration crises. To complicate things further, the external areas surrounding the European Union function as a buffer system, in which increasing control of migration flows in one area produce changes, or “deviation effects”, in others, a situation that has been likened to playing a game of whack-a-mole. Despite these issues, common migration control policies have been applied over the past decade,

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<sup>1</sup> See <http://frontex.europa.eu/trends-and-routes/migratory-routes-map/> and I-Map (<http://www.imap-migration.org/>)

characterized by a series of interrelated dynamic traits developed sequentially and in an increasingly coordinated fashion: externalization (including bilateralism), communitarization, "remote control", technologization and privatization.

The objective of this article is to analyze the dynamics and discrepancies involved with applying this policy on the southern maritime border of the European Union since the creation of the Schengen Area. This focus highlights aspects related to the maritime nature of these borders, combining these physical and geographic conditions with the idiosyncrasy of a political action that in an uncertain geopolitical setting has had to simultaneously deal with: a) different levels of migration frequency; b) diverse national, binational and supranational interests; and c) numerous responses against such action by civil society and the international community. It is, therefore, an analysis that characterizes the political sphere of border control as a multilayered, multi-staged, multi-located and contested action.

The article is divided into four parts. The first part describes the evolving traits of this intervention, based on the perception that migration control at the border is a "selective permeability" mechanism used to block unwanted human movement within a highly complex European border system. The second part analyzes the migration dynamics of the main maritime routes, with special attention paid to the cases of Spain, Italy, Malta and Greece. The third part examines the changes that the maritime border has undergone since the end of 2013, with the intensification of the Central Mediterranean route and later the refugee crisis through the maritime route to Greece. The fourth part analyzes how adapting the European migration control system, including border control, freedom of movement and asylum instruments, to these new dynamics has produced serious political tensions, once again focusing on the discrepancies that have emerged between national and supranational interests.

## *2. Controlling irregular maritime immigration in Southern Europe: geopolitical determinants of constructing a single border*

### *2.1 The gradual construction of a common border*

The economic integration of the European Union, and to a lesser degree its political and social integration, has advanced substantially over the past

few decades, creating a single market that allows the free movement of capital, goods and people among the member states. The creation of an area of free movement made necessary the construction of a shared external border with similar permeability at all points, including the manner in which the entry of irregular immigrants is controlled. This process involves continuous agreements on many issues, such as the regulation of visas, the determination of requirements to allow passage through the territory or the creation of joint systems to register passengers and migrants.

The construction of a common external border has encountered many obstacles due to the reticence of member states to cede part of their national sovereignty to supranational institutions. These misgivings have limited the progress in this area to small concessions during border crises that obligate member states to accept greater collaboration.

In the case of migration management, nation states retain direct control of their borders, with some voluntary collaboration through Frontex (the European Border and Coast Guard Agency), and integrated information systems like EUROSUR (European Border Surveillance System). Moreover, the freedom of movement across internal borders guaranteed by the Schengen Agreement can be temporarily suspended given extraordinary circumstances, as occurred in 2015 along the routes used by Syrian and Afghan refugees.

The way irregular immigration is controlled illustrates the reactive nature of the “bordering” process, which leads to what some authors refer to as “borderscapes” (Rajaram and Grundy-Warr, 2007; Brambilla, 2015), highlighting that it is a dynamic process undergoing constant reform. There is a vast economic gap at the southern border of the EU, separated and connected by the Mediterranean, the main interstitial space between Europe, Africa and the Middle East, which generates a great deal of migratory pressure. Not surprisingly, the management of international mobility in this part of the world has faced emerging challenges regarding the protection of migrants, the implementation of the rules to access the Schengen Area and international cooperation between EU member states and also with neighboring countries.

The combination of policies, institutions and instruments that the European Union has adopted since the 1990s has the following features. First of all, the southern maritime border of the EU has gradually been made impermeable by focusing on “emergent” routes and hotspots where

irregular immigration routes attempt to penetrate European territory. This has resulted in control measures being deployed first in the western Mediterranean and later extending east. This gradual implementation includes a wide variety of actors and employs many instruments, making it a multi-located, multi-staged and multilayered intervention. Second, this gradual deployment has resulted in an integrated information and detection system named EUROSUR equipped with advanced technologies to detect the vessels used by immigrants, facilitate information exchange between states and accelerate the development of coordinated actions. EUROSUR is a key part of the final objective, which is to attain complete Integrated Border Management (Godenau, 2012: 8). Third, the European Commission has opted to outsource the creation and experimentation of the technologies used by EUROSUR, seeking the active involvement of prominent companies in the Defense and Security industries (Godenau and López-Sala, 2016a; Lemberg-Pedersen, 2013; Baird, 2016). Fourth, the creation of Frontex has allowed the operational response capacity of the EU along its external borders to be expanded. Its mission is to promote, coordinate and develop European border management in line with the Charter of Fundamental Rights of the EU, applying the concept of Integrated Border Management. Frontex has gradually increased its scope and competences; for example, it now includes a Fundamental Rights Officer to help protect fundamental rights during the interception, retention and derivation of migrants, among other oversight mechanisms. Fifth, Integrated Border Management also covers one of the specific causes of forced migration: the search for refuge and asylum. In this area, the EU follows the principle that the first member state to take the fingerprints of a refugee or that receives a request for asylum is responsible for examining the request for international protection (Dublin III Regulation of 2013: Regulation (EU) No. 604/2013). As we shall see later, this principle generates asymmetries due to the fact that some countries are more exposed to external borders than others. The outermost countries have to deal with a greater number of asylum seekers, regardless of the desired final destination of the migrants, and the refugee crisis of 2015 has provoked an intense debate regarding the mechanisms used to distribute refugees among EU member states. Sixth, the increasing number of refugees reaching the EU external borders triggered the decision to use Turkey as an enforced destination of migrants, with the aim of reducing the

number of additional asylum seekers in EU countries. This type of remote control does not concentrate on controlling migrants' exit or transit, it focuses on creating substitutive involuntary destinations.

The complexity involved in creating and maintaining this common border explains why its approach to managing economic and forced migration is so different from other international borders to which it is frequently compared, such as the border between Mexico and the United States (Andreas 2001; Fernández-Kelly and Massey, 2007; Koslowski, 2011; Jaskoski, Sotomayor and Trinkunas, 2015). The fact that it is a maritime border, coupled with its complex political and institutional framework, makes it very distinct from other borders.

## *2.2 The dynamics of maritime migration flows (1990-2016)*

The transformation of southern European countries into migration destinations in the 1980s led to maritime flows of irregular immigrants just a few years later. Therefore, this is not a new phenomenon, although the volume it has reached today is larger than it has been in the past quarter century (Fargues and Di Bartolomeo 2015; UNHCR, 2015; Newland, Collet, Hooper and Flamm, 2016; Crawley, Duvell, Sigona, McMahon and Jones, 2016).

Despite the fact that for years the volume of these flows was modest compared to those entering through airport and land borders, this type of migration has been a priority on the agenda of Spain, Greece, Italy and Malta over the past few decades. Their geographic proximity with the southern Mediterranean Riviera and the Maghreb, the Balkans and Turkey have converted them into the first stage or final destination of mixed flows (economic and forced) since the beginning of the 1990s. The dynamics of these maritime routes to Southern Europe have been affected by economic and geopolitical factors, such as the control measures taken at different points of the perimeter. In fact, whenever control has been increased over one part of the area surrounding the perimeter through surveillance, detection and (physical and virtual) containment measures, it has activated new corridors or reactivated old routes. This has created a dynamic and interactive system that evolves and receives feedback from land and air routes and shapes the geographic priorities for actions and intervention.

The fact that these irregular migration flows are travelling through a maritime environment makes an enormous difference in how they are

controlled compared to other settings<sup>2</sup>. First of all, because migrants must use some kind of vessel (which depending on the type of crossing varies greatly, from large ships to medium-sized boats to tiny *pateras* or even inflatable toy rafts used in the Strait of Gibraltar) they need some material resources at their disposal (or to be able to pay for them), a certain amount of organization, at least in the mid-sized vessels that require fuel, some type of navigation system and the ability to steer. The need for a vessel has generated a substantial market for middlemen in the coastal regions of countries from which these voyages are launched, a local migration industry that coexists with the remote surveillance carried out by receiving countries through collaboration with transit countries. The varying durations and risk involved in the different types of voyages also requires the migrants to undertake them with very different resources. Second, the amplitude of the maritime borders is an incentive to use the most sophisticated and expensive control and surveillance technologies that are capable of detecting vessels from a great distance and the most advanced remote sensing systems, most of which employ satellites and UAVs (Godenau and López-Sala, 2016a). This is why maritime routes require greater organization (and a "migration industry") and the migrants need more resources than they do when taking land routes.

In addition, series of high intensity immigration episodes are central to this evolution, what the press usually refers to as a "migrant crisis". These episodes began at the start of the 1990s when the first maritime flows reached the coast of Apulia (Bari and Brindisi) in Italy, through the Adriatic and the Strait of Otranto. The fall of the government in Albania and the war in the former Yugoslavia triggered the first stream of Albanian and Kosovar refugees (Albahari, 2006).

At the end of the 1980s migrants also began flowing through the Western Mediterranean route across the Strait of Gibraltar to the Spanish coast. This flow was consolidated in the 1990s, giving rise to the first deaths along that route and provoking the first Spanish measures to control its maritime borders (López-Sala and Esteban, 2010; López-Sala, 2015).

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<sup>2</sup> Newland, Collet, Hooper and Flamm suggested that irregular maritime migration can be characterized as a "wicked problem" extremely difficult to address. In their opinion the complexity of the management of maritime migration is related to the increasing number of actors involved in the process, the overlapping legal rulings at the sea and the risk of the routes (Newland, Collet, Hooper and Flamm, 2016).

Something similar occurred in the central corridor of the Mediterranean where since the 1990s the flow to Italy has intensified. The stabilization of the Balkans caused this route to lose importance in the east-west direction, while at the same time the south-north flow from Africa to Southern Italy intensified, first to Calabria, Sicily and the Aegadian Islands and from 2002 to the Pelagie Islands (Pastore, Monzini and Sciortino, 2006). Between the end of the 1990s and the start of the 2000s, the Western Mediterranean and Central Mediterranean routes became the most active maritime routes, and the origin of the migrants diversified, with the presence of Maghrebis (Moroccans, Algerians and Tunisians) and Western Africans (especially from countries in the Gulf of Guinea), Central Africans and migrants from the Horn of Africa (López-Sala, 2015; Godenau, 2014; Cuttita, 2008). Since 2002, Malta became one of the main destination countries. This was an “unexpected destination” (López-Sala and Esteban, 2010; Mainwaring, 2014) through the Central Mediterranean route for a large number of refugees from Eritrea and Somalia who initiated their sea voyage in Libya and then connected with the Eastern African land route.

Increased surveillance and control of the Western Mediterranean, especially with the gradual implementation of the Integrated External Surveillance System (SIVE) in the Strait of Gibraltar by Spain, caused the flows to be diverted west, activating new routes such as the Western Africa route connecting the coast of Africa with the Canary Archipelago. This route is where the “cayuco crisis” occurred in 2006. In just one year over 30,000 migrants from various African countries arrived in this archipelago belonging to Spain, which at the time was the most intense migration episode observed at Europe’s Mediterranean perimeter (Godenau, 2012; Godenau, 2014; López-Sala, 2015; Godenau and López-Sala, 2016b). The cayuco crisis had an enormous impact on the later evolution of migration control along the entire European maritime perimeter. It provoked an escalation in national and, especially EU actions to increase the surveillance and detection of maritime migrants. This included the implementation of the first joint Frontex operations (Operation Hera), the beginning of collaboration agreements with transit countries and later, the emergence of EUROSUR (Godenau and López-Sala, 2016a, 2016b). While improved surveillance in the Western Mediterranean substantially decreased the flow through the Western Africa route, at the same time it caused the flows through the central sector of the Mediterranean to increase, with a large

spike in arrivals to the coasts of Malta in 2007 and 2008 (Lutterbeck, 2009; Lutterbeck and Mainwaring, 2015) and the Italian islands of Sicily and Lampedusa (Cuttita, 2008). This led Frontex to extend its joint operations to the Central Mediterranean (Operation Nautilus) and stimulated bilateral and multilateral negotiations with the main transit countries (Tunisia and Libya) throughout 2009. Greece has also been the destination of maritime flows to its Aegean islands since the 1990s, with a slight increase in volume in the past decade, especially in 2007, but had remained below the volumes seen in Spain and Italy until the recent refugee crisis of 2015, which has surpassed previous migration records to Europe since the middle of the 20th Century.

The penultimate migrant crisis in the Mediterranean occurred in 2011 and was the result of the Arab Spring, which caused many young people to flee to Europe from Maghreb countries, especially Tunisia, but also Egypt. An earlier flow of Tunisian youths to Italy had been seen in 2008, when the Tunisian regime repressed the "Redeyef", a social movement that had arisen in mining areas in the southern part of the country, where the youth unemployment rate was over 60%. The 2011 crisis, however, led to a series of factors that have been consolidated since 2014. First of all, the perception that these migrant crises are emergencies, which was already present in the events of 2006, has been increasingly consolidated with each episode. It should be remembered that while the state of emergency involves humanitarian assistance, it also includes actions directed at increasing security. During the 2011 crisis, which witnessed clashes between the Italian and French governments, for the first time real statutory proposals to suspend the Schengen Agreement appeared, an aspect of common policy that until that moment had been broadly supported by the member states. In addition, at that time, the "principle of solidarity" with border countries during periods of intense inflows seemed to have been broken after years of high tension, as was evident in 2014 during the preparation of Frontex's Operation Triton, which substituted the Italian operation, Mare Nostrum. The intensification of the flow over the past year has been particularly revealing of the weakness of European policy compared to national or individual actions and also how European states react differently to these successive migration crises depending on their proximity to their territories.

### *3. Recent changes in the southern border of Europe: the “refugee crisis” and intra-European transit migration*

Since the end of 2013 the situation at the southern border of the European Union has again undergone very significant changes. The current migration panorama in the Mediterranean has been caused by a cluster of political conflicts in areas under European influence, especially due to the instability in many Maghreb countries (Mali, Libya, Egypt), sub-Saharan Africa (Nigeria) and Western Africa (Eritrea, Sudan, Somalia), as well as the deadlocked wars in Syria and Afghanistan. The unprecedented growth of migration flows and deaths in transit (Brian and Laczko, 2014 and 2016)<sup>3</sup> through the central Mediterranean produced a broad diplomatic and political reaction at the European level, which included the creation of the Task Force Mediterranean, the deployment of the Mare Nostrum rescue operation by the Italian government and later the Frontex operation, Triton. Throughout 2014, more than 170,000 people were intercepted along this route to Italy, in vessels mainly from Libya, but also from the coasts of Egypt and Turkey. The intensification of these flows was combined with the diversification of origins, with a growing presence of Syrians<sup>4</sup> and Eritreans (Fargues and Di Bartolomeo, 2015). During that year the political debate in Europe focused on creating measures that were capable of containing arrivals, while also protecting the lives of the migrants, although the resulting political agreements seem somewhat ambivalent to such a balance. Although European authorities have mentioned that search and rescue is a priority, rescue operations, such as Mare Nostrum, have also been perceived as a factor that attracts flows to this route (Fargues and Bonfati, 2014; Newland, Collet, Hooper and Flamm, 2016).

The failure to reach a diplomatic agreement with a politically unstable Libya, which had become the principal hub of this route, led the European Union to adopt extraordinary measures, including launching military operations such as EUNAVFOR in June 2015 to fight against migrant

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<sup>3</sup> See <http://missingmigrants.iom.int>.

<sup>4</sup> The intensification of arrivals of Syrians to European countries was also observed in Spain, although to a much smaller degree. Since 2014 Spanish territory has been accessed through what is known as the peripheral land border (mainly the city of Melilla), as indicated by the reports of different social organizations (CEAR, 2016; JRS, 2014; APDHA, 2015).

smuggling networks operating in this corridor (Arteaga and González, 2015). The Malta Declaration in February 2017 included as a priority aim the stabilization of Libya as a part of a strategy to reduce the flows along the Central Mediterranean route<sup>5</sup>.

Throughout 2015 and 2016 the routes used by migrants and refugees, mainly from Afghanistan and Syria, diversified. Firstly, there was a sharp increase in the volume of the flow through the Eastern Mediterranean route, both through the land border of Greece with Turkey and the Aegean sea, to the islands of Lesbos, Chios and Samos. In 2015 and 2016 Italy and Greece received the most immigrants and refugees in the European Union, far ahead of Spain and Malta, with low numbers in comparative terms. After the European agreement with Turkey in March 2016, the number of irregular migrants reported from the Central Mediterranean route was again higher than on any other route (FRONTEX, 2017).

In 2015 the other route widely used by Syrian and Afghan refugees was the Western Balkan route, an intra-European route (that does not only include EU or Schengen Area countries) from Greece to Central Europe. Transit through this corridor, which caught the attention of the European and International media in the middle of 2015, includes itineraries through Macedonia, Serbia, Hungary and Austria<sup>6</sup>.

There are various reasons why media and political attention has been so intensely focused on this transit movement toward central and northern European countries. First of all, the novelty of an intra-European migration route, coupled with the various external and internal controls that have been carried out over the past three years, including building physical walls<sup>7</sup> and taking exceptional measures to close borders within the

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<sup>5</sup> This declaration also included a new action plan to support the Libyan national coast guard and other agencies, the development of local communities, especially in coastal areas, and the support of assisted voluntary return programs. See [http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244654402\\_en.pdf](http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244654402_en.pdf).

<sup>6</sup> It also includes a much less used route that crosses the border between Turkey and Bulgaria.

<sup>7</sup> In the past years border walls (or reinforced fences) have been built at several perimeter areas of the European Union: a) the border between Turkey and Greece (Erdine), b) Turkey and Bulgaria (Lesovo and Kraynovo), c) Greece and Macedonia, d) Serbia and Hungary, e) France and the UK (Calais), f) Austria and Slovenia; g) Austria and Hungary, and h) Slovenia and Croatia. A new wall is now under construction on the Norway-Russian border.

Schengen Area<sup>8</sup>. This intra-European transit involves the borders of EU countries, as well as those of neighboring countries that are not (yet) part of the common border. The reactions of eastern and southeastern European countries to this pressure on their borders has been particularly harsh, as could be observed in Hungary's response in the summer of 2015, both in terms of border management and in their refusal to receive refugees.

Second, the difficulties in agreeing upon common border and asylum policies in the European Union, which has a great diversity of national border and asylum policies. In this sense, it should be mentioned that there have been repeated accusations made by other member states that Greece and Italy had not been meeting their obligations to effectively control its borders and had been showing "little interest" in registering potential refugees that cross through their territory. The euphemistic expression "hotspots approach"<sup>9</sup> (Prieto, 2016), which provided operational support to assist member states to manage "exceptional" migration flows was not the result of intra European solidarity but a new way to ensure the registration and identification of irregular migrants and asylum seekers at the external borders of Europe.

Third, the immigration dynamics through these routes over the past three years have provoked a differentiated management of what are considered economic routes and those used by asylum seekers, which has garnered a great deal of criticism from civil associations and international organizations, who feel that some of the flows which are being treated as economic, should in fact be considered forced migration.

Fourth, the substantial growth of immigration flows through the Eastern Mediterranean route took place at a time when there was a special alert due to terrorist attacks on European soil and the fact that the immigration was coming from regions in related conflicts (e.g., Syria). The receiving societies

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<sup>8</sup> This element had already been introduced into European policy during the intensification of arrivals to Italy in 2011 and 2012 as a consequence of the Arab Spring. In fact, the temporary reestablishment of internal border controls was formalized in 2013 through the approval of a regulation that specifically allows suspending Schengen for security reasons. The temporary suspension of Schengen involves reactivating internal borders and controlling the movement of people as if they were conventional international borders. During 2015 internal controls were reestablished in the Schengen Area countries of Hungary, Croatia, Slovenia, Slovakia, Austria, Germany and Sweden.

<sup>9</sup> The European Commission formulated the hotspot approach in the European Agenda on Migration in April 2015.

under terrorist threat perceive migrants and refugees not only as a population that needs assistance, but also as a source of insecurity. This climate of public opinion is a new version of "moral panic" that has been fueled in Europe in large part by right-wing political authorities and extremist groups who have gained visibility and support in the past two years.

Finally, Turkey's role as a transit country gained protagonism in this new scenario. In 2016 the European Union promoted a series of agreements with Turkey to increase its cooperation in controlling the flow through its territory, agreements that not only included generous economic endowments, but also relaxed the visa policy for Turkish nationals and reconsidered Turkey's adhesion to the European Union<sup>10</sup>.

#### *4. The impact of the "refugee crisis" on the construction of a common border*

The "refugee crisis" turned the European agenda on its head and had a profound impact on the construction of the common border and the EU's policies on the free movement of people and asylum (Morillas, Sánchez-Montijano and Soler, 2015). Various factors mentioned earlier in this article have led to tensions across Europe. To begin with, for the first time a large percentage of the migrants using these routes are refugees. This means that these flows have to be managed differently than traditional flows of economic migrants, considering that refugees are forced into migration and require international protection. Therefore, the initiatives implemented through the Schengen Agreement must be combined with the conditions put in place by the Dublin Regulation.

It is important to underscore that creating an area of free movement for people in Europe through the Schengen Agreement required harmonizing European asylum policies. This was accomplished through the signing of the Dublin Convention in 1990, which was later modified in 2003 and 2013 through what are referred to as the Dublin II and Dublin III regulations. The main objective of this agreement was to determine which European country within the Schengen Area would be responsible for processing each asylum request to avoid what was referred to in the 1980s as "orbiting" asylum seekers (applicants submitting applications in multiple

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<sup>10</sup> EU-Turkey Joint Action Plan, [http://europa.eu/rapid/press-release\\_IP-16-268\\_en.htm](http://europa.eu/rapid/press-release_IP-16-268_en.htm).

member states). In order of priority, the criteria to determine the country responsible for processing each application are: a) first of all, the country where the applicant has family members with refugee status<sup>11</sup>; b) second, the European state in which the applicant has a residence permit or visa; c) the country through which the applicant entered the territory of the European Union. The establishment of this procedure has had two important consequences for the concession or denial of refugee status. First of all, that the concession or denial is definite, that is, once the application has been processed and resolved, the asylum seeker cannot apply again in another European country. Second, applicants cannot freely and unilaterally choose where to apply for refugee status wherever they like, but rather they must adhere to the conditions established by the Dublin regulation.

This agreement has been heavily criticized, especially during the 2015 crisis. First of all, it did not guarantee a fair distribution of asylum seekers, because the responsibility falls mainly on the perimeter border states. In addition, it is common for recent refugees not to apply for asylum in the countries through which they enter European territory, but rather in those states that have better resources for receiving them. The difficulties in applying this agreement are tied, therefore, to the unequal distribution of responsibilities, the diversity of asylum policies among European countries and the difficulties in effectively determining which state is responsible to process asylum applications<sup>12</sup>.

The disparities caused by the Dublin Regulation and the need to find a solution for the thousands of refugees who entered Europe over the past two years had much to do with the political agreement that German Chancellor, Angela Merkel, and the European Commission negotiated to ensure that the refugees were distributed among the different countries, which was finally signed in September 2015. This binding agreement<sup>13</sup> involved the distribution and relocation of 160,000 asylum seekers coming from Italy and

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<sup>11</sup> These criteria are considered a priority to protect the fundamental right of family reunification.

<sup>12</sup> Another important criticism is that the agreement violates the rights of refugees, since the fair and efficient examination of the applications is not guaranteed in every country (Garcés-Mascarenas, 2015, 2016).

<sup>13</sup> This is a binding agreement that must also be respected by countries who voted against it, such as Hungary, Romania, the Czech Republic and Slovakia.

Greece, the main entrance countries<sup>14</sup>. This revealed that the tensions caused by “the refugee crisis” affecting the Schengen Agreement, the main instrument ensuring free movement in Europe, have also affected the Dublin Convention, the main political mechanism for a common asylum policy.

The political implications also included new mobility dynamics. The discrepancy between where the flows of refugees have arrived during this crisis (mainly Greece and Italy) and where asylum applications were made (mostly Germany, but also in the Scandinavian countries) have been caused by an intra-European transmigration process that had not been seen since the Schengen and Dublin agreements were adopted and that has reinforced the idea the main European instruments for asylum and free movement must be reformed or replaced.

Although the recent flows of irregular immigration through the southern border of the EU contain a high percentage of refugees fleeing the war in Syria, it should be remembered that it is not the source of all migration and that the Syrian conflict is not the only one that is provoking forced migrations<sup>15</sup>. Furthermore, it is important to note that the speed at which the routes have changed and reorganized over the past two years reveals just how volatile the dynamics of migration flows to Europe are at present.

The emergence of migration in the Eastern Mediterranean through the routes crossing the Balkans and in the Central Mediterranean also provoked various interrelated phenomena. First, the solidarity shown by border populations and volunteer organizations, who are doing a great deal of the work to assist and rescue migrants, mainly during the dangerous maritime crossings where they put their lives at risk. It is worth mentioning, due to its novelty, that some non-state actors and private organizations are taking part in rescue operations, especially during the

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<sup>14</sup> By the end of 2016 European countries relocated only one in twenty of the refugees they promised to shelter under this agreement. In March 2017 over 13,000 asylum seekers have now been relocated from Greece and Italy to other European Union member states (European Commission, 2017).

<sup>15</sup> According to the latest data published by FRONTEX the majority of the asylum seekers come from Syria, Afghanistan and Iraq. Other important nationalities of the asylum seekers are Nigeria, Pakistan, Iran and Eritrea (FRONTEX, 2017).

last months at the Central Mediterranean route<sup>16</sup>. Second, the volume of this flow over the last years has been so large that in February of 2016 the intervention of NATO military forces was approved for reconnaissance, control and supervision operations, with the goal of fighting against migrant smuggling networks in the Aegean. The intervention of Frontex, the European agency created to manage such emergencies, has clearly been insufficient. In this sense, the public mechanisms and resources that have been assigned to manage migration have been incapable of meeting the challenge of a flow of this magnitude. Third, the actions and attitudes of European countries have not exactly been respectful towards fundamental rights. Actions that have been criticized include the repressive use of the army in Hungary or the seizure of the financial resources of refugees in Denmark. Fourth, the migration crisis has reinforced the involvement of civil organizations in keeping watch over events affecting migrants, reporting the violation of their rights and the actions taken to correct these situations. In this sense, what has been called “humanitarian border” by Walters (2011) is reflected in the active involvement of civil society in holding the states accountable for their actions. Finally, the European Union will probably further externalize migration management to Turkey and other transit countries in exchange for economic and political concessions. It remains to be seen if in that transfer of competences the new actors will also be held accountable.

##### *5. Final thoughts*

The "refugee crisis" is both a reflection and cause of the difficulties faced by the European project to achieve economic, political and social integration. The debate provoked by the distribution of responsibilities reveals that national sovereignty has far from disappeared and the community project is in danger of being partially dismantled. The

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<sup>16</sup> One example is the Spanish NGO Open Arms Proactiva which has been carrying out maritime rescue operations since September 2015 near the Greek islands of Lesbos and Chios (<http://www.proactivaopenarms.org/>) and since September 2016 at the Central Mediterranean corridor, or the MOAS association, which is carrying out rescue operations since the end of 2013 in the Central Mediterranean and in the Aegean with private boats and vessels (<https://www.moas.eu>) (see also Cusumano, 2017).

European Union is suffering yet again from the consequences of an integration policy that mainly advances reactively and is always conditioned by negotiations of national sovereignty. Although the European migration panorama is at a crossroads, and how it is managed politically will be determined by the results of multilateral negotiations, it is urgent that public and media thoughts on this issue be accompanied by an academic reflection. This should be based on the challenges that this new scenario presents in terms of European values and internal social cohesion, the impacts on the economy and the welfare state, as well as the need to reform the common model used to manage asylum.

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