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European migration politics:
between security and humanity

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European migration politics: between security and humanity

Abstract:

The EU migration management following the arrival of Syrian refugees in 2015-2016 has called into question the effectiveness of the Dublin Protocol. The rise of nationalist, Eurosceptic and largely anti-migration narratives has brought forth an interpretation of the migration issue in terms of security. The latter securitization of the discourse has made it difficult to reach a consensus between Parliament and the European Council on the reforms of the Dublin system proposed by the Commission in 2016 and has encouraged the externalization of the community borders. In this respect, after the COVID-19 crisis, the approach taken by the European Commission under Von der Leyen's mandate in the new pact on immigration and asylum in the EU will be decisive.

Keywords:

European Union, migration, security, nationalism, Dublin system, borders, outsourcing, COVID-19, migration and asylum pact.

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Introduction

According to the functionalist theory on the European Union, it is in periods of crisis when EU member states become convinced of the need to hand over competences to the European level and when they aspire to be "more Europe". Examples of this are the terrorist attacks in Madrid in 2004 or London in 2005, which resulted in progress in matters of coordination in the event of emergencies and crises. In turn, the 2008 Financial Crisis also prompted greater coordination in monetary and economic policy at the European level. However, despite the critical situation of European migration policies and the late reaction to the arrival of refugees in 2015-2016, migration is, thus, presented as a challenge that invalidates the functionalist theory. Instead of helping to deepen the competences of the EU, the migration management has fuelled Eurosceptic and nationalist movements that prevent further European integration and, thus, a common migration policy¹.

Genschel and Jachtenfuchs argue that the traditional problems of the European Union always arise around institutional fragmentation, political segmentation and territorial differentiation². These three points can in turn explain the European response to the migration crisis of 2015-2016. Firstly, institutional fragmentation can be observed in the lack of convergence in matters revolving the right to asylum and the duplication of mechanisms, such as the Integrated Political Crisis Response (IPCR), the European Asylum Support Office (EASO) and the European Coast Guard Agency (formerly known as FRONTEX, created in 2015, with 10,000 European coast guards)³. Secondly, political segmentation can be observed in the nationalistic shift in the internal policies of member states and the resurgence of a new social fracture around the migration issue⁴. In turn, territorial differentiation can be found in the different management of hotspots and in the division of member states generated by the Dublin Protocol between border

¹ TARDIS, M. "L'UE est-elle prête pour les prochains défis migratoires?", *Politique Etrang'ere*, 3, 2019, p. 110.

² GENSCHEL, P., & JACHTENFUCHS, M. "More integration, less federation: the European integration of core state power", *Journal of European Public Policy*, 2015, doi:10.1080/13501763.2015.1055782.

³ COLLET, E., & COZ, C. L. *After the storm: Learning from the EU response to the migration crisis*, Migration Policy Institute Europe, 2018.

⁴ ADEMMER, E., & STÖHR, T. "The Making of a New Cleavage? Evidence from Social Media Debates About Migration", *Kiel Institute for the World Economy* (2140), 2019.

states, with greater responsibility for managing asylum applications, and internal countries, which are not directly affected by the migration issue.

Throughout this paper we will study the drift of the European Union's migration discourse and policy towards security. To this end, we will firstly examine the weakness of the Dublin System in the face of the arrival of Syrian refugees in 2015-2016 and the consequent rise of nationalist political movements around the migration issue. Secondly, we will study the anti-European and the anti-migration shift of the political discourse, which is part of the imaginary of the emerging nationalist parties. We will see the impact of this emerging discourse in the paralysis in the tripartite decision-making - the Commission, Parliament and the European Council - with regard to the reform of the Dublin system and security at the borders and interoperability between information agencies. Later, we will examine how this nationalist approach can be observed in the closure of internal borders, together with the externalization of the borders of the European Community area. Finally, we will examine the European Commission's response to the emergence of nationalism with the new Pact on Migration and Asylum, scheduled for 2020, under the presidency of Von der Leyen in a time of great uncertainty after the coronavirus crisis.

The weakness of the Dublin system in the face of the 2015 crisis

EU competences in the field of asylum and immigration were introduced in the Maastricht Treaty (1992), assigned to the third pillar of the EU: Justice and Home Affairs. Following the Treaty of Amsterdam, the European Commission became responsible for proposals on migration and asylum, which would be taken up unanimously by the European Council until 2005, with the entry of the Parliament into migration decision-making. Articles 67(2) and 78(2) of the Treaty of Lisbon, also known as the Treaty on the Functioning of the European Union, insisted on the creation of a common European policy based on the principle of "non-refoulement" and the Geneva Convention on refugees. In turn, Article 80 of the TFEU took up the principle of fair sharing of responsibility for migration⁵. To comply with the above provisions, the EU

⁵ TAGLIAPIETRA, A. "The European Migration Crisis: A Pendulum between the Internal and External Dimensions", *Instituto Affari Internazionali*, 19 (12), 2019.

adopted the Dublin Protocol and the Common European Asylum System (CEAS), later known as EASO.

In 1990, the member countries of the European Union signed the Dublin Convention, which stipulated that the asylum process should be carried out in the first EU country to receive the applicants. It aimed to "harmonize asylum policies within the European area of free movement" and to avoid the so-called "asylum shopping" (a person choosing the country in which to seek asylum), or "orbiting" (no country being responsible for managing asylum applications)⁶. Both revisions of Dublin II (2003) and Dublin III (2013) deepened the criteria for relocating asylum seekers by giving priority to family unity, then to the provision of a residence permit or visa, and finally to the country through which the applicant entered the EU or in which he or she applied for asylum.

However, in spite of being a "policy of minimum standards", the effectiveness of the Dublin protocol has been highly questioned due to an unequal distribution of responsibilities between member states, a lack of efficiency and the violation of the refugees' rights, as there are no guarantees of a fair and efficient examination of the asylum request. Along these lines, some authors are of the opinion that the main problem with migration policy is that it is guided by ideals and not by a rational evaluation of the reality of migration⁷ and that it is "a patchwork policy", with little vision and a lack of common criteria for protection⁸.

First, the protocol disproportionately shifted responsibility for managing asylum seekers to countries in the front line of access, such as Spain, Greece, Italy or Malta. In 2014, only five member states had to deal with 72% of asylum applications in the EU⁹. This situation led bordering countries not to register asylum seekers at their borders and/or to impose restrictive immigration policies, seen in the suspension of the right to family reunification in Germany for two years, the introduction of the detention for one to five years in cases of irregular entry in Italy, or the limits on limiting admissions for asylum to

⁶ GARCÉS-MASCAREÑAS, B. "Por qué Dublín 'no funciona'", *Notes Internacionals CIDOB* (135), November 2015.

⁷ TARDIS, M. "L'UE est-elle prête pour les prochains défis migratoires?", *Politique Etrangere*, 3, 2019, pp. 101-112.

⁸ CEAR. (2012). *La situación de las personas refugiadas en España*. Comisión Española de Ayuda al Refugiado. Madrid: Los libros de la catarata.

⁹ LULLE, R. K. *Research on Migration: Facing Realities and Maximising Opportunities. A Policy Review*. Luxembourg: Publications Office of the European Union, 2016, p. 13.

37,500 in Austria in 2016¹⁰. In addition, the disproportionate sharing of responsibilities led to a lack of solidarity by member States with the countries that received the biggest share of migrants and the re-establishment of some borders within the Schengen area (Hungary, Slovenia, Slovakia, Croatia, Germany, Austria and Sweden¹¹).

Secondly, the conditions of the Dublin Convention promote an inefficient asylum process. As the criteria for allocating responsibility do not coincide with the applicants' preferences, the success of the insertion of asylum seekers in the receiving countries is limited. The lack of "willingness of the states" to harmonize the procedures and conditions of asylum seekers has been demonstrated, as is the specific case of Spain, with an open appeal to the European Court for a lack of harmonization of its asylum policy compared to the European one of 2008. All this has once again promoted asylum seekers' preferences for certain European destinations. An example of this is the 33 days required for recognition of asylum in Italy, compared to the 180 days required in Greece¹². In turn, the rate of recognition of asylum differs considerably among member countries: Germany has 71% recognition of asylum seekers, compared to 8% in Hungary¹³.

Thirdly, the great difference in rights and access to the labor market between member countries is also an important condition for asylum seekers in their choice of destination country. "Not because they are fleeing from where they come from, (asylum seekers) are indifferent to where they are going"¹⁴. For example, Greece and Spain are the European countries with the highest unemployment rates, with 16.7% and 14.2% respectively, compared to the Czech Republic (2.2%) or Germany (3.1%)¹⁵. Another

¹⁰ TAGLIAPIETRA, A. "The European Migration Crisis: A Pendulum between the Internal and External Dimensions", *Instituto Affari Internazionali*, 19(12), 2019.

¹¹ GARCÉS-MASCAREÑAS, B. "Por qué Dublín 'no funciona'", *Notes Internacionals CIDOB* (135), November 2015, p. 3.

¹² BOVE, C. *Country Report: Italy*. Asylum Information Database, 2018, p. 34. Available at: <https://www.asylumineurope.org/node/261>

KONSTANTINOPOULOU, A., & GEORGOPOULOU, A. *Country Report: Greece*. AIDA, 2018, p. 42. Available at: <https://www.asylumineurope.org/node/259>

¹³ MOUZOURAKIS, M. *Refugee Rights Subsiding? Europe's Two-Tier Protection Regime and Its Effect*. AIDA, 2017, p.10. Available at: <https://www.asylumineurope.org/node/2712>

¹⁴ GARCÉS-MASCAREÑAS, B. (Noviembre de 2015). Por qué Dublín "no funciona". *notes internacionals CIDOB*(135), November 2015, p. 2.

¹⁵ Eurostat. *Unemployment statistics*. Statistics Explained, 2019.

notable difference is access to nationality. In 2017, Sweden had the highest European nationalization rate (8.2 acquisitions per 100 foreign residents), compared to countries such as Spain, Germany, Denmark and Ireland, among others, whose nationalization rate is less than 2%¹⁶.

Anti-immigration discourse booms in the EU

The European Union does not have exclusive competences in the field of migration, but rather shares them with the Member States, which largely explains the difficulty of managing the migration issue. The progressive loss of competences of the Member States in the Treaty of Amsterdam (1999) and the Pact on Migration and Asylum (2008) has generated resistance and, in recent years, nationalist movements and Eurosceptic and/or extreme right-wing parties.

This can be seen in how nationalist parties have increased their presence on the European political scene, gaining government in five Member States and 22 EU parliaments¹⁷. However, when talking about European nationalist parties, it is necessary to understand that they are not uniform, but that they encompass anti-immigrant narratives, nationalist and anti-European policies, economic protectionist measures, and, in some cases, even neo-Nazi connections. In most cases it has been the nationalist discourse which has managed to gather votes thanks to the uncertainty around the arrival of Syrian refugees and the economic situation facing Europe, which has led many to consider the emergence of a new social fracture around the issue of migration¹⁸. The arrival of refugees called into question cultural, economic and religious aspects of many member states, which was skilfully used in the political imaginary of these parties, with a narrative that often presents migration in the EU in terms of security, rather than focusing on humanitarian issues.

¹⁶ Eurostat. *Migration and migrant population statistics*, 2019.

¹⁷ CABRAL, I. A. "La ultraderecha tiñe el mapa de Europa: está en cinco gobiernos y 22 parlamentos de la UE", *Público*, 21 January 2020.

¹⁸ ADEMMER, E., & STÖHR, T. "The Making of a New Cleavage? Evidence from Social Media Debates About Migration", *Kiel Institute for the World Economy* (2140), 2019.

Euro-sceptic nationalist parties are presented as the first force in Slovenia, Hungary and Poland; the second force in Belgium, France and the Netherlands; or the third force in: Austria, Denmark, Finland, Germany, Hungary, Italy, Spain and Sweden. Only four countries have right-wing parties with less than 10% of the vote in their last elections (Cyprus, Greece, Lithuania and Portugal) and three countries have no right-wing parties in parliament (Luxembourg, Ireland, Croatia)¹⁹.

At the level of the European Parliament, however, nationalist parties are present in many different political groupings, such as Europe of Nations and Freedoms, Europe of Freedom and Direct Democracy, European Conservatives and Reformists, European People's Party or Identity and Democracy. On the one hand, Italian Salvini's proposal for the creation of a European Alliance for Peoples and Nations brings together extreme right-wing parties from Austria, Belgium, Finland, France, Germany, the Netherlands and Poland²⁰. Despite numerous differences in economic and social policies, they agree on "closing Europe's borders to immigration, defending Europe's 'traditional cultural heritage' and protecting 'national identities' from those who want more EU political and economic integration"²¹.

On the other hand, there are the member countries of the Visegrad Group (Slovakia, Hungary, Poland and the Czech Republic) whose interests have shifted from the democratization of their governments to the reception of a smaller number of immigrants in order to "protect their national identity". The European Union's Court of Justice on 31 October 2019 held a trial against Hungary, Poland and the Czech Republic for their refusal to relocate the 160,000 asylum seekers under a system of compulsory quotas²². The Hungarian Parliament, under Hungarian Prime Minister Viktor Orban and his party FIDESZ, had approved a law to criminalize aid to migrants ("Stop

¹⁹ CABRAL, I. A. "La ultraderecha tiñe el mapa de Europa: está en cinco gobiernos y 22 parlamentos de la UE", *Público*, 21 January 2020.

²⁰ LÁZARO, A., & PARROCK, J. "La difícil alianza de la Europa de las Naciones", *Euronews*, 20 May 2019. Available at: <https://es.euronews.com/2019/05/20/la-dificil-alianza-de-la-europa-de-las-naciones>

²¹ BUJJ, A. "Salvini une fuerzas ultraderechistas para conquistar Bruselas", *La Vanguardia*, 8 April 2019. Available at: <https://www.lavanguardia.com/internacional/20190408/461524502811/salvini-une-fuerzas-ultraderechistas-conquistar-bruselas.html>

²² DE MIGUEL, B. "La justicia europea se decanta por obligar a Polonia, Hungría y República Checa a reubicar refugiados", *El País*, 31 October 2019. Available at: https://elpais.com/internacional/2019/10/31/actualidad/1572548542_180324.html

Soros” Law) and a reform of the Constitution to prohibit the relocation of refugees²³. At the EU level, Poles aim to influence the Conservatives and Reformers, and Hungary's Orban seeks to attract the Populists, from whose group he is temporarily suspended.

In short, the rise of nationalist, Eurosceptic and largely anti-migration narratives go against the idea of moving towards 'more Europe' and makes it difficult to reach a consensus on the management of European migration policy. All this entails a challenge to the EU's international credibility. In the section "Decision-making at stake" we will understand the implications of the migration narrative on security for decision-making in the EU.

The impact of the anti-migration discourse in the EU

The Commission's proposals on migration

The EU's attempts to harmonize asylum procedures and conditions with the EU Asylum Procedures Directive (2013) and the Reception Conditions for Asylum Seekers Directive (2013) proved to be ineffective in implementing the Dublin Protocol. Without standard procedures and independent control mechanisms at the local and international level, "applicants apply for asylum more than once, they do not necessarily do so in the assigned country according to the Dublin criteria and their transfer is problematic"²⁴. In view of this situation, the Commission has put forward several proposals with the following objectives: (1) the establishment of a fair and sustainable Dublin system for determining the responsibility of the Member States and the harmonization of the conditions for applying for, qualifying for and receiving asylum seekers and (2) interoperability between information agencies for greater security at the borders.

²³ SAHUQUILLO, M. R. "Hungria aprueba la polémica ley que criminaliza la ayuda a los migrantes", *El País*, 21 June 2018.

²⁴ GARCÉS-MASCAREÑAS, B. "Por qué Dublín 'no funciona'", *Notes Internacionals CIDOB*(135), November 2015, p. 4.

The reform of the Dublin system

Garcés-Mascareñas argues that "the alternative to Dublin is not a new revision of the regulations, but a rethinking of how to build a true common asylum policy"²⁵. To do this, the EU has had to rethink a basis of common principles to answer the following basic questions: how to distribute responsibility among member states, how to homogenize asylum procedures and conditions, and what to do with asylum seekers who are not recognized as refugees. In response to the reform of the Dublin system, the Parliament, for its part, reacted with the proposal for a centralized system of responsibility, that is to say, the management of asylum applications at EU level, instead of in the country of arrival. On the other hand, Parliament's Committee on Civil Liberties, under Cecilia Wilkström's report, suggested considering the population size and economy of the Member States as criteria for the resettlement of asylum seekers²⁶. They also proposed blocking the transfer of asylum seekers between member states, processing asylum applications at European level and considering the applicants' links with specific countries as criteria for resettlement. The Council, for its part, is currently continuing discussions on the draft.

The Commission also proposed in 2016 (1) to harmonize and simplify the asylum procedure across the EU, (2) a greater convergence in the asylum recognition ratio and in the protection measures for asylum seekers among the Member States, (3) decent and harmonized reception standards, and (4) a resettlement system at EU level.

The Commission's proposal in 2016 to transform EASO into an EU agency, "with the means and mandate to assist Member States in crisis situations and provide them with technical assistance" was approved by Parliament and the Council in a first reading²⁷. In December 2016, the Justice and Home Affairs Council raised questions about the potential overlap of powers between the new agency and the Commission with regard

²⁵ *Idem*

²⁶ ALTANASSOV, N., DUMBRAVA, C., MENTZELOPOULOU, M.-M., & RADJENOVIC, A. "EU asylum, borders and external cooperation on migration: Recent developments", *European Parliamentary Research Service*, 2018, p. 9.

²⁷ ADEMMEER, E., & STÖHR, T. "The Making of a New Cleavage? Evidence from Social Media Debates About Migration", *Kiel Institute for the World Economy* (2140), 2019, p. 11.

to the assessment of member states' capacities and responsibilities for the implementation of European law²⁸.

Border security and interoperability between information agencies

The European Commission launched a proposal in 2016 in reference to the Eurodac regulation²⁹ whereby Member States would collect data and fingerprints from third country nationals or stateless persons not seeking international protection who cross EU borders irregularly or who are in the EU illegally³⁰.

In response to the terrorist attacks in Paris, a reform of the Schengen Borders Code was adopted in March 2017, involving the permanent control of persons at EU entry points and biometric verification. By a joint decision between Parliament and the Council, the transformation of Frontex into the European Coast Guard Agency took place in 2016 and the Entry/Exit System (EES) of the EU's register of non-national travelers for the identification of "over-stayers" was introduced in 2017. The latter was complemented by the ETIAS (European Travel Information and Authorisation System) programme, which checks asylum seekers' applications against European intelligence databases such as Eurodac, Europol or Interpol. In addition, the introduction of the Schengen Information System (SIS) was proposed, to alert on wanted or missing persons and property, and the eu-LISA, a program for the operational management of large-scale IT systems in the areas of freedom, security and justice and the improvement of the interoperability of European information systems³¹.

²⁸ ALTANASSOV, N., DUMBRAVA, C., MENTZELOPOULOU, M.-M., & RADJENOVIC, A. "EU asylum, borders and external cooperation on migration: Recent developments", *European Parliamentary Research Service*, 2018.

²⁹ Eurodac is the European Union's fingerprint database used to register and identify asylum seekers and irregular migrants crossing the EU border.

³⁰ ALTANASSOV, N., DUMBRAVA, C., MENTZELOPOULOU, M.-M., & RADJENOVIC, A. "EU asylum, borders and external cooperation on migration: Recent developments", *European Parliamentary Research Service*, 2018, p. 11.

³¹ *Idem*, p. 23.

Decision-making at stake

Legislative proposal	Commission proposal	Parliament's position	Council's position	Current situation
The Dublin System Reform				
Reform of the Dublin system	Proposal (May 2016)	LIBE report (November 2017)	Negotiation mandate (October 2017)	Triologue
Regulation on the common asylum procedure	Proposal (July 2016)	LIBE report (April 2018)	Discussions in progress	Preparation phase
Regulation on uniform requirements for asylum	Proposal (July 2016)	LIBE report (June 2017)	Negotiation mandate (July 2017)	Triologue
Directive on reception conditions	Proposal (July 2016)	LIBE report (October 2017)	Negotiation mandate (November 2017)	Triologue
EU Resettlement Framework	Proposal (July 2016)	LIBE report (October 2017)	Negotiation mandate (November 2017)	Triologue
Turning the EASO into a European Agency	Proposal (May 2016)	LIBE report (December 2016)	Negotiating mandate (December 2016)	Interim agreement (December 2017) New Commission proposal for amendments (September 2018)
On border security and interoperability between information agencies				
Eurodac regulation	Proposal	LIBE report (June 2017)	Negotiation mandate (June 2017)	Triologue
Reform of the Schengen Borders Code	Proposal (December 2015)	LIBE Report (June 2016)	General approach (February 2016)	Regulation (March 2017)
The European Coast Guard Agency (formerly Frontex)	Proposal (December 2015)	LIBE Report (June 2016)	Negotiation Mandate (June 2016)	Regulation (September 2016)
Entry and Exit System (EES)	Proposal (April 2016)	LIBE Report (February 2017)	Negotiation mandate (March 2017)	Regulation (November 2017)
ETIAS	Proposal (November 2016)	LIBE Report (October 2017)	General approach (June 2017)	Regulation (December 2017)
Schengen Information System	Proposals (December 2016)	LIBE report (November 2017)	Negotiation mandate (Nov. 2017)	Triologue
eu-LISA	Proposal (December 2017)	LIBE Report (December 2017)	General approach (Dec 2017)	Triologue

Table 1. Status of the Commission's 2016 legislative proposals on the migration issue. Source. Updated data (February 2020). ALTANASSOV, N., DUMBRAVA, C., MENTZELOPOULOU, M.-M., & RADJENOVIC, A. "EU asylum, borders and external cooperation on migration: Recent developments", European Parliamentary Research Service, 2018, p. 34.

The table above shows how the traditional EU decision-making is at stake, due to the greater role of the European Council vis-à-vis the Parliament and the Commission in the negotiations, since it is in the European Council that decisions are delayed due to the difficulty of finding consensus among the Member States. Even though the Eurosceptic and ultra-nationalist parties have already reached the European Parliament, the latter is generally more liberal than the European Council, leading to a paralysis in decision-making and shifting the final word to the Council.

The underlying problem is that the European Commission presented the above measures as a package', with the aim of having them all accepted by the co-legislators. However, only those measures more strictly related to the security aspect of the migration issue have been regulated, while the debate on the more humanitarian measures that seek to harmonize procedures remains open.

In fact, from the table we deduce that in those security-related migratory issues where the states do not have as much reserve of sovereignty, as in the case of the control of the community border and the control of irregular immigration, there is an easy transfer of competences to the EU, which facilitates the agreement between the Parliament and the Council for the implementation of the Commission's proposals. This is the case with the creation of FRONTEX together with the regulation of the Schengen system, ETIAS and EES. Not in all security-related issues has agreement been reached between the co-legislators, as is the case with EURODAC, the reform of the Schengen information systems or eu-LISA. This is because these agreements do not depend solely on the will of the Member States but are also influenced by the will of intelligence agencies at national and European level (Europol).

On the contrary, in those migration issues that are not directly related to security matters there is less transfer of competences from the member states to the EU, such as the regulation of legal immigration or asylum. It is in these measures that the three-way dialogue process continues, see in the Dublin reform, the common asylum procedure, uniform asylum requirements, reception conditions or the EU resettlement framework.

The shielding and externalization of European borders

With the arrival of Syrian refugees in 2015-2016, some member countries from Northern, Central and Eastern Europe (e.g. Germany, Sweden, Denmark) rejected the proposal to end the Dublin legislation and replace it with a new regulation to distribute asylum seekers across the European Union. In the absence of a renewal of the Dublin protocol and the failed quota system, two alternative movements emerged. Firstly, a reorientation of the budget whereby EUR 10 billion was allocated to frontline countries, in other words, the same policy that had previously failed was insisted upon, but this time with more resources. Secondly, the externalization of the migration issue was normalized through agreements with third countries.

Indeed, cooperation with third countries and externalization of EU borders, governed by the Global Approach to Migration, are other aspects openly criticized by the UNHCR: "the EU should take in at least 20% of global resettlement needs and should not rely on cooperation with third countries"³². The EU's declaration with Turkey, agreements with Mediterranean countries (Libya, Morocco or Tunisia), support for non-EU European countries (such as Serbia or the Republic of North Macedonia), trust funds for so-called countries of origin (such as the Syria Trust Fund) and the EU's relations with Africa all raise the question of whether the EU depends on cooperation with third countries for the management of migration flows.

The agreements with third countries by each Member State on a bilateral basis and not at the level of the European Union through the European Council, denote a prioritization of national interests over European ones. Indeed, the bilateral treaty of the Member States with Turkey was "an experiment by the European institutions as a response to a complex and multilateral policy challenge"³³. According to the agreement, irregular migrants entering Greece after 20 March 2016 would be returned to Turkey and the EU would resettle one Syrian for every Syrian returned from Greece. In return, the EU made certain promises to Turkey that included visa liberalization, assistance of 6 billion euros, improvement of the Turkey-EU Customs Union and a review of the country's EU

³² ALTANASSOV, N., DUMBRAVA, C., MENTZELOPOULOU, M.-M., & RADJENOVIC, A. "EU asylum, borders and external cooperation on migration: Recent developments", *European Parliamentary Research Service*, 2018, p. 15.

³³ COLLET, E., & COZ, C. L. "After the storm: Learning from the EU response to the migration crisis", *Migration Policy Institute Europe*, 2018, p. 20.

accession process. While the headlines "rapid implementation of EU-Turkey Declaration looked like it would end the crisis", on the ground it heralded a change in the nature of the crisis as the negotiation required high-level political discussion, while implementation required coordination, planning and collaboration of local and national governments with European and international bodies³⁴.

The agreement has now been suspended by the government of Erdoğan due to escalating tensions between Turkey and the EU over Turkish gas explorations in the waters off Cyprus. However, the recent renewal of Italy's signature of the controversial agreement with Libya for migration management and border control on the Central Mediterranean route, —"the world's deadliest migration route" according to the IOM—, suggests that the European Union continues to rely on bilateral agreements between member states and third countries. The EU's General Court "considers that the evidence presented by the European Council (...) shows that it is not the Union, but its Member States, as actors in international law, who conducted the negotiations with Turkey in this area, including on 18 March 2016" and that "neither the European Council nor any other institution of the Union has taken the decision to conclude an agreement with the Turkish Government in relation to the migration crisis"³⁵. Although the EU-Turkey declaration was an informal pact between EU member states and Ankara, the externalization of borders in countries such as Turkey or Libya is of questionable legality, as none is considered safe by the EU. Therefore, in this case, the externalization of the migration management entails an externalization of the protection of the human rights of migrants in these countries.

The process of shielding the external borders of the European Union can also be seen in the development of FRONTEX. From being a mere instrument at the service of Member States, FRONTEX has come to have executive powers, acquire its own equipment, "coordinate joint operations, execute returns (voluntary and forced), sign agreements with third countries and recruit a corps of 10,000 armed border guards"³⁶.

³⁴ COLLET, E., & COZ, C. L. "After the storm: Learning from the EU response to the migration crisis", *Migration Policy Institute Europe*, 2018, p. 20.

³⁵ Press Release No 19/17, Orders of the General Court in Cases T-192/16, T-193/16 and T-257/16 NF, NG and NM v European Council (General Court of the European Union 28 February 2017)

³⁶ GONZÁLEZ-PÁRAMO, A. "El negocio en la sombra del discurso del miedo", *El País*. Retrieved on April, 25th 2020, de

https://elpais.com/elpais/2020/01/14/3500_millones/1578991134_775179.html?ssm=TW_CC

Another proof of the shift towards the EU's border protection can be seen in the 2021-2017 budgetary framework, which will allocate "0.829 million euros to migration and border control (2.7% of the total budget, 207% more than the previous period), 24.322 million to security and defense (2.1% of the total) and a good part of the 100,000 million to innovation and the digital economy³⁷.

The European Union, in turn, has tried to respond to the immigrant trafficking networks on the Mediterranean routes through military operations such as EUNAVFOR MED³⁸, also known as Operation Sophia. Due to the limited capabilities of the military to enforce the law in Operation Sophia, it was demonstrated that the military needs a new role in the EU whose priorities are: intelligence, training other civilian agencies in the protection of human rights and only acting in crisis situations³⁹. On 17 February 2020, this operation, previously primarily humanitarian, was closed due to disagreements between Member States on where to land the rescued. Operation Sophia has been replaced by another operation to stop the supply of arms to Libya, under the condition set by countries such as Austria, Hungary or Italy that "in the event that the European naval deployment causes a knock-on effect on human trafficking networks, the naval assets will be withdrawn from the area, to prevent them from becoming an instrument of these networks"⁴⁰. This shows once again that security issues are given priority over humanitarian issues in migration policy.

With respect to the EU's relations with Africa, some authors believe it is necessary to return to the principles of promoting integration and mobility in Africa of the Cotonou Agreement and the Joint Valletta Action Plan. The current approach, which focuses on the EU's Emergency Trust Fund for Africa, does not take into account that a country's development can increase its level of emigration by connecting migrant readmission

³⁷ GONZÁLEZ-PÁRAMO, A. "El negocio en la sombra del discurso del miedo", *El País*. Retrieved on April, 25th 2020, de https://elpais.com/elpais/2020/01/14/3500_millones/1578991134_775179.html?ssm=TW_CC

³⁸ EUNAVFOR MED stands for European Naval Force Mediterranean.

³⁹ HIMMIRICH, J. "Beyond Operation Sophia: What role for the military in migration policy?" *Dahrendorf Forum: Debating Europe*. LSE Ideas, 2019.

⁴⁰ PONTIJAS CALDERÓN, J. L. *Novedades en el panorama europeo de seguridad y defensa*, IEEE. Retrieved March 20, 2020, from http://www.ieeee.es/Galerias/fichero/docs_informativos/2020/DIEEEE10_JOSPON_SegDef.pdf

agreements with development cooperation⁴¹ and frustrates African institutional efforts, such as those of ECOWAS, for African mobility⁴².

New agreement under the presidency of Von der Leyen

Even though the refugee crisis in 2015 highlighted the need for a truly common European policy on migration, an ineffective policy that prioritizes national interests over the common good has continued to be pursued⁴³. "Dublin is the result of a precarious balance of power between member countries with very different interests⁴⁴. The differences between the member states have led to a lack of agreement between the Council and the European Parliament on a reform of the Dublin system. Although negotiations continue in progress on this issue, migration management is thus presented as a "symbolic policy" with which the European Union, on the one hand, does not provide an effective response to the arrival of asylum seekers with guaranteed minimum conditions and, on the other hand, fuels nationalist and xenophobic movements in the member countries.

In fact, the prioritization of national interests over the common European good and the securitization of migration policy have complicated the consensus between the Council and the European Parliament on the reform package and demonstrated that Community rules are moving towards more Europe on the one hand and the political will of the states on the other. This can be seen in the establishment of internal borders within Schengen in nine Member States (e.g. France), the impunity for human rights violations on the Balkan route and the bilateral agreements between Member States and third countries for the externalization of Community borders.

From the lack of agreement between Parliament and the European Council, we can conclude that it is increasingly difficult for the Commission to make proposals that will

⁴¹ ÁLVAREZ, F. "Migración y seguridad: perspectivas de Europa", *Instituto Español de Estudios Extranjeros* (127), 2018, p. 16.

⁴² BARANA, L. "EU Migration Policy and Regional Integration in Africa: A New Challenge for European Policy Coherence", *Instituto Affari Internazionali*, 18(42), 2018, p. 1- 5.

⁴³ GARCÉS-MASCAREÑAS, B. "Por qué Dublín 'no funciona'", *Notes Internacionales CIDOB* (135), noviembre de 2015, p. 4.

⁴⁴ GARCÉS-MASCAREÑAS, B. "Por qué Dublín 'no funciona'", *Notes Internacionales CIDOB* (135), noviembre de 2015, p. 3.

be accepted by the co-legislators. Faced with this new paradigm, the European Commission, under the presidency of Von der Leyen, has created a commissioner on the "Promotion of the European way of life"⁴⁵, chaired by Greek Commissioner Margaritis Schinas. On the one hand, this position is precisely intended to combat the rise of nationalist parties by seeking to generate a pan-European identity. On the other hand, however, it can bring the EU closer to the far-right parties, because of the idea of protecting the European from the outer world. The union of the migratory policy with the European values is generating an alteration of the political language, since under the migratory question the subjects related to security are being prioritized in front of the most humanitarian ones.

The new European Commission had declared that in March 2020 it would unveil the European Union's new immigration and asylum pact. However, the emergence of the COVID-19 seems to indicate that there will be a change of priorities in European policy with an emphasis on shielding borders to ensure incomes, social cohesion, and a way out of the recession. Furthermore, the different European policies on the regularization of migrants in the face of the pandemic require a new, joint, fairer and more effective look at the migration issue. The future Pact on Asylum and Migration is therefore an opportunity to move forward on safe and legal migration routes, improve integration and access to employment, and implement more respectful and innovative temporary mobility mechanisms.

Conclusion

The traditional problems of the European Union, without exception of the migration management, always arise around institutional fragmentation, political segmentation and territorial differentiation. Post-arrival migration management of Syrian refugees in the EU has questioned the effectiveness of the Dublin protocol due to unequal distribution of responsibilities between member states, lack of efficiency and violation of refugees' rights. Furthermore, the EU's attempts to homogenize asylum procedures and conditions with the Directives on the Asylum Procedure in the EU (2013) and the

⁴⁵ Initially this ministry would be called "Protection of the European way of life".

Conditions for Reception of Asylum Seekers (2013) proved to be ineffective for the implementation of the Dublin protocol.

On the one hand, the rise of nationalist, Eurosceptic and largely anti-migrant narratives run counter to the idea of moving towards 'more Europe'. The package of migration policy reforms proposed by the European Commission in 2016 has shown that nationalist discourse has permeated EU decision-making and standardized anti-migration discourse. In fact, consensus has only been reached between the Council and the European Parliament on security-related measures, where member states do not have as many sovereignty reservations, and not so much on those measures related to more humanitarian issues.

On the other hand, the nationalistic drift of European decision-making can be seen in the cooperation with third countries on a bilateral basis (and not at EU level through the European Council) and the externalization of EU borders, aspects openly criticized by the UNHCR. The European Union, in turn, has tried to respond to the immigrant trafficking networks on the Mediterranean routes through FRONTEX or military operations such as the Sofia military operation, which, previously fundamentally humanitarian, has been replaced by another one to stop the supply of arms to Libya, denoting, once again, a shift towards the armouring of migration policy.

Finally, the new European Commission, which in March 2020 would initially unveil the European Union's new immigration and asylum pact, is facing new migration challenges, such as the COVID-19 crisis or the tension on the border with Turkey. The approach that the Commission will take under Von der Leyen's mandate regarding migration policy will be therefore decisive in the next mandate.

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