

THE EUROPEAN REFUGEES CRISIS: HOW TO ADDRESS IT

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Abstract

The issues of immigration and asylum have been in recent months at the center stage of the European political debate., where the situation is fluid, both in the political and in the legislative discussions,

The European asylum policy and the Dublin System are currently considered very controversial topics. This paper analyses the situation in the European context and looks at the legislative practices, the major problems in the application of these practices, as well as to the Agenda of the European Commission and comes out with a series of suggestions on how to reduce and possibly eliminate the gaps showed in the asylum management, most importantly by proposing the establishment of a European citizenship for refugees.²

Keywords

European Union; refugees, asylum and migration; asylum policies; Dublin System, refugee status; European citizenship, national legislation, refugee allocation, European Agenda

1. Introduction

Due to the growth of asylum seeker flows arriving into EU territory, the evident inability of the EU to effectively answer the problem and the increased interest shown in public opinion to the images of suffering and death that accompany asylum seekers trying to reach EU soil, the immigration and asylum subjects, in recent months, have become central in the European political debate.

Asylum seekers flows, having remained quite stable from 1990 to 2010, have started to grow following the Arab Spring and the consequent destabilisation of the North African region. Further increases have been registered following the Libyan civil war and the Western military intervention that ended with the death of Muammar Qaddafi, leaving the country highly divided and without a central government able to control the entire territory and its borders. Yet, only with the onset of the Syrian civil war, between the end of 2011 and the beginning of 2012, and the advance of radical fighting groups (such as al-Nursa and Daesh) between 2013 and 2014, have the flows of asylum seekers started to increase dramatically.

According to the UNHCR, in 2014 the number of asylum seekers in industrialised countries was the highest of the last decades with a total of 866.000 applications, registering an increase of 45% compared to 2013. Although it is not the only factor, war is without a doubt a key variable in explaining the phenomenon. Table 1 shows the number of asylum applications submitted to the EU, divided by country of origin of the asylum seekers. The data shows the top ten countries of origin from which the EU received applications in 2014.

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² I would like to thank: Daniele Archibugi, Daniele Santoro, Martina Bavastrelli and Alice Pease for their valuable feedback on the article.



Table 1: Top ten countries by number of asylum applications, divided by country of origin of the applicant, presented in the European Union in 2014.

N°	Country	2014
1	Syria	127,940
2	Eritrea	46,730
3	Afghanistan	42,700
4	Kosovo	38,450
5	Serbia	31,180
6	Pakistan	22,360
7	Iraq	21,870
8	Nigeria	21,235
9	Russia	20,235
10	Somalia	18,135
Total number of applications from the top ten countries		408835
Total Applications - 2014		663240
Top ten countries percentage of the total		61.64%

Source: Eurostat³

As we can see, the data shows that the top ten countries of origin are responsible for the 61.64% of the total applications presented in 2014. In addition it shows that the countries of origin have in common the presence of authoritarian regimes, or are experiencing (or have recently experienced) violent conflict. Syria, where a particularly violent civil war is ongoing since 2011, accounts for the 19.29% of the total asylum applications.

According to the data published by the European Commission, at a European level the first six months of 2015 saw 400.000 applications registered, compared to 600.000 registered throughout the whole of 2014. Germany has announced that, according to their predictions, 800.000 applicants are expected to reach German territory by the end of 2015⁴. This data on asylum seeking shows how the EU is facing one of the major humanitarian crisis since the end of the Balkan wars in 1995.

This situation has shown the limits of the Dublin System, created in 1999 and reformed in its subsequent versions as Dublin II and Dublin III, which were supposed to harmonise European policies and minimum standards on assessment and treatment of asylum seekers. Some of the inefficiencies in EU asylum policies had already been denounced in 2011 by southern European states overlooking the Mediterranean Sea, which is the main theatre of landing and death caused by the sinking of boats.

³ http://ec.europa.eu/eurostat/product?mode=view&code=migr_asydcfsta

⁴ The Guardian, (2015). Germany raises estimate on refugee arrivals to 800,000 this year. URL: <http://www.theguardian.com/world/2015/aug/20/germany-raises-estimate-refugee-arrivals-800000>



The causes of the failure of EU immigration and asylum policies (which we will analyse in depth in the next sections) has multiple roots that require a multi-layer analysis. Bad management and scarcity of funds, significant disparities across Member States in the management of the asylum applications, as well as the disparity of rights associated with the status of refugees in different countries, and the inability to agree on a European common management of the international crisis, are just some of the factors that contributed to this failure.

This failure was revealed in its most brutal form with the high number of deaths recorded among asylum seekers in early 2015. One of the emblems of this tragedy is story of Aylan Kurdi⁵, a Syrian child found drowned on a Turkish beach, whose picture was reported by media all over the world.

These deaths have shaken public opinion, as well as prompting the European institutions and EU Member States to have a serious debate about what measures to adopt to face the crisis, at both the domestic and European level. However, the debate still shows to the divisions between Member States with respect to the general approach to immigration.

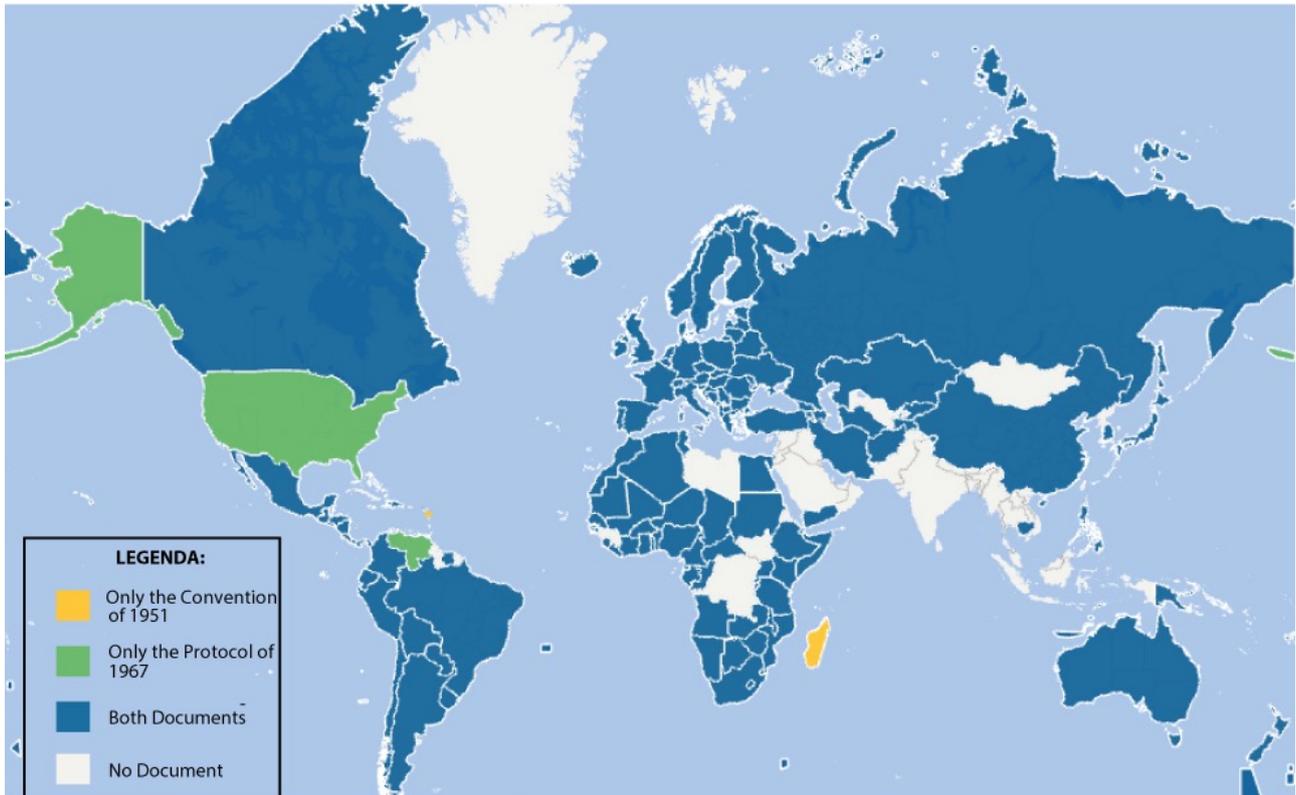
While some of them, such as Germany, have shown more attention towards proposing solutions that (despite unfeasibility in the long run) may face the emergence in the short term, others have shown no will to discuss solutions. Hungary has championed this non collaborative approach, leading to the decision to construct a wall on the Serbian border in order to contain the migration flows and the Austrian Government has announced the construction of a barrier along the Slovenian border.

However, refugees and asylum seekers are not just a European problem. Asylum has a global nature that affects all regions of the world. As mentioned, at the international level the issue of refugees and asylum seekers is governed by the Geneva Convention of 1951 and the Protocol on the Status of Refugees of 1967. To date, 143 states have ratified both documents while 2 States (St. Kitts and Nevis and Madagascar) have only ratified the Convention and 3 States (Cape Verde, the United States and Venezuela) only the Protocol. Figure 1 shows a summary of the signatory States of the two documents.

⁵ Adam, Withnall, (2015). Aylan Kurdi's story: How a small Syrian child came to be washed up on a beach in Turkey. *The Independent*. URL: <http://www.independent.co.uk/news/world/europe/aylan-kurdi-s-story-how-a-small-syrian-child-came-to-be-washed-up-on-a-beach-in-turkey-10484588.html>



Figure 1: Map of the signatory countries of the Geneva Convention of 1951 and the 1967 Protocol on Refugees



Source: Author's elaboration

The two documents set out the minimum criteria for accepting a person as a refugee. However, States retain substantial freedom with respect to the means by which they practically grant international protection, and which rights are associated under that status.

According to UNHCR estimates, in 2013 globally, 10.7 million people were forced to leave their home. Of these, 8.2 million people found refuge within the borders of their own country, while 2.5 million were new refugees⁶.

At the end of 2013, UNHCR estimated that worldwide there were 16.7 million refugees and 1.2 million asylum seekers. The countries of origin of these individuals are various; however, the top three were Afghanistan (2.56 million), Syria (2.47 million) and Somalia (1.12 million), which amounted about to half of the world's refugees⁷.

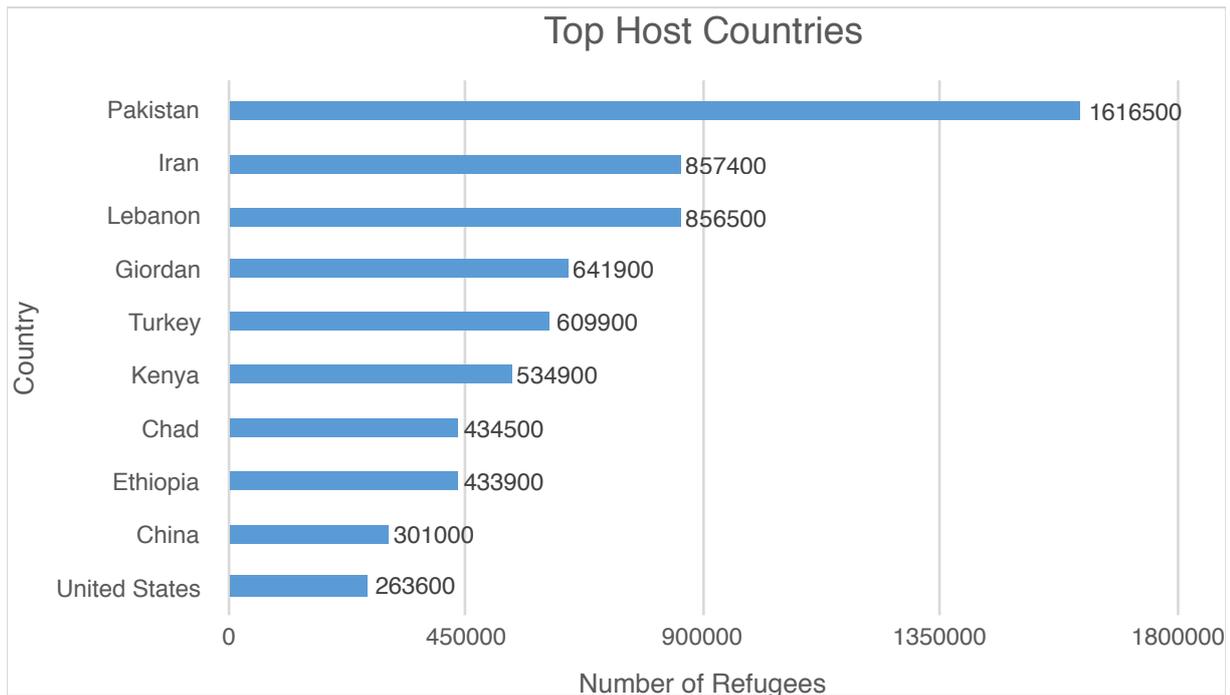
Regarding host countries, according to UNHCR the countries that received the largest number of refugees belong to the developing regions of the world. In 2013, developing countries received 86% of refugees while the more developed areas of the world received the remaining 14%. Figure 2 shows which countries have received the largest number of refugees.

⁶ UNHCR Global Trends Report 2013

⁷ Ibidem



Figure 2: Ranking of countries receiving the largest number of refugees worldwide



Source: Author's elaboration on data from the UNHCR Global Trends Report 2013

In conclusion, the problem of refugees and asylum seekers predominantly affects developing areas of the world. In addition, considering the international scenario and especially the Middle East situation, it is legitimate to expect that the current emergency is likely to continue rather than diminishing over the next few years. These considerations suggest the need to develop an international wide-ranging strategy in order to manage more effectively the humanitarian situation of millions of people forced to flee their countries to escape war or conditions of serious and systematic violations of human rights.

2. Legislation on Asylum

The legal institution of asylum is rooted in a long Western tradition. In ancient Rome, according to the reports of Plutarch, a sacred place was set up under the protection of the God Asylum, where fugitives (slaves, religious and political persecuted people) could be welcomed and find shelter from their persecutors.

However, until the 1950s, when two important documents were signed (the Geneva Convention on Refugees (1951) and the European Convention of Human Rights (1950)), the right to asylum was still inextricably linked to the authority exercising its power on the places of asylum (the gods, the Church or the State), therefore it was simply the consequence of the "sovereignty" exercised on those sites. Successively, instead, another more revolutionary significance of asylum, as an institution capable of responding to the necessity to protect individual human rights, was developed⁸.

⁸ Cherubini, Francesco, (2014). Asylum Law in the European Union: From the Geneva Convention to the Law of the EU. *Routledge*.



The changes occurred in the second half of the twentieth century, in which the traditional conflicts between States have been almost completely replaced by internal conflicts and civil wars for political control, and made a compelling case for making asylum an instrument for urgent action.

According to international law, an asylum seeker is a person who, having left her country, applies for the recognition of refugee status or other forms of international protection⁹. Until the competent authorities of the country she applies make a final decision, the person is an asylum seeker and is granted as such the right to stay legally in that country, even if she entered without a regular visa. However, states maintain the right to regulate the procedures for examining the applications and the permanence of asylum seekers and refugees.

Asylum seekers should not be confused with economic migrants who decide to emigrate for personal reasons, usually economic ones. The latter is essentially an individual who enters a country with a tourist visa or illegally in search of better living conditions and economic opportunities. The asylum seeker instead, regardless of how she enters a country, is a person that is entitled to benefit from international protection by the country in which she submits her application because she flees from serious situations of war, escapes severe and systematic violations of human rights or escapes persecutions either political or personal. For instance, an individual that asks international protection being a homosexual escaping from a country in which homosexuality is punished by the death penalty or a whistleblower who having disclosed secret and compromising governmental documents seeks protection abroad to avoid retaliation from its own state¹⁰.

2.1 The Dublin System

At a European level, in addition to international obligations imposed on Member States, the right to asylum is reinforced both by primary and secondary legislation adopted by the European institutions. According to Article 18 of the European Charter of Fundamental Rights "the right of asylum is guaranteed in compliance with the Geneva Convention of 1951 and the Protocol of 1967"¹¹, while the principle of non-refoulement — potential refugees cannot be deported if there is a possibility that they would suffer persecution — is guaranteed by Article 19 of the Charter. However, the Charter does not contain any mechanism to facilitate the arrival of asylum seekers, which in fact do not have a valid visa at their arrival and are so forced to enter Europe illegally, taking significant risks. Therefore, the acquis of the European asylum law becomes applicable only from the moment when the asylum seeker physically arrives in the territory of a Member State.

The so-called "Dublin system" is a cornerstone in the EU asylum policy and enforced in all 28 Member States as well as in Norway, Iceland, Switzerland and Liechtenstein. The Dublin Convention, signed in 1990 and entered into force in 1997, established the principle that a single Member State should be responsible for processing an asylum application, and outlines the criteria for determining which state should have this responsibility. This tool was created with the purpose of containing phenomena such as so-called "asylum shopping", i.e. asylum seekers simultaneously presenting their applications in several Member States. Dublin II, introduced in 2003 as a Regulation, defines the hierarchical criteria to determine which state is responsible for processing the application, while Dublin III expands the guarantees for asylum seekers, and clarifies the rules and obligations on them. A summary of the key components of the "Dublin system" is shown in Table 2:

⁹ See the definition provided by the United Nations High Commissioner for Human Rights UNHCR. URL: <http://www.unhcr.org/pages/49c3646c137.html>

¹⁰ Santoro, Daniele, (2015). Should Europe Protect Whistleblowers? *Manuscript*.

¹¹ European Convention on Human Rights, Article 18.



The “Dublin System”		
Regulation	Entry into force	Principal content
Dublin Convention (97/C 254/01)	1997	Establishes the criteria to determine which Member State should be responsible for the examination of the asylum application. Under the Convention, the responsible Member State has a number of obligations, including examining the asylum application and that of taking charge of the applicant goes illegally to another Member State.
Dublin II (No. 343/2003)	2003	Replaces the Dublin Convention, re-establishing the principle that only one Member State is responsible for examining an asylum application. It defines more clearly the hierarchical criteria to establish the Member State responsible for each asylum application, such as family considerations, recent possession of visa or residence permit and, whether the applicant has entered EU irregularly or regularly.
Dublin III (No. 694/2013)	2013	Based on the same principles as the two previous regulations, but it extends the safeguards for asylum seekers and clarifies rules and responsibilities of Member States, including which state should bear the cost of the application. With Dublin III, there is a possibility of appealing a transfer decision. In addition, a new clause states that a Member State is not allowed to transfer a person to another Member State, if there is a risk that the person will be in “risk of inhuman or degrading treatment.”

Source: Author’s elaboration

In essence, the Dublin Convention, as amended by subsequent modifications, aims to establish a set of rules that allow better management of asylum applications through a regulation that establishes clearly and unequivocally which State is competent for examining any single application.

In principle, the Convention provides that the Member State competent for examining the asylum application is that of the “first arrival” of the applicant, introducing some exceptions, mainly but not limited to family reunion, which derogate from this rule.

The need to ensure that asylum seekers have uniform protection across the EU and to offer fair and reasonable application procedures led — starting 1999 — to the development of the Common European Asylum System (CEAS). The “Dublin system” integrates into this most complex system. Article 78 of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of the CEAS with the main objective of reducing the disparities between Member States in the procedures for examining the applications.



Table 3: Common European Asylum System (CEAS)

Common European Asylum System (CEAS)	
EU Legislation	Objective
Asylum Procedures Directive 2005/85/EC	Establishes common standards of safeguards in order to reduce disparities between national examining procedures amongst Member States. It guarantees access to a fair and efficient asylum procedure, and sets out the rules of the whole process of claiming asylum.
Reception Conditions Directive 2003/9/EC	Establishes the minimum common reception conditions such as housing, food and employment, which Member States are required to grant to asylum seekers whilst processing applications. The Directive limits asylum applicants' secondary movements.
Qualification Directive 2011/95/EU	Clarifies the grounds for granting international protection. It also establishes the content of the protection granted to these persons from <i>refoulement</i> to access to education, accommodation and medical care.
Dublin Regulation No. 604/2013	Establishes which Member State is responsible for examining the application, and clarifies the rules governing the relations between States.
EURODAC Regulation No. 2725/2000	Establishes an EU asylum fingerprint database, making it easier to determine which Member State is responsible for examining individual applications.

Source: Author's elaboration

3. The Gaps in European Legislation

The idea that the "Dublin system" has failed because it was unable to carry out its task of efficiently managing refugees has become a common opinion¹². Created in order to introduce common rules allowing to determine objectively which states should take charge of every single application for asylum, to prevent phenomena such as "asylum shopping"¹³ and "asylum seekers in orbit"¹⁴, the Dublin System entered into crisis as a result of the increase in migration flows following the Arab Spring and the subsequent instability of that area.

The current European asylum system suffers from a number of issues that, despite the changes made over the decades, continue to persist and to affect both the Member States, the EU as a whole, and the asylum seekers. The problems regarding the Dublin system can be divided into those affecting the legal level and those affecting its implementation. From the legal point of view, although fairly comprehensive in its legislation, which in theory covers all aspects of the process of seeking asylum (the Qualification Directive), the procedures pertaining to states and European institutions

¹² Elspeth Guild et al., (2015). Enhancing the Common European Asylum System and Alternatives to Dublin. URL: http://www.ceps.eu/system/files/CEPS_LSE_83_0.pdf.

¹³ The possibility, by the applicant, to submit their applications in more than one European countries.

¹⁴ The fact that the applicant was sent from one Member State to another without anyone being declared competent for the examination of its application.



(Asylum Procedures Directive) and the minimum reception standards to be offered to asylum seekers and refugees (Reception Conditions Directive), the Dublin system actually has significant gaps.

They are:

The asylum seekers allocation in EU Member States: making it mandatory to submit the application for international protection, and consequently the compulsory residence in case the application is accepted, in the first country of arrival, generates unbearable disparities in asylum flows across Member States.

From the point of view of its implementation, the Dublin system has two important gaps, namely:

The differences between the Member States in the treatment of refugees and asylum seekers: Member States show huge disparities in managing asylum applications and in the treatment of applicants. These disparities are reflected in the request procedures, timing, and outcome;

The differences between the Member States with respect to the rights granted to those with refugee status: Member States have a strong autonomy in choosing which rights are granted to those with refugee status and thus, again, this causes disparities between Member States.

3.1 Asylum Seeker and Refugee Allocation

By introducing the rule that only the state of first arrival should be responsible for examining an asylum application, the Dublin System has put greater pressure, both financial and social, on the Member States sharing the EU's external borders, such as Greece, Italy, Spain and Hungary. These states are those mostly exposed to the arrival of migrants, especially undocumented ones, and have in fact experienced a dramatic increase in the number of asylum applications submitted in their territory, the number of refugees who have died trying to reach their coasts, and in the cost of patrolling borders (which is only partially funded by the EU). In addition, the countries most affected by irregular arrivals have showed frustration from the part of both public opinion and governments, which in some cases has led to the adoption of non-virtuous and questionable behaviour. According to the Spiegel Online, Italian authorities have provided provisional documents to the potential asylum seekers facilitating them to reach other European countries, and in some cases, even providing the money needed to reach these places¹⁵.

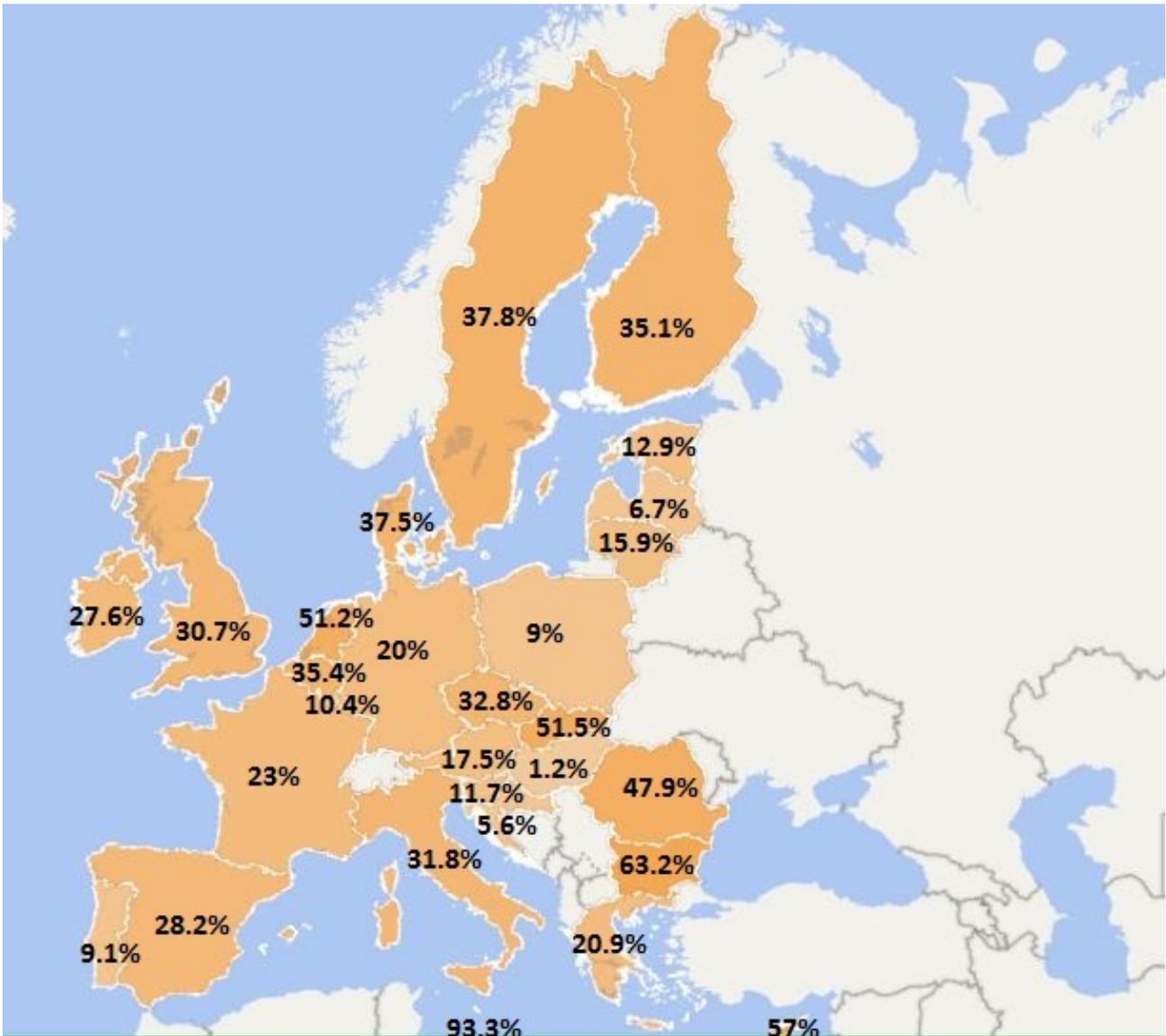
This kind of behaviour in violation of EU law was functional to both the Italian government and asylum seekers. On one side, Italy was able to reduce the number of applications to be examined with a considerable reduction in costs; on the other asylum seekers have been able to reach destinations in which they would choose to present their applications. Italy is not the only country that has adopted questionable measures. In Hungary, as mentioned earlier, the government of President Viktor Orban has approved and completed the construction of a wall on the Serbian border, attempting to prevent asylum seeker arrivals and is now building another barrier on the Croatian border. The construction of the second wall, moreover, is a much more serious fact because it is the first time in EU history that a Member State has built a barrier on another Member State's border.

Second, the Dublin regulation showed to be dysfunctional also from the refugees' point of view. The system according to which the first Member State of arrival is responsible for examining asylum applications is based on the strong assumption that EU Member States provide equal protection and equal criteria regarding the granting of asylum status, but data shows us that this assumption is not empirically sound. Looking at data relating to the applications presented in EU Member States and, the rate of acceptance of applications (Figure 3) we can see that there are indeed substantial differences.

¹⁵ Spiegel Online, (09 ottobre 2013) Fortress Europe: How the EU Turns Its Back on Refugees. URL: <http://www.spiegel.de/international/europe/asylum-policy-and-treatment-of-refugees-in-the-european-union-a-926939.html>



Figure 3: Percentage of asylum applications accepted in 2014 in European Member States



Source: Authors' elaboration on Eurostat data¹⁶

As shown by Figure 3, the application acceptance rate in 2014 considerably varied from 1.2% in the case of Hungary to 93% in Malta with a European average of 29.3%. For this and for other reasons, such as the presence of community networks in another country, refugees often do not wish to present their applications in the first Member State of arrival. This means that in many cases refugees attempt to escape the registration of fingerprints and their personal data, provided by EU legislation and, if they succeed, often rely on criminal networks trying to reach the chosen country where present their asylum application.¹⁷

¹⁶ http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_on_%28non-EU%29_asylum_applications,_2014_%28number,_rounded_figures%29_YB15_IV.png.

¹⁷ Day, K. (2015). These are refugees, not migrants, arriving in their thousands on Greek shores. *The Guardian*. URL: <http://www.theguardian.com/global-development/2015/jul/27/refugees-not-migrants-arriving-thousands-greece-shores>.



3.2 Treatment of Asylum Seekers and Refugees

The problem of the differences between Member States in the treatment of asylum seekers and asylum applications and the differences in the rights granted refugees can be analysed together. Both in fact arise from the unrestrained autonomy left to the Member States in the application of European rules and, as we shall see, share the same consequences.

However, a similar argument can be made regarding the treatment of asylum seekers and those who are granted refugee status. Despite EU attempts to make the rules more consistent through the Dublin System, substantial differences remain across Member States with respect to the procedures for the recognition of the status as well as with respect to the living conditions of refugees after the recognition of international protection. These differences, as shown briefly in 2013 by Spiegel online, are reflected in several aspects including the time required to examine applications, housing conditions, health assistance and the possibility of integration following recognition of the status. The Spiegel article shows how applying for asylum in a Member State rather than another can make great difference for asylum seekers.¹⁸

Concerning the timing, a survey carried out by Euractive shows in detail the significant differences in the examination of asylum applications between Member States, pointing out how they widely vary from a few months for Sweden, to one or two years in the case of Italy and France.¹⁹

From the standpoint of reception conditions, the differences are even deeper. On the one hand, some Northern European countries such as UK, Sweden and Norway offer relatively high hosting standards; on the other hand, some southern European countries like Italy have relatively poor standards. Once the refugee status is recognised, in Norway the state provides a well-structured assistance program lasting two years granting for access to housing, salary, language and professional courses, and a wide range of social and welfare services. In Italy, the lack of sufficient accommodation and investment, and the disorganisation of the international protection system ensures that refugees are often forced to live in conditions of hardship and marginalisation, in occupied structures or in tent camps.

These differences clearly show that the assumption, at the base of the Dublin System, according to which all EU Member Countries offer comparable levels of international protection is untrue.

4. Filling the Gap: The European Agenda on Migration

The strong increase in migration flows towards the EU and the number of lives lost in the attempt to reach Europe, or to cross the "borders" of its Member States, together with awareness with respect to the failure of the Dublin system in coping with the current crisis, have raised a fervent debate on the issue of asylum seeking and refugees within the European institutions, the governments of the Member States and public opinion.

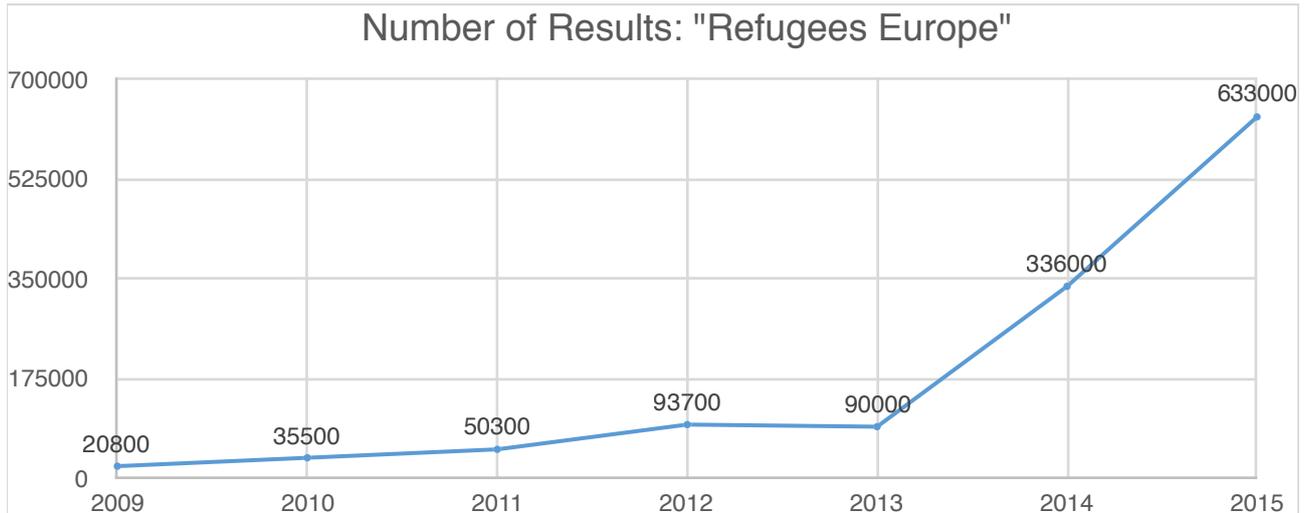
To try to understand the magnitude of the growth of interest in asylum seekers and refugee issues in recent years, we try to consider the number of articles, available online, containing the words "Refugees Europe". By using the search engine Google News, with which one can find all the articles contained in online newspapers, blogs and information websites, we have inserted the search key "Refugees Europe" and found the number of results returned, divided per year, from 2009 to 2015.

¹⁸ Spiegel Online, (09 ottobre 2013) Fortress Europe: How the EU Turns Its Back on Refugees. URL: <http://www.spiegel.de/international/europe/asylum-policy-and-treatment-of-refugees-in-the-european-union-a-926939.html>.

¹⁹ Euractive.com, (September 22, 2015). Asylum systems in Europe remain disparate. URL: <http://www.euractiv.com/sections/justice-home-affairs/asylum-systems-europe-remain-disparate-317822>.



Figure 4: Number of results returned by the search key "Refugees Europe" for the years 2009 - 2015



Source: Author's elaboration on data from the search engine Google News

As shown in Figure 4, the number of results paid to the search key in question, while increasing, steadily remained fairly stable until 2013, when it suffered an exponential increase which continued into 2015²⁰.

The growing interest in migration issues and the intensification of the debate have pushed European institutions to seek short and long-term solutions whose main objective is to bridge the gaps in European legislation and its application.

While Member States, as mentioned earlier, have tried to respond to the crisis in very different ways, some adopting one time "extraordinary" solutions, other total rejection (and even suspending the Schengen Treaty and reintroducing border controls or temporarily blocks), the European Commission has approved the so-called European Agenda on Migration. The Agenda recently approved by the European Parliament and now under review by the Council has proposed a number of short- and long-term solutions to be implemented, through the approval of individual law packages in the next few years. In the Agenda the Commission recognises the need to adopt a broader and decisive approach with respect to the common management of immigration. However, in order to be implemented, the Commission proposal must be approved by the European Council, constituted of the governments of Member States, which is the ultimate decision-making body of the EU.

With respect to short-term measures, the most important is undoubtedly the adoption of an emergency scheme that will reallocate 160,000 people, from the most affected to other Member States, according to parameters such as GDP, unemployment rate and number of refugees accepted in previous years. This solution, according to the statements made by the Commission itself, will only be a forerunner to a permanent system of allocation aimed to share the burden and costs of the reception more fairly between the Member States.

In this regard, we can note that the approval of the first reallocation package, mainly forced by Germany, primarily represent a signal to European public opinion and to the Member States, in fact, at the current rates, the number of refugees reallocated is lower than the number of people arriving in Europe in a single month²¹.

²⁰ This analysis are of course coarse-grained. However, despite having a merely indicative function, it shows a significant increase in the general interest about the topic in question.

²¹ Adriana Cerretelli, (23 Settembre 2015). Un voto che complica la crisi dei rifugiati. Il sole24ore. URL: <http://www.ilsole24ore.com/art/commenti-e-idee/2015-09-23/un-voto-che-complica-crisi-rifugiati-081406.shtml?uid=ACpgDx2>.



In addition, the allocation schemes will cover only the distribution of refugees who arrive irregularly on European territory crossing the borders of the peripheral States. Moreover, once relocated to different EU Member State applicants will be still obliged to submit their request for asylum in the country in which they were relocated.

Thus, the new system despite promising to resolve the problem from the states' point of view, does not face the problem from the potential refugees' perspective. The quota system could probably reduce the pressure of the accommodation costs imposed on the more exposed states, but would not solve the problem of the applicants' inability to present their request in a Member State of their choice. Consequently, the quota system probably will leave unchanged the practice according to which refugees try to escape the registration upon arrival on European territory, trying to illegally reach, risking their lives, different Countries where present their asylum application.

Finally, it is important to stress that in light of the statements contrary to such a mechanism, expressed by several Member States, the approval of the permanent scheme appears to be quite uncertain.

Concerning the long-term solutions, the European Agenda on Migration is organised around four pillars:²²

- a) *Broaden European activities*: the first pillar concerns the reduction of incentives for irregular migration and specifically provides for the expansion of the role of EU delegations in strategic countries, namely the countries of origin and transit of asylum seekers, the increase of funds in favour of these countries, and more generally of the funds allocated for cooperation and, the intensification of the fight against trafficking and smuggling of migrants;
- b) *External borders*: the second pillar relates to border management. This pillar provides for the strengthening of Frontex and the establishment of new forms of cooperation among the Member States. The Commission's intention is to create during 2016 European legislation on border management that is able to increase the level of cooperation of the States in this area.
- c) *Common asylum policy*: the third pillar concerns the strengthening of the common asylum policy. The priority here is to ensure a consistent and homogeneous actuation of the CEAS through the creation of a new monitoring process. The Commission will also reinforce the use of infringement procedures toward the states that would not comply with the new European standards.
- d) *Legal migration*: the fourth pillar, in essence, aims at implementing a law that allows to manage the legal migration in a more streamlined way.

Let us analyse in more detail the third pillar: honouring a moral duty to protect and a strong common European asylum.

With respect to the implementation of a more rational and efficient common asylum policy, the Commission develops the third pillar in six points:

1. New monitoring and evaluation system for the European common asylum standards and guidelines to improve reception conditions and asylum procedures, giving also priority to infringement procedures against those who fail to implement and enforce European law.
2. Guidelines on the fight against abuses of the asylum system.
3. Strengthening of provisions on the safe country of origin and of the directive procedures in order to faster the application process for asylum seekers arriving from such designated countries.
4. Measures to promote the systematic identification and fingerprinting registration.
5. More biometric identifiers in the Eurodac system.
6. Review and possible revision of the Dublin Regulation in 2016.

²² European Commission, (2015). European Agenda on Migration, COM(2015) 240, Brussels.



The strategy outlined by the Commission seems to address only in part the identified gaps. With respect to the allocation of asylum seekers and refugees, the agenda, as mentioned above, does not consider in any way their problem of the inability for asylum seekers to decide in which European country they present their asylum application. On the contrary, the Commission intends to strengthen the instruments such as Eurodac, ensuring that the rule of the first state of arrival will be respected in a more effective way, therefore, it does not seem to question this rule in any way. In addition, it will remain an impossibility for a person who has obtained refugee status to move freely within Europe.

This last point seems in my opinion particularly contrasting with the desire to establish a “strong” common European asylum policy to enhance the protection of asylum seekers and refugees. A common European asylum system should imply that the decision of a Member State to grant refugee status to a subject should be automatically accepted by all Member States and therefore a person who has been recognised as a refugee should have the opportunity to decide in which Member State to live.

Such a policy would have a number of advantages and it might be useful to solve the problems highlighted. First, allowing refugees to choose where to stay once they get the status would partially eliminate the reasons why a number of refugees attempt to evade the controls upon arriving in European territory, thus avoiding the possibility of them being pushed toward the criminal networks involved in trying to reach a European country different from that of first arrival. Secondly, the authorisation to move and to stay within all EU could facilitate employment and social integration of refugees. Being able to move freely, they could move to a Member State where there is less unemployment and more job offers or simply to a Member State in which some acquaintances may reside who could help them to socially and economically integrate. Finally, such a choice would greatly facilitate family reunification, avoiding bureaucratic delays that currently can span across several months.

With respect to the issue of the differences between the Member States in the treatment of asylum seekers and refugees, some of which we have seen are also linked to allocation issues, the Agenda seems to address this more effectively.

The Commission assumes that, if applied, the rules concerning the treatment of asylum seekers and refugees, contained in the three procedures, reception and qualification directives, are in principle sufficient to ensure a harmonized approach between Member States. Consequently, the Agenda aims to strengthen its monitoring and evaluation system regarding the rules on reception conditions implemented by Member States to transpose European legislation and, to use the infringement procedure system more extensively towards the Member States showing a lack of implementation and enforcement. However, in order to determine the effectiveness of such an approach we should wait until it is enforced and check how the Commission and the Council will decide to implement the Agenda's programme.

The European Agenda on Migration is undoubtedly a good starting point, not only to address the immediate problem of the emergency, but also in an effort to create a rational and efficient European system, and thus eliminating gaps currently present in the legislation, particularly its implementation. In this sense, it is indeed a rather ambitious project.

However, still in its embryonic stage, the Agenda has already met resistance from some Member States (such as the Czech Republic, Slovakia, Hungary, Romania and Finland) in the implementation of the first legislative package concerning the reallocation of refugees. Similar resistance has appeared towards the implementation of a permanent quota system, especially with respect to the choice of the quota from which it would depend.

In addition, the implementation of the Agenda is subjected to the approval of the legislative and operational measures required to attain the settled goals. From this point of view, to assess the effectiveness of the Agenda we will need to wait for the approval of legislative packages. Moreover, the attitude of many countries will give a direction in the roadmap to implement the Agenda.



5. A New European Citizenship for Refugees

As we said, there are significant gaps in the treatment of asylum seekers and refugees among different Member States, both in terms of reception, living conditions, rights, policies, and practices implemented in order to recognise or not international protection.

This situation deserves careful consideration, especially in light of a fundamental institution of the European system, i.e. the EU citizenship. Established in 1992 by the Maastricht Treaty, it does not replace national citizenship, on the contrary, as stated by the Art. 9 of TEU “it is added to national citizenship.” European citizenship emerges as partially opposed to the statist vision that considers citizenship as an exclusive emanation of a sovereign State. It opposes only “partially” because, it is still up to the “sovereign” Member States to establish the methods and procedures for the acquisition of national citizenship, which is a prerequisite to obtain the European citizenship.

The concept of citizenship is linked to that of nationality and it is useful to distinguish the two concepts. Citizenship is defined as the legal relationship linking a particular individual to a particular jurisdiction (state), which recognises to the individual a set of rights related to the legal relationship between them. In other words, citizenship is a legal instrument by which a State recognises, to those classified as citizens, the entitlement of civil and political rights. The concept of nationality instead refers to the fact of belonging to a certain nation, where belonging is defined on the basis of historical, cultural, linguistic and religious characteristics. The concept of nationality indicates a bond that goes beyond the mere legal recognition and it is characterised in that a certain community of people feels somehow linked by common history, a common language, common culture or common values.

According to Triggiani, “[the] great migration and the increasingly globalised human activity are gradually changing, in some cases making it the definitions of belonging and citizenship obsolete. The latter concept is evolving and becoming progressively [more] International, making inconsistent, so anachronistic, the correspondence between nationality and citizenship.²³” One of the reasons behind this process comes from the “progressive achievement of acts and international instruments relating to fundamental human rights, which limit the absolute power of States to determine their own regulations on the assignment and denial or deprivation of nationality; acts and instruments that also give the foreigner an increasingly significant corpus of rights.²⁴” In other words, according to some authors, the development of international instruments that somehow limit the sovereign power of states, along with the process of globalisation, are changing the classic link between the concepts of “nationality” and “citizenship”, marking a disjunction and widening the scope citizenship beyond national borders.

The case of the EU is perhaps the most emblematic case with respect to this kind of changes. In the words of Nadia Urbinati “Europe has tried to become a new model of citizenship. This is one of the noblest ambitions of the European Union project. Theorists and lawyers have talked about a new paradigm of political freedom capable of decoupling citizenship from national belonging²⁵.”

However, at European level the migration crisis and the unfavourable economic climate, have slowed down this phenomenon. Nadia Urbinati nicely summarises this problem when she writes that “probing by the flow of migrants and the economic crisis, the European myth tarnishes. Nation states are returning as main players, the intergovernmental policy gains priority and with it the bilateral diplomacy; borders return to being closed [...] the countries that are located on the borders of ‘Fortress Europe’ become outposts in the rejection of the army of desperate people. Faced with

²³ Ennio Triggiani, (2006). La Cittadinanza Europea per La ‘utopia’ Sovranazionale”. Studi Sull’integrazione Europea 1:3 435–78.

²⁴ Ibidem

²⁵Nadia Urbinati, (30 aprile 2015). Migranti senza-Stato. URL: <http://www.rivistailmulino.it/item/2799>.



landings of refugees in the world, Europe no longer seems certain to want to be the laboratory of a new nationality and addresses the issue of refugees as a national security issue and even as a war.”²⁶

If so, what kind of citizenship is possible outside of the state space? Who are the possible subjects of this “extra-national” citizenship?

Currently the EU does not provide a citizenship totally separated from nationality. At the present evolution of EU architecture, citizenship is conditional on of the nationality of one of the Member States.

On this issue, cosmopolitan literature offers a certain amount of writings and insights. Daniele Archibugi and other cosmopolitans argue that “The implication of the disconnection of citizenship from state nationality can become a starting point for a general policy that guarantees fundamental rights to individuals regardless of their nationality.”²⁷ The idea, essentially, is that of a cosmopolitan citizenship that “unify all human beings, which allows them to travel, visit and live in any corner of the world [...]”²⁸ and the refugees seem the perfect category for this idea of citizenship because “being citizens of nowhere, they are potentially world's citizens”²⁹.

Following the cosmopolitan line of thought, the partial disjunction between citizenship and nationality that occurred with the introduction of European citizenship could become a starting point to imagine the implementation of a system granting certain rights regardless of the individual nationality so that it could be applied to refugees.

The cosmopolitan vision, perhaps too ambitious when it postulates the creation of a world citizenship totally divorced from the individual's nationality, could be partly applied to the case of the EU, at least to a specific category, namely, refugees. As well, such an approach could be considered consistent with the process that the EU actually has already started, which is that to establish a sui generis transnational citizenship that brings with it certain rights. The idea of an innovative European citizenship to be conferred on humanitarian grounds would make Europe an entity at the forefront of the protection of fundamental human rights by subverting part of the cardinal principle of the concept of citizenship, namely the exclusivity.

5.1 A “Strong” Common European Asylum

The Agenda, however, is a good starting point for the implementation of a true common European asylum policy. However, to eliminate the gap highlighted above, further steps, without a doubt, could and should be undertaken.

In the first place, in the absence of a reform of the treaties that revises the rule of the first country of arrival, one should try to eliminate the underlying causes of the attempts of refugees to escape this rule. The choice of the Commission to strengthen the control on the application of EU law and to appeal more broadly to the tool of the infringement procedure is a good starting point, but as we have seen, it is not enough. Regardless of the control, in fact, some member states will continue to provide more opportunities and guarantees through the implementation of well-structured programs of proven effectiveness, as in the case of Sweden³⁰, and this will provide an incentive to asylum seekers to try to reach these countries.

²⁶ Ibidem

²⁷ Daniele Archibugi, David Held, and Martin Köhler, (1998). *Re-Imagining Political Community: Studies in Cosmopolitan Democracy*. Stanford University Press.

²⁸ Archibugi, Daniele. (2008). *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy*. Princeton University Press.

²⁹ Daniele Archibugi, David Held, and Martin Köhler, (1998). *Re-Imagining Political Community: Studies in Cosmopolitan Democracy*. Stanford University Press.

³⁰ Euractive.com, (September 22, 2015). Asylum systems in Europe remain disparate. URL: <http://www.euractiv.com/sections/justice-home-affairs/asylum-systems-europe-remain-disparate-317822>.



A viable solution would be a partial reform of the directives adopting in all member states a common program built on the good practices put in place by the best performing Countries including policies to support both economic and social integration.

Such an approach, in conjunction with a quota system for the allocation of asylum seekers and a better monitoring of the compliance with European standards, would be able to solve, at least partially, both the allocation problem and the problem of the treatment.

Second, the need to begin to consider the allocation problem not only from the point of view of the States but also from the point of view of the refugees is becoming increasingly clear. Once solved, the problem of the different treatment of asylum seekers and refugees among Member States there are still other reasons why the refugees escape the system trying to reach other Countries than that of first arrival, doing so relying on human traffickers.

In this case, a solution could be precisely the establishment of a European citizenship for refugees. Once resolved or greatly mitigated the problem of differences of treatment, the establishment of such an instrument would reduce to zero, or at least to reduce to a minimum, the incentives for refugees to escape the Dublin System. In other words while maintaining the rule of the first country of arrival, when an applicant is expected to find similar conditions among Member States— with respect to rates of applications acceptance, timing for procedures completion, reception conditions during the application process and, economic and social assistance conditions once achieved the status— much of the incentives to evade the system would vanish. If one adds to this picture the opportunity to move into the European territory once refugee status is acquired, the applicant would have no more incentives. In such a context, indeed, he could move to his family, easily reach any friends or relatives (excluded by the current definition of family and therefore with no possibility to be reached with the current tool of family reunification), move to a Country of which he knows the language or, move to a Country where job opportunities are greater.

5.2 European Citizenship for Refugees Implementation

In the previous sections we have seen how, by establishing a European citizenship, the EU has partly operated a disjunction between the concepts of citizenship and that of nationality. This disjunction however is only partial since European citizenship remains subjected to the possession of the nationality of a Member State.

As provided by the Treaties, European citizenship adds a number of additional rights to the rights already conferred by the possession of the nationality of a Member State. These rights are: freedom of movement and residence throughout the EU; the active and passive right to vote in local elections and European elections in the Member State of residence; the protection by the diplomatic and consular authorities of any Member State in a third country in which the State of which the person concerned is a national is not represented; the right to petition to the European Parliament and to complaint to the Ombudsman³¹.

A similar argument could be applied to the case of refugees. European citizenship for refugees might be thought as a temporary citizenship conditioned to the possession of the refugee status. In other words, in this case, European citizenship would not be linked to the nationality of the subject but to the refugee status, which currently entitles the person who possesses it to stay in the territory of the Member State that has granted the status. It would also be temporary in the sense that the refugee would lose it when he would be no longer in possession of the refugee status for one of the grounds specified in the European standards.

Which rights to associate with this form of citizenship is a matter of debate. One might decide to guarantee the same rights as those granted by European citizenship to nationals of Member States; or one may instead decide to cover only

³¹ Consolidated version of the Treaty on the Functioning of the European Union (TFEU) arts. 20-25, December 13, 2007.



certain rights deemed to be essential. For example, this form of citizenship may exclude the recognition of the right to vote, but recognise welfare and education related rights. In any case, the minimum fundamental right linked to this form of European citizenship should include temporary freedom of movement and residence throughout the European Union.

Such a choice, as we pointed out above, would imply a number of advantages for both Member States and, asylum seekers and refugees. In addition, it would be easily manageable from an EU perspective. Once registered in the Eurodac database, which includes a set of biometric parameters aimed to register asylum seekers and refugees, the ability to move within the EU would not create any particular management or public security problem.

Finally, from the economic point of view, such a policy could be coupled by a greater financial engagement of the EU in sharing the costs deriving from the management of asylum seekers and refugees. This could be done through the establishment of a compensation fund aimed to supporting those Member States which have to manage larger number of refugees. Such a compensation fund could be made up by EU funds raised through the establishment of a special "European tax for Refugees", to be taken from Member States, and calculated in a progressive manner based on parameters such as GDP per capita, public debt, unemployment and other economic parameters and, could be distributed annually and proportionally to the number of refugees already accommodated.

A system reformed in this way would represent a huge step forward in improving the common European management of asylum and would probably be more consistent with the principles of democracy and rule of law that underpin the EU itself.

6. Conclusions

The issues of immigration and asylum have been in recent months at the center stage of the European political debate. This extremely fluid situation, both in the political and the legislative discussions, makes it quite complicated to make a precise analysis of the policies proposed and implemented at national and European level to address the problem. Recently both the Governments of Member States and the European institutions have discussed the problem by proposing solutions, taking actions and positions somewhat uneven.

However, an analysis of the European legislation and practices related to the Dublin system allowed us to identify and isolate the major problems inherent in the current European Common Asylum System: the allocation problem and the problem of the conditions of asylum seekers and refugees.

In the analysis of these problems, we pointed out how they have both a legislative and applicative nature and, in addition, are bound to each other in that the former is in part dependent on the latter. We have then analysed the European Agenda on Migration, the main tool that EU has developed in the effort to reform the system and to create the conditions for the implementation of a migration policy more effective and efficient in the long run.

However, the analysis showed us how the Agenda addresses only in part the gaps that we have pointed out in the analysis of the current European legislation. In particular, while promising to settle the allocation problem from the states' point of view, the Agenda fails to address it from the point of view of potential refugees. The quota system can reduce the economic and social pressure imposed on the more exposed States, but cannot solve the problem of the applicant inability to present its request in a Member State of his choice. The quota system probably will leave unchanged the practice whereby refugees are trying to escape the controls upon arrival on European territory to try to reach, in a clandestine way and risking their lives, a different country where present their request for asylum.

With respect to the issue of the differences between Member States in the treatment of asylum seekers and refugees, the Agenda seems to address the issue more effectively. The Commission assumes the premise that if the rules concerning the treatment of asylum seekers and refugees were to be applied, this would be sufficient to ensure a



harmonised approach among Member States. For this reason, the solution presented by the Agenda is to strengthen the monitoring and evaluation system of the EU rules implemented by States and to use more extensively the infringement procedure towards those Member States failing to transpose and to enforce them. However, the implementation of the Agenda is subject to the approval of the legislative and operational measures required to attain the goals. From this point of view, in order to assess the effectiveness of the Agenda, we need to wait for the approval of legislative packages essential to its implementation.

Finally, we presented our own concrete suggestion to reduce, if not eliminate, the gaps showed in the EU asylum management. Since the problem of the conditions of asylum seekers and refugees appear to be satisfactorily addressed by the Agenda, our proposal focuses on the allocation problem. Assuming that the quota system alone is not sufficient to fully solve the problem, we proposed the establishment of a European citizenship for refugees.

Such a European citizenship for refugees might be thought as a temporary citizenship conditioned to the possession of the refugee status. In other words European citizenship would not be linked to the nationality of the subject (as in the case of EU Member States' citizens) but to the refugee status, which currently entitles the person who possess it to reside in the territory of the Member State that has granted it. It would also be temporary in the sense that the refugee would lose it in case there were not longer in possession of the refugee status on one of the grounds specified by the European standards. At this particular type of citizenship, one may apply different rights, for instance the same rights as guaranteed by European citizenship to nationals of Member States, or just a subset of those rights deemed essential. With regard to the problems of the European legislation on asylum, it may be sufficient to connect to European citizenship for refugees only the freedom of movement and residence throughout the EU.

Such a policy would have a number of advantages. First, allowing refugees to choose where to stay once they got the status would partially eliminate the reasons why a number of refugees attempting to evade the registration once arrived on European territory, thus avoiding their being pushed toward criminal networks in the attempt to reach a different country. Secondly, the authorisation to move and to stay within the entire European territory could facilitate employment and social integration. Being able to move freely, they could move to a Member State where there is less unemployment and more job offer or simply in a Member State in which may reside any acquaintances who could help them to socially and economically integrate in a given Country. Finally, such a choice would greatly facilitate family reunification, avoiding delays that often span several months.

A policy designed in this way should be accompanied by a greater financial engagement of the EU in sharing the cost deriving from the management of refugees. This could be done through the establishment of a compensation fund aimed to supporting those Member States which have to manage larger number of refugees. Such a compensation could be distributed annually and accordingly to the number of refugees previously accommodated and other economic parameters such as GDP, unemployment rate and public debt magnitude. A system so reformed would represent a huge step forward in the achievement of a genuine common European asylum management that would be more consistent with the principles of democracy and rule of law underpinning the EU itself.

A European citizenship for refugees would obviously not solve all the problems caused by the exceptional nature of migration flows across Europe. To solve these problems, one should address the original causes pushing such a large number of people to flee their own countries and to address long and risky trips in the attempt to reach Europe. These causes —wars, extreme poverty, situations of gross and systematic violations of human rights and natural disasters— could be partly addressed on the part of EU Member States if they showed a willing to move towards a greater integration of their foreign policies. And since these problems are international in nature, they should be addressed not only by the EU but by the entire international community. European citizenship for refugees would make the asylum seekers more dignified, enabling them to choose the Country in which to settle and start their own new lives.



Appendix

Table 4: Number of refugees in Europe in 2013 divided by country of residence and, its percentage of the total.

Country	Refugees	Percentage
France	232487	23.70%
Germany	187567	19.12%
United Kingdom	126055	12.85%
Sweden	114175	11.64%
Italy	78061	7.96%
Netherland	74707	7.62%
Austria	55598	5.67%
Belgium	25633	2.61%
Poland	16438	1.68%
Denmark	13170	1.34%
Finland	11252	1.15%
Malta	9906	1.01%
Ireland	6001	0.61%
Spain	4637	0.47%
Bulgaria	4320	0.44%
Cyprus	3883	0.40%
Greece	3485	0.36%
Czech Republic	3184	0.32%
Luxembourg	2873	0.29%
Hungary	2440	0.25%
Romania	1770	0.18%
Lithuania	916	0.09%
Slovakia	701	0.07%
Croatia	684	0.07%
Portugal	598	0.06%
Slovenia	213	0.02%
Latvia	160	0.02%
Estonia	70	0.01%
Total EU	980.984	100%

Source: Author's elaboration on Data: UNHCR, The 2013 in numbers³²

³² https://www.unhcr.it/sites/53a161110b80eeaac7000002/assets/53c9265e0b80eea03a0078e3/IL_2013_IN_CIFRE.pdf



Table 5: Total of applications submitted and of those accepted, the percentage of applications accepted, the population and the GDP per capita of the different EU Member States

Country	Application Submitted	Acceptance Rate	Total Population	PIL Per-Capita
Germany	202645	20.0	82531671	47822
Sweden	81180	37.8	9482855	58939
Italy	64625	31.8	59394207	34909
France	64310	23.0	65327724	42733
Hungary	42775	1.2	9932000	14029
United Kingdom	32785	30.7	63456584	46332
Austria	28035	17.5	8443018	51191
Netherlands	24495	51.2	16730348	52172
Belgium	22710	35.4	11094850	47353
Denmark	14680	37.3	5573894	60707
Bulgaria	11080	63.2	7327224	7851
Greece	9430	20.9	11290067	21498
Poland	8020	9.0	38538	14343
Spain	5615	28.2	46196276	29767
Finland	3620	35.1	5401267	49824
Cyprus	1745	57.0	862011	27194
Romania	1545	47.9	21355849	9997
Ireland	1450	27.6	4582707	54374
Malta	1350	93.3	417546	22776
Luxembourg	1150	10.4	524853	116664
Czech Republic	1145	32.8	10505445	19530
Croatia	450	5.6	4398150	13475
Lithuania	440	15.9	3003641	16507
Portugal	440	9.1	10542398	22132
Slovenia	385	11.7	2055496	23999
Latvia	375	6.7	2041763	15719
Slovakia	330	51.5	5404322	18501
Estonia	155	12.9	1294486	20162
European Union (28 countries)	626965		469209190	
Average	22392	29.5		34304

Source: Author's elaboration on Eurostat data. The yellow coloured lines show the Countries with a GDP per capita above the EU average



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