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2015 & 2022 Migrant Waves in a Comparative Perspective: an analysis of the French policy and context within the European and International framework.

Supervisor: Dr. Olivier FERRANDO

Candidate: Ângela Fernandes de Castro Amaral

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Ângela Fernandes de Castro Amaral

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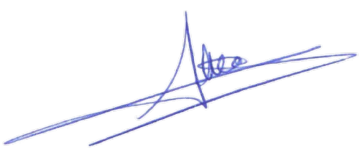

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Abstract

The main purpose of this thesis is to analyse the legal and political distinguishment that were presented within the immigratory waves of 2015 and 2022, with the emphasis on finding the possible reasons for the different treatments regarding the reception and integration of the individuals seeking international protection. The structure of the thesis will be divided into two parts, each one containing three chapters. The first part aims at explaining, based on a multi-level perspective, the different legal frameworks englobing the asylum jurisdiction and responsibilities. Meanwhile, the second part will analyse the French policy and context based on the book "Orientalism", by Edward W. Saïd, as one way to interpret and highlight the possible explanation for the asymmetrical activation of different mechanisms for those requesting international protection, in 2015, and the Ukrainians who were fleeing the Russian invasion, in 2022.

The thesis aims to demonstrate that colonial past and its implications, alongside with racism and islamophobia are some of the elements that contributed to the adoption of a divergent approach among the different immigratory waves, although there might be other different explanations to this phenomenon. At the end of the analytical work, this academic study will highlight what are the attitudes and courses of actions, on the form of recommendations, that can be done with the purpose of strengthening and protecting the refugee and asylum framework, but above all, stressing the work that can be done by the French Republic and its authorities.

Keywords: immigratory waves, reception, integration, 2015, 2022, France, racism, islamophobia, colonial past, Ukrainians, asylum-seekers, asymmetrical policies, legal asylum framework, recommendations.

Résumé

L'objectif principal de ce mémoire est d'analyser les différences qui ont été présentées concernant les mécanismes juridiques et politiques d'accueil et d'intégration entre les deux vagues migratoires de 2015 et 2022, en mettant l'accent sur la recherche des raisons possibles de la différence de traitement des demandeurs de protection internationale. La structure de la thèse sera divisée en deux parties, chacune contenant trois chapitres. La première partie vise à expliquer, selon une perspective multi-niveaux, les différents cadres juridiques englobant la question sur les responsabilités et la juridiction sur l'asile. Entre-temps, la deuxième partie s'appuiera sur le livre "Orientalism", d'Edward W. Saïd, pour analyser les politiques et le contexte français comme l'une des manières d'interpréter et de se concentrer sur l'explication possible aux politiques asymétriques entre les individus qui demandaient protection internationale en 2015 et les Ukrainiens qui fuyaient l'invasion Russe, en 2022.

La thèse démontrera que le passé colonial et ses implications, ainsi que le racisme et l'islamophobie sont quelques-uns des éléments qui ont contribués à l'adoption de l'approche distinguée parmi les différentes vagues d'immigration, bien qu'il puisse y avoir d'autres causes à ce phénomène. À la fin de l'analyse critique qui a été proposée par le mémoire, ce travail académique mettra en évidence les attitudes et les différentes lignes de conduites, sous forme de recommandations, qui peuvent être faites afin de renforcer et mieux protéger le cadre politique, légal et sociétal des réfugiés et du droit l'asile, mais surtout en soulignant les actions qui peuvent être faites par la République française et ses autorités.

Mots Clés: vagues migratoires, réception, intégration, 2015, 2022, France, racisme, islamophobie, passé colonial, Ukrainiens, demandeurs d'asile, politiques asymétriques, cadre juridique sur l'asile, recommandations.

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Table of Acronyms

CEAS–Common European Asylum System

Ceseda–Code of Entry and Residency of Foreigners and of the Right to Asylum (Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile)

CFR–Charter of Fundamental Rights

CNDA–National Court of the Right to Asylum (Cour Nationale du Droit d'Asile)

DRC – Democratic Republic of Congo

EASO–European Asylum Support Office

ECHR–European Convention on Human Rights

ECJ–European Court of Justice

ECRE–European Council on Refugees and Exile

ECtHR–European Court of Human Rights

EU-European Union

EUAA–European Union Agency for Asylum

IMF–International Monetary Fund

NAM–Non-Accompanied Minors

OECD–Organisation for Economic Cooperation and Development

OFPRA–French Office for the Protection of Refugees and Stateless Person (Office Français de Protection des Réfugiés et Apatrides)

OFII–French Office of Immigration and Integration (Office Français d'Immigration et d'Intégration)

OIF–Organisation Internationale de la Francophonie

NATO–North Atlantic Treaty Organisation

TFEU–Treaty on the Functioning of the European Union

UDHR–Universal Declaration of Human Rights

UNHCR–United Nations High Commissioner for Refugees

UN–United Nations

Introduction

The question of emigration throughout the world cannot be seen as a contemporary issue once that the movement of individuals from one region to another can be traced back to the beginning of humanity. At the earliest times, humans migrated with the purpose of finding a better environment to survive, with more fertile land and less extreme climates, driving these persons to migrate to distinct places (Fisher, 2013, XII and 4). Throughout the time, distinct types of movements emerged, with the continuous aim of searching for well-being and preferable conditions of living.

The development of States and its necessity of consolidation as a homogenous and unique group led the creation of the notions of citizens and citizenship, pushing forward the development of narratives that assemble one group in detriment of another. The definition of the concepts of nation, nationality and nationalism presents itself as an extremely difficult challenge, yet these concepts are globally accepted and legitimised by every single actor in the political scenario (Anderson, 2006, 3). The evolution of this political sphere has promoted the idea of nationality sharply linked with the notion of membership to a specific socially constructed category. The continuous expansion of the feeling of belonging has created obligations to the subjects in this political equation: to the State, in which the person belonging to this group will demand individual protection and rights; and to the individuals, which in return to the concession of rights given by the State, will need to participate and legitimise the government and the system that was adopted.

The acquirement of a national status has become the main decisive point to have access to rights, national protection conceded by the State, political participation, and benefits of social-economic policies (Tambini, 2001, 196). This two-sided approach is important in the evolution of migratory policies, once that according to nationality law, the State is only compelled to provide national protection to those in which it identifies as being its citizen. The Convention relating to the Status of Refugees, commonly called as the 1951 Refugee Convention or the 1951 Geneva Convention, is a unique and crucial turning point mechanism in what regards the extension of national protection to individuals that are not part of the social constructed national grouping.

The 1951 Geneva Convention defines the crucial concept of refugee, establishes the parameters and criteria that must be fulfilled to be entitled to such protection, as well as establishes the core values and principles regarding the International Refugee Law, such as the concept of

non-refoulement (UN General Assembly, 1951, 30). Furthermore, this international document designates, to every single State party, what are its legal duties regarding the protection of the individuals that were recognized under the refugee status. As any international treaty, to be effective, there is the necessity of translation the international obligations, accepted in the lights of the international community, into its legal national framework.

Despite the fact that the 1951 Convention was an important step towards the construction of the asylum legal structure, within the national level, France has also adopted two other institutions that provides protection to human beings in need. The first one is the Constitutional Asylum, article nº L. 511-1 of the Code of Entry and Residency of Aliens and the Right to Asylum (Ceseda) (Tchen, 2023, 433-436). The second mechanism is the Provisional Protection, conceded under the jurisdiction of an embassies. As part of the European Union, France should abide to all its directives, regulations, norms, and principles of the legislative organ of the EU, as part of the acceptance of the commitments taken when the ascension to this regional instrument took place.

Additionally, there are another two apparatuses to guarantee the concession of other forms of international protection. By bringing forward the European Union principle of direct effect, the French government has as a regional obligation to translate into its own national systems both devices that were adopted by the EU organisms: the directive 2001/55/EC (Temporary Protection) and 2011/95/EU (Qualification Directive). These two regional legal bodies have both aimed at putting into place a distinct procedure that, whenever invoked, would guarantee the application of two different protections to those in need.

The enactment of these mechanisms of international protection (refugee's status, temporary protection, subsidiary protection, and constitutional asylum) was tested in the European scenario by the emergence of two significant events regarding the income of a mass influx of individuals: the former, in 2015, and the latter, in 2022. In 2015, the number of asylum-seekers throughout the globe was approximately 3,2 million (UNHCR, 2015-a, 2), concurrently, around the same time of the period of 2022, the number rampantly increased to around 4,9 million, besides the numbers of 5,3 million other people in need of protection (UNHCR, 2022-a, 2).

The previous numbers englobing the two mentioned cases prove that in both situations, 2015 and in 2022, there was an explosion on the numbers of displaced groups, with a significant augmentation of people who were seeking protection worldwide. Although the two contexts present mostly similarities, the answers, actions, and solutions that were given mainly by European

authorities show a different approach, once that differently from 2015, in 2022, the Temporary Directive was activated for the first time.

This thesis presents a classical comparative methodology, mainly based on the analysis of regional and international legal documentation, media content, national reports, and academic articles and books. Furthermore, this work is an effort to combine three different, although complementary, perspectives: the legal, the political and the anthropological ones. This pluridisciplinary approach aims at examining the French legal responsibilities, at the same time that it tries to analyse a social and political phenomena, the immigratory flows, through the lenses of different human perceptions and understandings. The research of the data that has been continuously scrutinized was possible due to its availability online, mainly through the government's website and reports that were made by national and international institutions.

The main aim of the thesis is to understand what are the circumstances that might have influenced the French immigration policy, focusing on the asymmetrical establishment of courses of actions to receive people requesting asylum in both immigratory waves, in 2015 and in 2022. The migratory movements that started in 2015 have not ended and, above all, were never properly addressed. Moreover, concerning the previously mentioned movements, the issue was accentuated by a new wave in 2022, but differently from the enormous influx of people that happened in 2015, the 2022 wave was dealt differently. The 2022 wave and its policies demonstrated the possibility of emphasizing another understanding on asylum, where the adopted attitudes lied on a humanitarian approach, presenting a high standard of compliance with the international human rights responsibilities and adding the possibility of using a distinguished mechanism to complement the instruments under Refugee International Law.

Part I-Understanding the different legal backgrounds and their applicability to the migratory waves of 2015 and the 2022

Chapter 1-The French legal framework on Asylum

Whenever discussing the European context, even if the France did not always configure itself at the top of the list in what englobe the main countries of asylum-seeking, mainly because France is not a country that composes the EU external borders, it introduces itself as an important asylum country. This appeal and the high numbers of applications, was elucidated in 2015, when France figured as the third country within the European Union to receive the most applications (OFPRA, 2015, 37), even if France is known mainly as a country of secondary migration.

This interest in France can be explained because those looking for international protection have either connections with their country of destination, such as cultural habits, common language or family members who immigrated earlier; or due to the amplitude of mechanisms to provide international protection, in addition to its compliance with asylum standards. To summarize, France is an example of attractiveness mainly due to two elements: the different mechanisms of compliance with conventional obligation and its respect regarding international responsibilities, and its connections to the claimants, which are mostly based on its colonial past.

Using a multi-level approach, it is possible to recall many obligations in which France has engaged itself on a national, regional, and international scenario. Regarding the national level, the authorities are bound to theirs obligations in respect to the Ceseda (the basis of the French legal asylum system), where the asylum engagements were translated and codified into its national legislative forms. The government's authorities can be referred at a regional level, by the directives of the European Union and its obligations in relation to the European Charter of Fundamental Rights of the European Union. Last, France can also be scolded at the international level, owing to the assignments undertaken by the signature and ratification of the 1951 Refugee Convention, which recognise, to each single person granted the status of refugee, different rights.

Complementarity is a key concept in the examination of the multiple legal systems, and it could not be any different in what regards the French responsibilities towards asylum and its applicants. This correlativeness among the engagements accepted by States, stressed by the

different multi-level layers of the international system, should be understood as a powerful set to promote human dignity and the fulfilment of human rights. The conjuncture of numerous utensils used to signalise the responsibilities of governments must be read based on an interrelated and multi-level approach.

1.A- The 1951 Convention and the 1967 Additional Protocol

Starting the analysis from the macro-level, the 1951 Convention relating to the Status of Refugees is a solid instrument that has stabilised itself as the most essential pillar in the concession of international protection. This importance can be attributed to the fact that, in the aftermath of the World War II, the question that surrounded the problem of refugees became of such great dimension (Robinson, 1952, 3) that States could not ignore the pressing problem. The 1967 Protocol relating to the Status of Refugees, known as the 1967 Additional Protocol, is a complementary international treaty, which became of magnanimous importance due to its contemporary applicability in interpreting the 1951 Convention.

The Convention highlights the necessity of providing a full assemblage of fundamental rights that would impact every single aspect of the refugee's life. Above that, one of the most innovative features of the 1951 Geneva Convention, compared to the previous international agreements, regards the fact that this document sought the expansion of the scope of applicability of this treaty (Ibid, 6-8), instead of targeting specific groups or individuals from a certain nationality. The possibility of establishing an enlarged and broader understanding of those who could be granted a status of refugee is possible under the declarations (section B of article 1) in which each State should issue whenever signing, ratifying, or ascending the treaty in question.

However, it is important to determine the main goals and objectives of the Convention, which can be divided into three categories: (1) the arrangements in which the document would be put into place; (2) the rights in which the States would bound themselves to respect and protect; and (3) the procedures and conditions in which the Convention would base itself to start to be applicable (Ibid, 9).

1.A.1–Determining the concept of "refugee"

No protection can be granted without a clear and explicit definition of the term "refugee" and the principles around this concept, being the reason why the first article of the 1951 Refugee

Convention have been devoted to this specific task. The first article is divided into six paragraphs. The first paragraph being divided into two sub-parts, the first being (a) the individuals who were, prior to this Convention, accorded the status of refugee, which due to the date that the Convention has been established, they almost do not exist anymore. The second sub-part, and most important currently, is (b) the reasoning and criteria for individuals to demand international protection, which means the obligation to have a:

> "…well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and it's unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. " (UN General Assembly, 1951, 14)

Once that the second sub-part is contemporarily most relevant, no further analysis of the first part will be done. The scrutiny will be centred in the following sub-part, which determines who are the persons and what are the criteria to be considered by the States, when conducting an examination, in order to recognise the person as a refugee.

The level of caution in drafting the Convention is shown by the indication of all criteria in which the examination must rely upon. To determine the status of the applicant, the person must demonstrate a fear of persecution due to five criteria: race, religion, nationality, membership of a particular social group or political opinion. Another criterion regards the necessity of the applicant to be outside his or her country of nationality, or if the person is stateless, the requirement of being outside of his or her country of former habitual residence. Finally, the last requirement, under the second sub-part of the first paragraph, highlights the necessity of not being able to demand to its country of nationality or residence, or not wanting to do so based on the same fear of persecution.

In respect to the second paragraph, the drafters of this indenture were preoccupied with the scope of the territorial delimitation. Behind this idea there is the fact that the 1951 Geneva Convention was a document that sought solution for a geographically concentrated problem, even if the article 1.B gives the possibility to extend such a comprehension. With the aim to invite more States to abide by this international document, the authorities were given the possibility to choose between two understandings. The first one regarding the protection covering only candidates

within the European continent, making anyone else beyond this specification unfit to request protection, or the second englobing the protection that encompassed every single person coming from any continent around the globe. The second possibility was a way in which drafters found a solution to provide a less restrictive interpretation of the continental limitation, by amplifying the scope and granting the possibility to any individual to ask for protection.

The third paragraph encompasses article 1.C, which displays what are the criteria that a person who has been granted the status of refugee can have this recognition withdrawn. The writers of the Conference of Plenipotentiaries emphasized six motifs that could be used by the Member States to terminate the concession of an international protection. The reasons being: (1) the voluntary re-obtention of the nationality; (2) the voluntarily re-gaining of a lost nationality; (3) the acquisition of another nationality; (4) the voluntarily return and permanence on the country which he or she left; (5) the end of the circumstances that allowed the person to claim fear of persecution; and by being a stateless person, (6) the termination of the reasons for fearing of persecution.

In the third paragraph among the reasons to withdraw the international protection, a stress has been put in what concerns an individual that have a nationality. The essentialness regarding nationality comes from the clarifications given by the "Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection: under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees", where national protection have always prevalence upon international protection (UNHCR, 2019, 31-32).

From this paragraph onwards, meaning the sections 1.D., 1.E. and 1.F., the exclusionary clauses will be introduced and further developed, pointing at the criteria that make someone being excluded of receiving international protection. Among the three exclusionary paragraphs, the reasons not to be granted international protection will differ.

The fourth paragraph, denominated article 1.D, establishes that individuals already under protection or assistance of an agency of the United Nations, differently from the United Nations High Commissioner for Refugees (UNHCR), cannot be given the recognition of the status of refugee. This article accentuates the commitment to prevent an overstep of the competency of one organism on the affairs of another, as well as reducing to zero the possibility of two different agencies providing protection twice, which would culminate in an important loss of resources.

The fifth paragraph, meaning article 1.E, indicates that those who are entitle national protection would not have the possibility to claim international safeguarding. According to the

Convention, national protection can be interpreted from the fact that local authorities of the country of that person's residence or nationality recognize their obligations and rights. Once again, this international document shows the primacy of the protection that is granted nationally over the protection that can be granted internationally (UN General Assembly, 1951, 16).

The idea of the primacy of national protection is often evoked due to the constructed affiliation that is made between the individual and the State, which gives birth to the concept of nationality and the principle of sovereignty, making each State responsible for its own citizens. Whenever talking about stateless individuals, it cannot be directly assumed that some of the person's rights are not preserved just because they are not citizens, once that it may be some specific arrangements; or there might be ties between the individual and the resident State.

The last paragraph, article 1.F, focuses on the persons in which, according to the Conference of Plenipotentiaries, are excluded from claiming international protection because they are deemed as unworthy. The principle of indignity is emphasised to those that the State have "serious reasons for considering that" (Ibid.): (1) have committed one of the four crimes under the jurisdiction of the International Criminal Court (genocide, crimes against humanity, war crimes and crimes of aggression); (2) have committed serious non-political crimes; or (3) have been found guilty of committing attitudes that oppose all the principles of the United Nations.

The last paragraph of article 1 highlights a pressing issue among the imbalanced relationship between individuals and the States, the problem regarding the margin of appreciation. Meanwhile, the first problem rests on the breach of the presumption of innocence, one of the most important principles of law, which allows the States to neglect a petition based only on a reason to believe that is not proved. The second problem is illustrated by article 1.F.(b) and regards the fact that there is no definition of what can be considered as serious non-political crimes, once more giving an enormous margin of appreciation to governments, an actor that is more powerful internationally than a general individual.

After the recognition of the refugee status: establishing the bases of the State compliance

The provisions that follow article 1 of the Convention mainly talk about the measures and principles that States should respect whenever the status of refugee has been granted. From article two onwards, the Convention makes a connection between the two first parts of the Convention, since it gives instruction referencing how the rights, freedoms and obligations should be

applicable. Within these international commitments, there are provisions encompassing the: obligation of refugees to follow national rules (article 2); establishment of the principle of non-discrimination (article 3); indication to States of the importance of protecting freedom of religion of these individuals (article 4); stipulation that if there is a more beneficial clause already granted by the State, the Convention will not present itself as a hindrance (article 5); and last, a clarification on the concept of "in the same circumstance" (article 6).

Furthermore, this global instrument establishes that the Convention: is not based on the principle of reciprocity, although it is an essential principle of international law (article 7); demonstrates that States should refrain as much as possible to apply exceptional measures (article 8); lays the obligation under the Convention should not impair the State possibility to adopt measures for its national security (article 9); establishes that concerning the World War II, the (1) sojourn of a forcibly moved refugee starts counting from the period that he or she was present in that territory, even if the Convention was not into force and (2) if the refugee has been removed from his or her territory and if he or she has returned to their previous territory, the time of forced transference should be counted as a continuous residency (article 10); and lastly, it displays provisions for refugees that are seamen (article 11).

Concerning the relationship between France and the international legal asylum framework, it can be highlighted that the signature of the Convention happened on the 11th of September 1952 and the ratification occurred on the 23rd of June 1954. The engagement with the protection of refugees has led France to indicate its ratification to the 1967 Protocol relating to the Status of Refugees, where it ascended on the 3rd February 1971. The signature of the 1967 Protocol made France responsible to consider events that happened throughout the whole globe and where the time limitation had been completely null and void (UN General Assembly, 1967). In relation to the set of articles presented by the 1967 Additional Protocol, France did not emit any kind of reservation, declaration, or objections.

1.A.2–The guarantee of fundamental rights and freedom

The second segment of the Convention circumscribes the guarantees of some of the freedoms and the rights that must be accorded to those who have their refugee's status granted by a Member State. This specific fragment of the global treaty is essential mainly because it gives substance to the international protection, emphasising the understanding that international

protection without consideration for the rights and freedoms that are associate to it, is meaningless. The importance of this segment lies down on the comprehension that, within a robust document, there is no full protection without the stipulation of freedoms and rights, but, most essentially, without such commitments, the main goal of this international text will not be achieved.

Although the Convention is passive of criticism for lacking some rights, such as freedom of press, participation on election, and many others (Robinson, 1952, 16-17), it is also true that it covers a range of obligations. The rights presented on this international instrument encompass civil rights, such as freedom of movement (article 26) or access to courts (article 16); economic rights just as wage-earning employment (article 17) in addition to movable and immovable property (article 13); social rights, such as housing; (article 21) or public education (article 22); and finally cultural rights as artistic rights and industrial property (article 14).

The rights and freedoms mentioned above do not englobe all the measures that must be respected, protected and fulfilled by the States, beyond the ones mentioned, there are still: personal status (article 12); right of association (article 15), although it exclude the possibility to grant to refugees political and profit-making association rights; self-employment (article 18); liberal professions (article 19); rationing (article 20). Moreover, the Convention also stipulates: public relief (article 23); labour legislation and social security (article 24); administrative assistance (article 25), identity papers (article 27), travel documents (article 28), fiscal charges (article 29), transfer of assets (article 30), refugees unlawfully in the country of refuge (article 31), expulsion (article 32), prohibition of expulsion or return (article 33), naturalization (article 34).

It is crucial to point out that, in regard to the 1951 Convention, France has used its right to deposit declarations and reservations (UN General Assembly, 1951, 35) and it does not abide by the article 29, paragraph 2, in what encompasses the application of fiscal charges, meaning that the Nation can ask for the payment of taxes for refugees. As for the second reservation, France does not observe the article 17 that focuses on the wage-earning and employment, basically recognizing that the government can establish numbers and proportions on how many alien workers are given the authorization to work (UNHCR, 1951, p.8). As to the 1967 Additional Protocol, France did not make any type of declarations, nor reservations or objections.

1.A.3–Procedures and conditions for the 1951 Refugee Convention

On the last part of the 1951 Geneva Convention, the Conference of the Plenipotentiaries needed to establish what would be the parameters and the process to which it would confer the validity and applicability to the Convention. In addition to these measures, the last part also regulates the primordial clauses to guarantee the connection between the State's obligations and the international charter's pursuits, trying to find the balance between these two sides of the spectrum. This essential part arises as a compromise, that requires a positive attitude from the State and from those who created the articles that dictates the authorities' responsibilities within the document, with the view to guarantee the protection and the fulfilment of the rights of refugees.

This mutual agreement and compromise among the purpose of the treaty to protect refugees and the recognition of States as the main international actor has guided governments towards policies that have the aim of respecting, protecting and fulfilling the obligations enumerated by this instrument. The commitment, translated into the achievement of the balance among the interest of these two actors, has also set the foreground to the creation of some national guarantees for the States. The search and the achievement of this balance between these two elements will not only establish the success of the Convention, but it will promulgate the ideals and the acceptance of this internationally binding document.

There are twelve provisions in total, variating among their objectives, going from the responsibility to work with the organs of the United Nations (article 35) to the necessity of informing the United Nations' Secretary General of the ratification of the treaty (article 46). The provisions that set the State's responsibilities and rights, for example: the necessity of informing the UN's authority of measures that will be adopted to comply by the obligations (article 36); the establishment of the relation among the Convention and other international treaties concerning this thematic (article 37); it imposes a mechanism of solution of possible disputes (article 38); it indicates the days and the process in which the Convention will be open to be signed or ratified, as well as the amount of days necessary to the conclusion of the accession (article 39).

The Convention also rules over the clauses that: delimitate the territorial applicability of the responsibility (article 40); illustrate the different obligations between the States, focusing on Federal States (article 41); give to State the possibility to make reservations and observations to some articles in which there may be incompatibility with legal legislations or State's interest (article 42); determine precise dates in which the Convention will start to be applicable (article 43). Moreover, the text will allow the possibility to denounce the treaty, in the case in which the

State believes that its participation to the Convention does not fulfil its objective (article 44); and last but not least, this document allows the Member State to ask for revision of the Convention and establishes to whom this request must be sent to (article 45).

1.B-Code of Entry and Residency of Foreigners and of the Right to Asylum (Ceseda)

The Ceseda is the main French legal framework determining all the laws, mechanisms, procedures and establishing the immigration system that guides the rules of applicability of the right to asylum. Although, it presents distinguished regulations in regard to different types of migrations, this subdivision of chapter one concentrates on the three main points regarding the whole asylum procedure within the country, them being: (1) the distinct types of concession of protection under the authority of the French government (2) the institutions that regulate the right to asylum; and (3) the national translation of regional laws into its local and internal legal system.

1.B.1–Conceding different types of protection under the French law

One important element that must be indicated before further inspection of these forms of granting asylum covers the fact that, despite the circumstances that exist, any State, based on the principle of sovereignty, may grant, at any moment and without the necessity of explanation, international protection under its government. This discretionary power shows that the authorities must not provide a protection in which it does not achieve the threshold of the minimum obligations taken internationally, yet there is nothing that prevents those countries to go beyond the minimal compliance level with the view to concede a more favourable attitude.

Currently, within the French legal framework, there are six forms of proceeding with the national concession of protection. These procedures can be granted based on different mechanisms and different analysis, even though the objective remains the same: giving protection to those who, by being able to prove that there is a fear of persecution or a concrete persecution, are demanding shielding. To deepen the analysis, the article nº L. 511-1 of the Ceseda, which enumerates some forms that the French government can accord international protection, will be unravelled.

Constitutional asylum, protection under the UNHCR mandate, conventional protection

The previous mentioned article of the Ceseda elucidates three situations in which a person could be recognized as a "refugee": (1) those who are persecuted regarding their actions in favour of freedom; (2) those in which the High Commissioner for Refugees, body within the competencies of the United Nations, exercises its mandate upon; (3) retaking the 1951 Convention relating to the Status of Refugee, those who fulfil the criteria of recognition of fear of persecution or acts of persecution, that are required to be outside of the borders of its State of nationality or habitual residency, and that are among those individuals that because of a such fear of persecution cannot or do not have the possibility or the willingness to request State protection (Tchen, 2023, 427).

Making allusion to article L. nº 511-1 of the Ceseda, the first possibility of recognition of the status of refugee englobe the concept of Constitutional Asylum. This form of acknowledgement of international protection is completely based on the idea of the discretionary power of the State, recognising its national prerogative and competence to allow anyone which the authorities consider worthy to be given its protection. As it has been stated by the national law, the main reasoning behind the national decision of providing international protection under Constitutional Asylum regards those individuals who have fought to conserve freedom and liberty in their country of residence or citizenship. The concept of freedom is extremely vast, which makes it possible to encompass the fight for human rights and the expression of a divergence political opinion as features of those fighting for freedom.

The procedure of giving such protection undergoes an individual analysis of the case in question by either the French Office for the Protection of Refugees and Stateless Person (OFPRA), as a mechanism of first instance, or by the National Court of the Right of Asylum (CNDA), as an instrument of appeal and an institution of second instance, as stressed by the article nº L. 513-1 (Ibid., 494). Under the discretionary power of the State, recognized under the preamble of the Constitution of 1946 and retaken by the Constitution of 1956, and which are impersonated and given to those two institutions, France will determinate if the protection will be accorded or not. The Constitutional Asylum classification is a much less common form of granting protection than the one based on the guarantees and responsibilities safeguarded by the Convention (KRULIĆ, p. 132, 2003), since the former requires a certain level of notoriety of the situation that are happening in the person's country and even of the person's work.

The protection provided by the United Nation High Commissioner for Refugees was strictly determined by the resolution 428 (V) of 14 December 1950 of the General Assembly. This

global action has established the work of the UNHCR as social and humanitarian, but above all, it has prohibited any type of a political positioning. This organism is entitled to recognise and concede the status of refugee, under the name of the UN. The strictness linked to the competence of the High Commissioner for Refugees comes from the fact that the organism must not overstep the principle of sovereignty of States, always having the need to be "…subject to the approval of the Governments concerned…" (UNHCR, 1950, 2-6).

The independent work of the UNHCR encompasses improving the sensibilization of the topic and the cooperation with the countries that have ratified the Convention, and to those governments who have not, the UNHCR promotes the dialogue to further enable the adoption and ratification of the 1951 Refugee Convention. Notwithstanding the competencies given to the UNHCR, one of the most crucial jobs within the organism surrounds the right to have access to all the asylum-seekers around the world. Differently from the process of recognition of the status of refugee under the auspices of the Convention, the recognition under the mandate of the UNHCR are mostly done by a collective procedure, known as *prima facie*.

At the present moment, according to the data provide by the UNHCR as the Mid-Year Trends 2022, many of the individuals that are worldwide recognized as refugees are under the protection given in the name of the UN, accounting for a total number of 26,7 million from the 32,5 million refugees (UNHCR, 2022-a, 2). Lastly, a particularity in regard of the protection given by the UNHCR is that, due to the non-political character of the organ, there is no possibility of imposition of its rules, norms, and directive guidelines within the recipient country. The lack of political will attributed to the UNHCR impacts the protection granted within a specific territory, normally a refugee camp, since it must have been previously accepted by the hosting authorities.

The last type of protection that has been acknowledged by the article L.511-1 of the Ceseda has already been discussed and it concerns the appeal to the provisions of the 1951 Convention relating to the Status of Refugee. As a conventional international law, whereabout the States parties have given up a part of its sovereignty in order to bind themselves to the Convention, there is the legal understanding that this obligation have primacy over internal law. The obligations have been integrally translated into the articles: nº L.511-2 (reasons and acts of persecution, link to the directive 2011/95/EU); nº L.511-3 (aspects connected to the sex, gender and sexual orientation as part of the reasoning of membership to a social group); nº L.511-4 (link between the alleged facts and acts of persecution); nº L.511-5 (primacy of the competency of the authorities in assessing the

case); nº L.511-6 (exclusions clauses: articles 1D, 1E and 1F); nº L.511-8 (cessation clauses: article 1C, fraud and exclusion clauses: 1F) from the Ceseda (Tchen, 2023, 459-479).

Subsidiary protection, temporary protection and diplomatic asylum

The last three possibilities to grant asylum in France are indicated by distinct articles within the Ceseda, but also by international reiterated actions, making part of the international customary law. The next type of protection that will be inspected surround the articles nº L.512-1 until the nº L.512-4, and it makes allusion to a specific type of safeguarding, called as subsidiary protection (Ibid., 480 - 494). According to the measures that were established under the article nº L.512-1, the subsidiary protection is a contrasting protection granted by the French authority, as a way of guaranteeing the conformity of the European directive 2011/95/UE.

According to this regional directive, under the chapters I, II, V, VI, VII, different articles evoke general provisions to determine definitions, standards, procedure of assessment, elements of persecutions, protection, clauses of applicability, cessation or exclusion and the processes of implementation of this procedure (European Union, 2011), which are currently under the umbrella of the Ceseda. Under those arrangements, article nº L.512-1 shows beyond doubt what is the definition of subsidiary, to whom this measure is entitled to protect and what are the reasons that can be evoked, by a person, to request such protection. Furthermore, article nº L.512-2 concentrates in the exclusionary clauses, meanwhile article nº L.512-3 translates the cessation clauses, and finally, article nº L.512-4 defends the possibility to revise the decision taken of granting protection, if there are proves that an irregularity has been taken place.

More specifically, article L.512-1 defines that any human being from a third country can be provided shelter and national defence if there are evidences that lead the authority to believe that this individual, in his or her country, could possibly suffer: (a) death penalty or execution; (b) torture or cruel, inhuman or degrading treatments; (c) concerning civilians, whenever there is a severe and individual threat to a person due to an exacerbated violence that can spread to others, without consideration of their personal situation, due to an international or interne conflict. As it is indicated in the name of this type of international protection, this protection is complementary, meaning that one of the prerequisites for being a possible candidate is not to fall under the competence of the 1951 Refugee Convention. This provision can only be claimed after the

emission of a rejection of the concession of international protection under the scope of the 1951 Geneva Convention (Tchen, 2023, 483).

The next category of international protection, granted by an authority under the name and jurisdiction of the French government, concerns the appreciation of request of temporary protection. The first time that the idea of temporary protection was conceived was at the beginning of the 1990s due to the war in the Balkans, and its creation has been concretised in 2001, by the European directive 2001/55/EC (Arenas, 2005, 435). This regional directive has been nationally translated into the French system by the creation of articles nº L.581-1 until the article nº L.581-10 of the Ceseda.

According to the Ceseda, the temporary protection is directly linked to the directive 2001/55/EC, which is emphasized in the transcription of the law, and which was transposed by article nº L.581-1. The subsequent laws circumscribe the modalities of who are the individuals that can benefit from such protection and what are the communications steps that must be taken in order to transmit the information to other States Parties to the EU (article nº L.581-2). Additionally, article nº L.581-3 sets up the period in which the person falling under the temporary directive is able to claim such protection and the documents that must be granted in the connection which this provision. Nonetheless, another statement done regards the prohibition to evoke or to demand temporary protection in France for the ones who have been granted subsidiary protection in another EU country (Tchen, 2023, 627-628).

The next articles give voice to other obligations such as: the non-exclusion of the individuals under temporary protection to demand for asylum, if this request it is not granted, the person could still benefit from the continuation of the temporary protection until its ending period (article nº L.581-4). In addition, there are also the possibility to evoke exclusionary clauses, if the applicant threats to the public order, security of the State in itself or if there exist indications that the he or she has committed one of the four crimes under the Statute of Rome (article nº L.581-5). Moreover, there is the recognition of the possibility to request family reunification, yet it also recognises possibility of rejection if there is the a reason to believe that the person will cause a warning to the public order (article nº L.581-6); or the extension of the previous rules of granting temporary protection to exceptional cases that present the same reasons and departing from the same country or the same region (article nº L.581-7) (Ibid., 628).

The following and final obligations surround the individuals that do not have the right to enjoy the temporary protection or has been excluded from this possibility and that cannot ask any other type of residence within the French territory, implying on the duty to leave the national territory (article nº L.581-8). Additionally, the possibility for the ones profiting from temporary protection to also have access to allowances, if the criteria for benefiting from this social welfare given by the State, is met (article nº L.581-9); and lastly, the conditions of applicability of the articles provided should be determinate by a State Council's decree (article nº L.581-10) (Ibid.).

Differently, from the other types of protection that have been discussed, the directive "2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof" have been activated by the first time in March 2022, after the invasion of Ukraine by the Russian troops. This protection does present some differences compared to the other ones. First of all, the concession is based on a collective assessment, mostly linked to a specific situation in which a group is targeted, besides the fact that there is a temporary limitation of three-years period. Other two important differences encompass the possibility of work that the beneficiaries of such protection are given, and most importantly, this directive must be activated by the vote of all 27 Member States of the EU, meaning that a consensus is required to trigger the action of the directive, stressing their collective sovereignty.

To end the types of granting international protection, the diplomatic asylum cannot be forgotten, although it is not very much used. This type of protection comes exclusively from the discretionary power of the State in question, which, after an evaluation of the context of the individual and the concerning reality, may decide to allow the person to be protected by its power. It is important to stress that differently from the refugee status, the constitutional asylum, the protection under the mandate of the UNHCR, the subsidiarity or even the temporary protection, the individual does not need to be geographically on the territory of the State that he or she will be demanding protection, although the embassy can be considered as territory of the nation within a foreigner State.

1.B.2–Regulating asylum: the institutions

Any legal provision to be effective must have a legal framework with competent institutions that will be given jurisdiction to apply and respect the laws and directives that have

been taken as obligations. Concerning the French case, withing the Ceseda, the second title of the first book is entirely dedicated to all measures that have as an objective to establish the competencies and the limits of action of the French agencies that deal with the right to asylum. Within the jurisdictional framework, there are three institutions that have exclusive competence and control over all the procedures regarding the power to accord international protection, them being: (a) the French Office of Immigration and Integration, known as the "Office Français d'Immigration et d'Intégration" or OFII; (b) the OFPRA; and finally, (c) the CNDA.

According to the first section of the second title of the Ceseda, and more specifically the article nº L.121-1, the missions and the activities under the supervision of the OFII are established. The OFII is an organism responsible for every single administrative, social and sanitary actions in what regards the reception of asylum-seekers and the management of allocations and their lodging; the integration of the foreigners within the national territory; and, if necessary, the return and reinsertion of foreigners into their country of origin or country of transit (Ibid., 57). The principal task of the OFII regards immigration and integration of foreigners, but mainly normal individuals that are not demanding international protection, leaving a very little mandate to the protection of asylum-seekers. Asylum-seekers may demand to the OFII, an assistance and accompaniment throughout the procedure of postulation for international protection at the OFPRA (OFII, n.d.).

The French Office for the Protection of Refugees and Stateless Person

The OFPRA is the second organism entitled to promote the objective of supporting and guaranteeing the right of asylum-seeking. This institution has a central position in what regards the right to asylum, more specifically all the procedures of receiving, analysing, judging, and granting the possibility of a foreigner to receive international protection. The centrality of the task that is assigned to the OFPRA is translated into ten articles within the Ceseda: from the articles nº L.121-7 until the article nº L.121-16. The previous articles have the task to clarify what are the different duties and composition of the OFPRA: from explaining the functions and the composition of the OFPRA, until the specific determination of the responsibilities that the organ must fulfil.

Article nº L.121-7 introduces the OFPRA as a financial and administrative independent structure that is assigned the objective of evaluating and granting international protection under the name of the French authority. Once that this main assignment is concluded, the activity of the OFPRA surrounds the competence to protect juridically and administratively the individuals

recognized as refugees, stateless person and those under subsidiary protection. Another important point that is highlighted by the above mentioned law, regards the recognition of the direct link between the agency, the Ministry of Foreigner Affairs and the Interior Ministry, under a common guardianship. As the independence of institution is important, the law emphasises, once more, that the decisions taken by the public servants within the OFPRA are made without receiving instruction or interference from any other French administration.

In respect of the article nº L.121-8, the Ceseda emphasises that the OFPRA is the guarantor, in partnership with other national organisms, of all the basic rights of these individuals, independently of the type of recognition (under national law or under any other international engagements, conventions, agreements, an international protection). The OFPRA also works to protect the interests of those individuals in which asylum has been granted, meaning those who are comprised under its competency, which are established by article nº L.121-7. Moreover, the article imbues to the OFPRA the responsibility of respecting, defending, and implementing the provisions accepted under the 1951 Geneva Convention and the 1967 Additional Protocol.

The article nº L.121-9 complements the previous provision by stating and attributing as a competence of the Office that, after all the verifications and where the recognition has been made, the organ is responsible for the emission of different documentations that are on the asylum-seekers' interest, respecting and enacting the possibility of these individuals to have a normal life. This article declares that the general director of the OFPRA is the responsible for signing the papers, and it establishes that the records that are emitted by the OFPRA have the same value of any other documents issued by the French Republic, and that no taxation fee should apply for the request of such. This article recognises the impossibility of the people, under French protection, to return to their country of origin to demand these papers and admits the crucialness of such documents for the continuation of their lives (Tchen, 2023, 61).

Article nº L.121-10 translates the obligation to provide anonymity of the agents that works at the Office and of the interview that are made to determine the status of the claimant. Beyond that, it also presents as the responsibility of the general director to transmit to the Republic's prosecutor all the information received that have arisen from the application of the exclusion clauses of article 1F of the 1951 Refugee Convention. Regulation nº L.121-11 establishes that the OFPRA can do missions throughout all French territory, meanwhile the article nº L.121-12 adds the obligation of creating and diffusing publicly, in addition to the representatives of the

Parliament, an annual report regarding all qualitative and quantitative data of the work done by the OFPRA. The last provision gives special attention to the actions taken by the OFPRA's agents, their formation and the data basing on a gender and vulnerability approach.

Additionally, the provision nº L.121-13 demonstrates how the institution is organised and how it must function. It emphasises the way in which the Administrative Council of the OFPRA should be arranged, highlighting the necessity to work in partnership with the UNHCR and the competence of this same Council to establish the list of which foreigner countries can be considered as safe or non-safe third countries. This list is extremely important because it determinates which process of candidacy will be applicable: an accelerated or a normal procedure. The following articles stress the form of nomination of the general director (article nº L.121-14); the imposition of the inviolability of all the process of the petitioners of asylum (article nº L.121-15). Finally, the last article dealing with the OFPRA highlights from where all the budget of the Office in question must be coming from (article nº L.121-16).

It is important to stress that the OFPRA is not the sole fundamental mechanism in what englobes the respect, analysis, application and fulfilment of the measures and protections taken in order to provide shielding to those who are recognized as refugees, stateless person and under subsidiary protection. There is a second institution entitled to the same powers, competences, and objectives, but with a more legal approach and with a greater juridical power. Meanwhile the OFPRA is seen as a mechanism of first instance for the deposit of the countless requests of asylum-seekers for receiving international protection, the National Court of the Right of Asylum, the CNDA, is given the prevailing power of deciding, in a second instance over the concession of international protection, having the power to revert the decisions previously taken by the OFPRA.

The National Court of the Right to Asylum

The third title of the first book is entirely dedicated to the competences, jurisdictions, and activities of the CNDA, with a total of four articles consecrated to better determine: (a) the organization of the Court; (b) its mandate; (c) its composition; (d) the necessity of accountability and the creation of an annual report. Regulation nº L.131-1 is the first law that encompasses the provisions about the Court, establishing the CNDA as an administrative jurisdiction that must be placed under the authority of one president and a State Counsellor that will be decided upon the appointment of the vice-president of the Conseil d'État (Ibid., 66).

The article nº L.131-2 comes to clarify that the Court of National Right to Asylum is a second instance mechanism that have the objective to permit the legal appellation to the decision that have been taken by the OFPRA. This article is crucial, once that it gives the opportunity, to all asylum-seekers that have had their application rejected, to be heard in front of a specialised Court, that it may either reiterate the previous judgement of the OFPRA or it may overthrow the previous assessment. This provision means that it exists a possibility of demanding a second opinion concerning the possibility to concede protection and, if the Court is called to emit a decision, the CNDA have primacy over the final decision.

The next point discussed by the Ceseda concerns the composition of the Court. Article nº L.131-3 establishes the distinct formations of the CNDA to better consider the high numbers of applications that could be received and it explains the normal procedure. There are three judges in the normal procedure: one in the role of president; one that is nominated by the UNHCR; and lastly, one judge that is nominated by the vice-president of the Conseil d'État, due to its juridical or geopolitical knowledge. Additionally to the composition that is set up, this rule indicates that each formation must be able to hear at least twelve audiences per year; that the president of the formation must be a permanent magistrate of the CNDA with a minimum of six months of previous training and no older than seventy-five years old; and that the duration of the mandate is ordered by the vice-president of the Conseil d'État.

Article nº L.131-3 shows a particularity that is innovative in what englobes the organisation of the CNDA, which is the possibility of an outsider organisation to make an indication for the French National Court. This idea shows that France has decided to give away some of its sovereignty in order to have an external opinion that may influence the final decision of the CNDA. Nonetheless, a bill project aiming at reforming structurally the asylum system has been proposed by the current prime-minister, with the intention to abolish the possibility to have a collegiate structure which would change the actual organisation to a unified structure based on the work of a single judge (Sénat Français, 2023). If approved, this reform will undermine the cooperation between France and the UNHCR and it will totally exclude the possibility of nomination of an independent expert that would be selected under the auspice of the refugee organ of the UN.

The last article of the Ceseda concerning the CNDA, is the one numbered as L.131-4, where the Code establishes, as it has been equally done within the regulations applicable to the OFPRA, the necessity of annually creating and publicly diffusing a report. This obligation gives a special

attention in what concerns the necessity of considering, within the collected and summarised data, the sexes of the claimants in addition to a gender approach, as well as any kind of possible vulnerabilities of the requesting part.

1.B.3–The process of requesting asylum: normal vs accelerated procedure

Whenever talking about the procedure to request protection within the French asylum legal framework, it must be pointed out that it exists two procedures that differentiate between each other. This difference does deeply impact, more specifically, two aspects: (a) the period in which the institutions will have to determine if the person falls under the category to be granted asylum; and (b) in the case of an appeal, the composition of the Court will differ depending on the procedure that will be taken. To start the explanation of why there are two processes, it is fundamental to recall the article nº L.121-13, in which the OFPRA's Administrative Council is responsible for creating the list of safe countries, opposing to ones that are not.

One of the points that has been constantly reaffirmed, is that the list of safe-third countries should be constantly updated to provide a better assessment whenever the evaluation of the status of refugee should be determinate, meaning that the country's situation must be taken into account (European Union, 2013-a, 5). The list is essential in deciding which procedure is taking place, since territories that are considered safe countries (in French: "pays sûr") will pass through an "accelerated procedure", meanwhile those countries considered as non-safe countries will be given a different treatment based on a process known as "normal procedure". The article nº L.531-6 stipulates that the consideration of the OFPRA should englobe the situation on the country of origin of the asylum-seeker, the personal situation, the declarations, and ultimately information and proofs, in addition to the individual's profession that can turn this person into a target.

The directive 2013/32/EU is a fundamental guideline to provide instructions for EU Member States in what regards the application of different procedures and, whenever it is possible, to affirm if the individual comes or not from a safe country of origin. Within the "annex I" of the directive, there is the instruction that all member of the EU should create a list of the safe-third countries, in addition to instructions on what are the elements that should shape the understanding of what is or what can be considered as safe country. According to the third chapter of the directive 2013/32/EU, on its Section I article 31 on the 8th paragraph letter (b), the directive recognises the

applicability of an accelerated procedure to those individuals coming from what can be defined as a safe country of origin (Ibid., 18).

Taken the directive 2013/32/EC as a pillar to the French understanding, safe-country of origin are the countries in which France considers that there is: (1) compliance with a minimum level of human rights; (2) applicability of important principles of law, such as rule of law and impartiality; and (3) a French understanding that the national government is democratic, where the country presents an impartial and independent tripartite division of power among the legislative, executive, and judiciary. Any territory that does not provide evidences of being free, democratic, with an autonomous and effective division of internal powers, and having individual protective measures to guarantee fundamental freedom, is classified as a non-safe country of origin.

The normal procedure is appropriate to the cases where the individual comes from a non-safe country of origin, the Ceseda provisions regarding this process englobe articles nº L.531-3 until the articles nº 531-23. However, the proceedings adopted to the applicability of an accelerated process, are assigned to the individuals coming from a safe country of origin, and are situated from the articles nº L.531-24 till the article nº L.531-31.

The most important differences between these two approaches is summarised the disparities regarding: (1) the time that the claimant will be called to present proofs of the facts and to do his or her interview; and (2) the composition of the CNDA and the possibility of requesting a removal order from the French territory.

Asylum Procedure in France		
	Accelerated procedure	**Normal procedure**
a)	OFPRA's convocation is quicker, normally it happens within some weeks;	OFPRA's convocation can take from six to fifteen months;
b)	CNDA's judgement must be given, maximum, in a five weeks period. Although if there is a breach on this delay, no penal sanction is stated. In 2022, the delay was of approximately eight months (Sénat Français, 2023);	CNDA's decision would come out within a variation period that in 2022 was around seven to seven months and a half (Sénat Français, 2023);

c)	CNDA's legal composition is reduced to a single judge;	CNDA's legal composition is determined by a collegiate formation (composition of three judges);
d)	Whenever the asylum-seeker appeals to the CNDA, this entreat cannot be characterise as having a suspensory effect. The absence of a suspensory outcome, makes it possible to the city hall to notify the claimant of a measure of a territorial removal order;	Whenever the asylum-seeker appeals to the CNDA, this petition will have a suspensory effect, excluding the possibility of the city hall to request a measure of removal from the French territory;
*Table made by the author		

Chapter 2–The European Union's Legal Framework

The EU did not start as a consolidated community, at the beginning of the integration among the first five countries, the idea of such a project was to homogenise the market and create a zone that would increase the economic integration to the point in which another war would not be possible. Nonetheless, the more this integration was taking form the more competencies were added to this organisation, once that the number of actors within the community and the willingness of enlarging the integration were augmenting, which has developed a pathway towards bigger commitments and more areas of cooperation among the members. As the focus in this chapter will be the European Union's legal framework and the development of the current system responsible for the asylum procedures, there are three international documents that are essential to be understood, since they established all these layouts that determine the common application of regional policies to every government part of this regional institution.

The essentialness of the Maastricht Treaty, the Amsterdam Treaty and the Conclusions of the Tampere European Council to the construction of the CEAS

The first document that creates the European Union, as we know today, is called the Maastricht Treaty, and it has been signed in 1992 and adopted in 1993. As it has been previously mentioned, the development of the EU also meant the amplification of domains in which the European communities would have competencies and power to interfere. Although, with only a

paragraph dedicated to the erection of a juncture that would deal with asylum within the European context, it is the Treaty of Maastricht that established an obligation to progress toward this aim. One of the main points made by this international document regards the construction of an area of freedom, security and justice that would affect any kind of subject that would englobe immigration, asylum, and the prevention and fighting against crimes (European Union, 1992, 7).

The second document that have had a fundamental impact, especially in what concerns the execution of the basis of what is called contemporarily as the Common European Asylum System (CEAS), is known as the Amsterdam Treaty and it has been signed in 1997 and entered into force in 1999. Differently from the Treaty of Maastricht, the Amsterdam Treaty consolidated a whole title within its provisions to regulate the policies related to free movement, visas, immigration, and asylum (European Union, 1997, 28).

Two main articles of the Amsterdam treaty discussed the asylum question: article 61 and article 63. Article 61 instituted different objectives to be achieved, nevertheless in what encompasses the asylum and immigration procedures, the most important part consecrated a time limit of five years in which the organisms within the European Union should have acted to fulfil the goals of the constructing an area of freedom, security and justice. In order to better structure this area, the EU would need to: (1) organise an initiative to promote free movement of people; (2) guarantee the obedience to the concepts and ideas of external borders controls, immigration and asylum; and (3) create measures in accordance with the safeguarding of nationals of third countries (Ibid., 28-29).

Article number 63, contrarily to article 61, was more precise in responding to the question of asylum. The provision was divided into two precise paragraphs with its subparagraphs, yet the two parts focused on the international protection granted in the name of the international law of refugees. The first part of article 63 also made reference to a time limit of five years, however it referenced international treaties in which all the European members are bound to respect. According to this article, the international documents made reference were the 1951 Geneva Convention, the 1967 New York Protocol and any other international instruments that tackle the thematic of establishing the: (1) criteria and mechanism to determine the country responsible for the asylum claim; (2) minimum standards whenever there will be the need to welcome asylum-seekers; (3) minimum standards to establish what are the qualifications that can be applied

whenever granting the refugee status; and (4) minimum standards on procedures for the recognition of the quality of refugee for nationals coming from third countries (Ibid., 29).

The second part of this article demands the adoption of initiatives, once again from States and from the organs of the European Union, to provide minimum standards for the concession of a complementary form of protection entitled "temporary protection". This request rely on the fact that there are individuals that cannot return to their country of origin and that the national and regional actors should promote an effort to try to balance the efforts to deal with the displacement these groups (Ibid.). It is important to see that, just like the European Union, the European legal framework on asylum has also been developed in a progressive manner.

The last indispensable international treaty that has made a significant step towards the consolidation of the creation of the Common European Asylum System was the Conclusions of the Tampere European Council. The Tampere Council has stand to the objective of putting into action an area of freedom, security, and justice in the EU, therefore emphasising different objectives. One of the most relevant achievements made includes the fact that this Council could finally put into practice the so called Common European Union Asylum and Immigration Policy, at the meetings who have taken place in Finland, in 1999. The result of the work was not only the creation of the Common EU Asylum and Immigration and Policy, but it also structured the four pillars of this system: 1–partnership with countries of origins, in regard to immigration; 2–the establishment of the Common European Asylum System; 3 – the enablement of a fair treatment of third nationals; and 4– the management of migration flows (European Union, 1999).

The work of the Council, that met in Tampere, was significant for the actual current system, not only because of the adoption of a Common European Union Asylum and Immigration Policy, but also due to fact that it provided direction to what became the pillars that guided this structure. The main idea of the CEAS would be to promote the right to seek asylum, to fully abide by the 1951 Refugee Convention and stimulate an inclusive approach.

Complying with the 1951 Convention would create a system that lies upon the emphasis of: (1) the importance of the principle of non-refoulement and a system that included a determination of the State that should be responsible for asylum requests; (2) a fair and efficient common standard for the asylum procedure; (3) a common minimum standards of reception of claimants of international protection; and (4) a convergence of the rules on the recognition and content regarding the status of refugee. The Council has also agreed that it would be important to

develop subsidiary forms of international protection that could attend the different needs of individuals. A further decision that was made regarded the promotion of homogenous rules among the European Community, which would create a more concise asylum procedure and that should be valid and recognized throughout all the Member of this community (Ibid.).

Other steps that were recognised as important and that have been taken concern: the necessity of finding a consensus for the issue around the idea of "temporary protection", in addition to the consideration of the creation of a fund to emergency situations. The Tampere Council realised that there was the need to conclude the work that was started by the common system, meaning to labour on providing an identification to each asylum-seekers (Ibid.). All these steps were taken by the Council and have contributed to the creation of the current CEAS, such measures were fundamental to understand the basis of the contemporary system and the actions that guides the CEAS. Yet and most importantly, it will also help to explain why the current mechanism is failing more than being able to accomplish its goal of guaranteeing protection to those in need.

2.A–Common European Asylum System (CEAS)

Within the European context, the right to asylum configures itself as a crucial obligation of States that must analyse and decide whether the claimant has the right to international protection. This obligation is based on article 18 of the European Union Charter of Fundamental Rights, as well as on articles 67 (2), 78 and 80 of the consolidated version of the Treaty on the Functioning of the European Union, known for the acronym TFEU (European Union, 2018, 1). Created in 1999, the Common European Asylum System keeps consolidating itself day by day, and it can be summarised as a set of rules and policies adopted at a regional level that aims at promoting a unified and homogenous regional framework of action to all countries at the regional level. The goal also surrounds the practice of a similar approach with the same standards and purpose to promote a robust response to all the challenges and crisis that could possibly affect its members.

The current system had its pillars erected by the 1997 Amsterdam Treaty, since it gave guidelines on which actions should be taken by the internal organs of the EU. Moreover, this guidance has determined what were the fundamental steps to merge the beginning of what would become the actual asylum policy. Composed of different directives and regulations, the Common European Asylum System has created this set of rules in which States must respect with the aim

of providing a better framework, compatible with the 1951 Refugee Convention and its 1967 Additional Protocol:

1–Qualification Directive (Directive 2011/95/EU);
2–Asylum Procedure Directive (Directive 2013/32/EU);
3–Reception Conditions Directive (Directive 2013/33/EU);
4–Eurodac Regulation [Regulation (EU) Nº 603/2013];
5–Dublin Regulation [Regulation (EU) Nº 604/2013];
6–European Union Agency for Asylum [Regulation (EU) Nº 2021/2303];

The Qualification Directive (Directive 2011/95/EU)

Firstly, the Qualification directive was a provision adopted to determinate what are the standards, characteristics and facts that must be presented by those who are soliciting the shielding on a foreign country To attain such a target, this directive focuses on delimitating a homogeneous course of action in relation to the methods of assessment that will be followed, and it enlists different possibilities and forms of conceding international protection (European Union, 2011, 5).

In general, the directive describes and guides States on how the assessment must be done; who are the possible actors of persecution and actors of protection; retakes the concepts of the 1951 Geneva Convention and translates into its provisions the reasons that must be met to be seen as a recipient of protection, as well as which situations would lead to cessation or exclusion of such status. Nevertheless, the directive 2011/95/EU went further by establishing a complementary form of protection called subsidiary protection. This directive consecrates a substantive part of itself to explain the qualifications elements for those who may seek such protections, the rights and obligations once the protection status was recognised, alongside to the clarification of the circumstances to apply the exclusion and cessation clauses (Ibid).

The Asylum Procedure Directive (Directive 2013/32/EU)

Secondly, the Asylum Procedure directive is an important mechanism that established what are the unified methods and criteria that must be adopted in order to not only grant but also to withdraw the international protection. This instrument focused on the procedures that must be met

in order to comply with the international set of conventions that protect individuals recognised as refugees (European Union, 2013-a, 6).

This directive englobed the definitions, the scope of applicability, the responsibilities of the national authorities, and it has instructed the basic principles that should be granted to the individuals that request such protection. Additionally, it determines: (1) how the procedure may vary in cases dealing with vulnerable people, such as unaccompanied minors and dependent individuals; (2) the right and guarantees to remain in the country responsible for the analysis even if the person does not have a visa; and (3) the obligations of the claimant, as well as the procedures that are going to be created to assess the recognition as a refugee, such as the steps to conduct an interview and other important rules and actions that must be considered (Ibid., 6-27).

The Reception Conditions Directive (Directive 2013/33/EU)

Thirdly, the Reception Conditions directive is a complementation of the previous directive. This legal provision aims to establish the standards for what asylum-seekers must benefit whenever starting a procedure for the possible recognition of a status of refugees. This directive implies the recognition and the urgency to adopt these first sets of rights and guarantees, by all the Member States of the EU (European Union, 2013-b, 4-15).

This directive is fundamental because it considers two important matters: the rights that must be secured by the State when receiving a litigant of protection, invoked on chapter II from article 5 until the article 19; and the fact that it exists vulnerabilities among the petitioners of international protection that needs to be answered by adopting a more diligent concession of rights, attention and priority, under the Chapter IV, from article 21 until article 25 (Ibid., 11-13).

The European Union Agency for Asylum [Regulation (EU) Nº 2021/2303]

Due to its central role to the failure of the actual system, the Eurodac and Dublin regulations will be further discussed, clarifying why the last point that will be made in this sub-chapter concerns the establishment of the European Union Agency for Asylum (EUAA). The EUAA is a mechanism that has been created to substitute the European Asylum Support Office (EASO), established in 2010 by the Regulation (EU) Nº 439/2010. Currently, the task of the EUAA did not differ much from its predecessor, the changes concern the: expansion of its mandate to provide

technical support to the States within the regional arrangement and production of guidelines regarding reception and procedure for dealing with asylum seekers (European Union, 2021).

Understanding the issue: the suppression of internal border the transference of an unbalanced weight on the countries of external border

Nonetheless, as stated precedingly, the focus must be directed to the Dublin System and the Eurodac, as its complemental instrument, mainly because it explains why such system is continuously failing. Before further advancing, it is crucial to understand the influence that the EU's basilar concept of freedom of movement has, direct and indirectly, in all the decision-making process of the migratory and asylum politics. The EU had, at its core, the idea to be a market and good free zone, where trade should be less regulated by internal borders, nonetheless as the Economic Community advanced, and the ambitions behind it enlarged, there were more incentives regarding free movement of individuals and the disappearance of internal frontier.

This idea of completely suppressing borders within the regional context has been consolidated in 1985 by the adoption of the Schengen Agreement and has been implemented by the 1995 Schengen Convention (Von Braun, 2017, 14). This document adopted arrangements and guarantees to establish, as its core, the aim to gradually abolish the checks within their frontiers between the first five founding members of the European Economic Communities to allow the free movement of individuals, but to easier the crossing of borders by goods throughout these national boundaries (European Community, 1985, 1). In this Convention, it was established that internal frontiers would comprise "… the common land borders of the Contracting Parties, their airports for internal flights and their sea ports for regular ferry connections exclusively from or to other ports within the territories of the Contracting Parties and not calling at any ports outside those territories;", meanwhile external borders would be determined as "…the Contracting Parties' land and sea borders and their airports and sea ports, provided that they are not internal borders;" (Ibid.).

With the expansion of the European Community, and later with the establishment of the European Union, a prerequisite to enter this space encompasses the obligation to accept many international treaties that would impact the regional context, and between then this Schengen Agreement which was called Schengen *acquis*. These agreements, treaties and obligations have been primordial in applying the 1997 Amsterdam goal regarding asylum, since it allowed the creation of a mechanism to determine the national responsibility to oversee the evaluation of the

asylum demands. With the evolution of the Schengen area and the augmentation of the number of countries adhering to this area of no internal borders, there was the need to establish new procedures to combine these regional commitments.

2.A.1–The Dublin Convention and its further Regulations

The Dublin Convention gave a clearer line of action to institute the mechanism to determine whose State is responsible for assessing the asylum procedures, nonetheless the international document who has been signed on 15 June 1990, only had its effectivity confirmed on the 1st September 1997, when the Convention entered into force.

The most essential points to highlight regards the article 2 (continuous commitment with the 1951 Geneva Convention and its 1967 Additional Protocol, as well the commitment of cooperation with the UNHCR); article 3.2 (establishment that only one member within the European Community would be engaged in assessing the asylum application), article 3.5 (the right to externalize the asylum application to a third country– known as externalization), article 3.7 (the right of a second Signatory State to send back an asylum-seeker to the first country where the application has been first lodged). Additionally, article 6 (where there is an irregular crossing of borders, the first Contracting Party is the one responsible for analyse the asylum procedure); article 7 (the responsibility to analyse the asylum request shall be given to the State that has the duty to control the entry of aliens) (European Communities, 1990, 3-4).

Other important provisions are: article 8 (whenever it is not possible to determinate which Member State is responsible, the government in which the claim has been made becomes the State responsible for the scrutiny); article 9 (humanitarian reasons can be invoked by the authorities, to call upon its willingness to analyse the case); article 10.1.c/d/e (the State that is incumbent of the analysis must take back the individual who has demanded asylum in its territory, but have re-applied on a second nation; or who is irregularly in another State party to the Convention; or which the application has been rejected and encounters himself or herself irregularly in another Member State); article 11.1 (within a six-month period, the secondary State can ask to the responsible government to take back the individual that is irregular in its territory, if that period is not considered there is the transference of responsibility to the secondary State) (Ibid., 5).

The last crucial articles of the Dublin Convention encompass: article 13.1.b (whether the supposed first entry State does not answer the secondary country within a eight days period, and

if it recognises its responsibility the asylum should be taken back within the quickest delay possible), article 14.1/14.2 (exchange of statistic data on arrival and nationality of asylum-seekers; transference of information among States in what concerns the trends in application for asylum and general information exchange about the countries of origin). Moreover, the last fundamental arrangements concern: article 17.2 (if States Parties go through an experience of major difficulties due to substantial changes, there is the possibility to suspend the application of the Convention); article 20 (no possibility of reservation) (Ibid., 6-8). The aim of the Dublin Convention was to restraint the possibility that one asylum-seeker would request international protection within different States of the European Community, which it would mean the waste of resources and time of authorities in order to analyse a sole request, preventing a system abuse (Hruschka, 2005, 474).

The Eurodac Regulation [Regulation (EU) Nº 603/2013]

Before developing the evolution of the Dublin Convention, it is essential to address the Regulation of the Council of the European Union nº 2725/2000 of the 11 of December 2000, which established an answer to article 14 of the Dublin Convention, by creating a structure where data and information would be exchanged among EU States. The regulation nº 2725/2000 established the creation of "EURODAC": a regional system of comparison of fingerprints of asylum-seekers (European Union, 2000, 1). The creation of this mechanism for determining which State is responsible for evaluating the asylum requests was crucial, since it became possible to know if the applicant of asylum was already registered in another country within the borders of the EU.

With the necessity of further developing this platform to make sure that the assignations of the State's duty to analyse an asylum application, this regulation was repealed by another instrument, known as Regulation (EU) Nº 603/2013. The new Eurodac regulation has further develop the rules of application and established the aim of clarifying some of the previous articles, and to change some provisions that needed to be updated or that no longer should be addressed due to the loss of validity (European Union, 2013-c, 1).

The evolution of the Dublin System

Going back to the Dublin Convention, it must be said that the international treaty that took so long to enter into forced, maintained itself activated for less than five years, and it was soon

invalidated by a new regulation of the Council of the European Union, the "Council Regulation (EC) nº 2003/343 of February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national", known by the name of Dublin II (European Union, 2003, 1).

The continuous difficulty to identify the member of the Dublin Convention that was responsible for the assessment task has directly impacted on the success of this international treaty, pushing a change from the Convention to the adoption of the Regulation. Although a new regulation has been adopted, the changes are almost imperceptible and the biggest noticeable transformation englobes the order of analysis of the criteria to establish the Member State responsible for the claim (Hruschka, 2005, 476).

Some of the other modifications concerned an expansion on the understanding of the concept of "family" allowing the members of the family to contest a removal for the country of entry, since an integrant of the family has already asked for asylum in another country. Moreover, the Regulation cleared the definitions on "recipient" countries and the "responsible" authorities, where the first can be defined as the countries of transit until the arrival to the final country, and the later would necessarily means the territory in which the asylum has been sought. Other changes considered the non-suspensive effect for the transference of the petitioner to the State responsible while the appeal is taking place, which has been granted by article 19 and 20 of the new Regulation (Ibid., 475-476).

Another question that was better addressed by the Regulation of 2003 circumscribes the specific case of unaccompanied minors, which the State's obligation should rely upon a unique article: the sixth one. A minor change has also been made by the Resolution nº 2003/343 and it regards the time given to countries to act and to respond for inquiry done by secondary national party, by decreasing the period in which these States should both: take actions and respond to the action previously taken by the other country (Ibid, 478). Lastly, the Article 10 of the Dublin II Regulation introduced the idea that after the passage of a twelve-month period of irregular entry of the asylum litigant on a second territory, there will be the cessation of the responsibility of first State of entry to analyse the solicitation.

Some of the biggest issues have been acknowledged by the Council, nonetheless the main problem was far from being solved, which is connected to the different understanding and interpretation of the 1951 Geneva Convention and its Additional Protocol of 1967 (Ibid., 477 -

478). With the lack of concrete, feasible and oriented measures to provide solutions to the Dublin Convention, as well as the fact that no unique interpretation of the documents was reached, no other result could be reached if not the continuous erosion of the goals of applicability and effectiveness of the Common European Asylum System. Moreover, the CEAS struggled to harmonize the criteria and the procedures that the national governments should adopt, in order to comply with objective establish by the Tampere Council, in 1999.

Once again, the failure to address eminent problems has pushed a continuous perception of the non-success of the Common European Asylum System, leading to the defence that there was a necessity of reframing the whole system, once that the aims were not achieved. By adopting a liberal intergovernmentalism approach what becomes clearer is that this necessity of prioritizing some actions, meaning market integration and economic benefits, over less consensual areas such as immigration and asylum, made the EU move toward a problematic and inadequate answer, where this regional organism develops incomplete and non-adequate solutions once that they are just trying to achieve the lowest denominator consensus (Lavenex, 2018, 1198).

The Dublin Regulation [Regulation (EU) Nº 604/2013]

This lower denominator has been working against the implementation of a Common European Asylum System that could be based on a workable set of measures that would ensure the adoption of a true and complete system. As a mean to only achieve the minimum consensus, major and concrete steps are being reneged, which expounds the reason why the Dublin II Regulation was repealed and another legal mechanism was adopted, under the name of Regulation (EU) Nº 604/2013 or Dublin III Regulation.

The Regulation of Dublin II was part of the first phase of development of the Common European Asylum System, different from the "Regulation (EU) nº 604/2013" that has inaugurated the second phase of the development of the CEAS. The understanding that the Dublin II regulation was not perfectly effective and that it must be improved came with a Council's proposal that was made in 2008 (Peers et al., 2015, 345-346). Nonetheless, the same way that has happened with the regulation of Dublin II, the promotion of Dublin III took some years to achieve a compromise between all the directly affected States.

The main problem englobing the Dublin II regulation circumscribes the idea that there was a lack of efficient tools and distinct deficiencies on the matters that concerned the protection of

asylum-seekers' fundamental rights. As a way to guarantee these rights, it was crucial to rely on the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) to promote the protection of these set of fundamental norms (Von Braun, 2017, 14). Above the problems mentioned another inadequacy that was presented on the Regulation (EC) nº 2003/343 encompassed the same issue of lack of unified interpretation that was present at the Dublin Convention of 1990. The question of having a distinguished understanding and interpretation of the norms consecrated in the 1951 Refugee Convention and its 1967 Additional Protocol hampers the applicability of a homogenous system of protection of the rights of asylum-seekers.

As for Dublin III regulation, the main differences to the previous regional rule encompass the establishment of two fundamental objectives: (1) to ameliorate the efficacy of the provisions that must be adopted by the State; and (2) to achieve better commitments to respect, protect and fulfil the authorities' obligation in regard to the fundamental rights of those who are seeking shelter and protection at the contracting State. Additionally, one important acknowledgement that was done by the latest Dublin regulation concern the recognition of the judicial cases and its legal basis in what encompasses the protection of those who achieve to demonstrate a fear of persecution and the necessity of international protection (Ibid, 14-15).

A further modification of the Regulation (EU) nº 604/2013 made possible to introduce a human rights driven perspective, yet developed under its preamble, it does make references to distinct international documents: the European Union's Charter (Charter of the EU) and the European Convention on Human Rights (ECHR). Going beyond the previous change, the Dublin III regulation emphasised the rights that must be granted to the individuals that are litigating for the possibility to be granted protection, it also recalled the responsibility of States to fulfil the distinct treaties that have been accepted by the parties that are bound by this regulation. Moreover, it is also important to recognize that the scope of application has been enlarged to all the different types of protection that can be granted under the regional European scenario (Ibid, 15).

With reference to the enlistment of rights that were put forward by Dublin III it is possible to highlight: the expansion of the definition of family and the obligation to respect family life. Moreover, by understanding the vulnerabilities of the individuals that are pleading asylum, this regulation sets up a framework of time limit to be respected regarding the procedures of taking charge and of answering to the request of information from secondary States as well as of transferring the asylum-seekers that are not in the responsible State. (Ibid, 17-18).

On top of that the article 28 is highly significant in protecting asylum-seekers from any type of detention, once that this article classifies detention as an action taken only as last resource. With the promulgation of article 33, the regulation recognizes the possibility of a collapse of the national asylum system, and to cope with such situation this arrangement tries to provide warning mechanism to notify other States about the current saturation, allowing the attenuation the problems in other States (Ibid, 18-19).

The greatest difference that was established by the Dublin III regulation regards the second chapter on general principles and safeguards, where the article 3.2 is introduced, based on the decisions and judgements previously done by the regional courts (ECtHR and ECJ) as well as the national legislations (Ibid, 15). The importance of such recognition made by regional and national courts englobes the fact that a State that configures as the country of second entry can become the responsible authority, if the returning of the individual to the first country of entry would mean to breach the Article 4 of the CFR of the European Union (European Union, 2013-d, 7). Article 3.2 has consolidated the human rights-based approach that legitimising the existence of a connection between the different international obligations of protecting litigants of asylum.

The Convention, as well as all the Regulations proposed under the name of the Dublin system, have always emphasised the necessity of compliance with the 1951 Convention and its 1967 Additional Protocol, nonetheless it has never really set the pathway on unifying the interpretation of all the provisions that were accepted and ratified by these countries. This lack of an integrated methodology of interpretation has legitimised and permitted that a great area of manoeuvre is given to these authorities.

This tool that permits the enlargement of the interpretation and execution of government's international duties has given all the contracting parties the possibility to differ in their understanding of crucial concepts. This permissibility have allowed the application of concepts in a more restrictive way than what it would be applied internally by other countries on other continents, creating a gap of applicability of this international instruments and contradicting the purpose of the CEAS. It can be concluded that a sole and unified system of international protection has not been achieved and that many steps are required prior to the development of a true unified and common asylum system within the European framework.

2.A.2–The current Dublin III Regulation as a failing system

As it can be noted, regardless of the regional instrument that was put into place since 1990, the common core and idea of the Dublin System that were presented concerned the assumption that the obligation to analyse the asylum demands would always rest upon the country of first entry. Nonetheless, due to: (1) the previous reforms that the Dublin system have undergone, in addition to (2) the latest proposal issued by the European Commission, in 2016, with the aim to, once again, reform the current system (Cafiero, 2019, 2), but also because of (3) the continuous struggles that Europe are undergoing in what concerns the asylum "crisis", it is clear that this current system has failed. The current layout does not work and it is hampering and preventing the exercise of the rights accorded by the 1951 Convention and the 1967 Additional Protocol.

The Dublin System has become a structure that are two folded, where sometimes it allows the right to seek asylum, yet only for those who could avoid being caught and that does not have its fingerprint at the Eurodac system, at the same time that it is a structure that denies the possibility of the petitioner to request protection by sending it back to the first country of entry, where many time there are no guarantee that their human rights will be respected (Bugge, 2019, 93). The UNHCR Executive Committee's Recommendation Nº15 regarding the "Refugees without an Asylum Country–Recommendation No. 15", from 1979, already stipulated that whenever possible the States should take into account the intention of the refugees and which country these individuals would like to go (Executive Committee of the UNHCR, 1979).

Once more the Dublin System shows its incompleteness, by not being able to adopt an international recommendation emitted by the higher organism specialised on the subject of refugees and asylum. The issues presented do not configurate as the only flaws of this system, the regional mechanism presents itself as highly problematic not only due to its un workability, but also because it goes against its own core idea of responsibility-sharing and regional cooperation.

The cooperation and the burden-sharing concepts are hindered by the uneven and unbalanced weight that it is put into external border countries, since they are responsible for the security of the whole Union under their owns expenses. However, internal border countries do not have this problem of having to protect borders additionally to the fact that they are sure that huge flows of migrants would not affect their country in the same way as first countries of entry, and if it does, they would be able to instigate the Dublin system to repeal such obligations.

One of the most evident situation that elucidates this relation, was expressed by Fabienne Keller on the Report A9-0245/2020 of the European Parliament. According to this report, the

excessive burden attributed to some countries is decisive to encourage some members to stop applying the Dublin III regulation, as examples, Italy and Greece, that due to extreme conditions in regard the reality of the life of asylum-seekers but also as a way of showing the unbalanced between the Member States, decided to boycott this regional measure (European Union, 2020, 4).

The system should be based on the idea of cooperation and regional solidarity, which made the EU to decide to take an *ad hoc* measure to help the first-entry responsible States, and in July 2015, a decision of establishing a relocation system was implemented, followed by the creation of a 2,4 billion euro's budget over 6 years to assist and give incentives to the EU member's with higher rate of refugees (Šelo Šabić, 2017, 2). Nevertheless, even if these schemes of relocation were adopted in 2015, they were not successful and tended to highlight the contradictions within the CEAS, turning the system into an ineffective organism that stresses its inefficiencies (Maiani, 2016, 6). It is incorrect to say that no relocation has been made, however, as confirmed by the 4th report on relocation and resettlement, issued in the middle of 2016, the relocation campaign should have achieved almost half of the commitments made by the time in which it was functioning, in 2016, yet only 2% of the goals established were accomplished (European Union, 2016, 2).

Lastly, in what encompasses the 2016 proposal of the Commission for the creation of a new Regulation, under the name of Dublin IV, this measure will downgrade all the rights that have been acquired by Dublin III. It is highly likely that it will enter into conflict with all the regional instruments of guarantee of human rights regional, and above all it will not give an answer to the main root cause (solidarity and fairness) since the issue will continue (Maiani, 2016, 6-7).

It essential to understand that no real change is going to be achieved if the EU does not decide, in cooperation with the authorities of the State, to find solutions for the main reasons of this mistrust and ineffectiveness issue englobing the regional structure. The current system do not provide the necessary answers to the contemporary immigratory wave, however, in 2022, with the activation of another form of international protection it has been shown that the European Union can come under a consensus to protect those in need, showing that a consensus is feasible.

2.B–Directive 2001/55/EC (Temporary Protection)

The European Union directive 2001/55/EC does not make part of the Common European Asylum System, differently from what the common public opinion may think. The temporary protection directive does not make part of the CEAS due to a series of reasons, including that this

directive is a form of "complementary" protection, alongside the fact that this directive was created concomitantly the organisation of the whole structure of the Common European Asylum System.

This mechanism has been entirely developed by emphasising the national discretionary power of the States Members of the European Union, and that until 2022, was never used, leading many human rights defenders, lawyers and academic scholars to conclude that it would never be activated, intriguing many others regarding the way in which this mechanism would work. It is essential to emphasise the differences that circumscribe this type of supplementary regional protection and its historical context as a way to understand all the existing nuances and non-similarities with the refugee status, defended under 1951 Convention and its 1967 Protocol.

2.B.1–The historical background for the creation of the Directive 2011/55/EC

As presented by the Temporary Protection directive itself, throughout its preamble, the adoption of these legal provision was influenced by all the political and conflictual situation of the 1990s, highlighting a special concern of the EU members regarding the reality presented by the tensions of the former Ex-Yugoslavia (European Union, 2001, 1). Nevertheless, from the idea of creating such a mechanism to the current mechanism, the directive has undergone variations, and it was only in March 2022 that the directive has been activated for the first time since its creation.

As a consequence of the conflicts that have arisen from the dissolution of the former Ex-Yugoslavia, additionally to the position taken by Western countries, the European Union decided to adopt a political position concerning the influx of asylum applicants that have been emitted in 1995. The Council of the European Union have, in 1995, decided to create a temporary resolution that tried, as an important goal, to regulate any possible crisis that would push States to act in order to protect those in need (European Union, 1995). This decision was one of the first steps taken to advance to the creation of the directive 2001/55/EC, as it is currently in place.

The Action Plan of the Council and the Commission of the 3rd December 1998 has adopted, in conformity to the Amsterdam Treaty, some standards to provide temporary protection, continuously integrating the willingness of the European Union States in helping those coming from the former Ex-Yugoslavia. On May 1999, the EU has emitted conclusions requesting the States to learn from the cases of those individuals that have been forcibly displaced from Kosovo. These conclusions led, at the end of the same year, after the Council's meeting in Tampere, to the Union's agreement on the need to better develop a mechanism that would establish the basis,

criteria, mechanism to provide temporary protection, which has culminating on the adoption of the text on Temporary Protection, in 2001 (European Union, 2001, 1).

2.B.2–The contrast between the different types of international protection and the temporary protection directive

The "Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof" works differently from the other methods to secure international protection. The subsidiary protection or the refugee status is an individual examination of the fear of persecution or the persecution in itself. Meanwhile, the temporary protection directive is a mechanism that requires few criteria to be assessed in order to concede protection to those individuals in need. Firstly, the core idea of the directive is that with the view to be activated there must be a mass influx of displaced persons, although there is a regional lack of definition concerning what can be understood as a "mass influx of displaced persons".

Secondly, another difference between this specific type of protection and the ones previously mentioned surrounds the fact that the directive is based on a collective type of sovereignty. To activate the directive it is necessary to have at least a qualified majority (article 5), meaning the minimum threshold of 2/3 of EU States in favour (Genç and Öner, 2019, 6 and 8). The execution of such provision depends on the willingness of the governments composing the regional community and which the provisions of the regional framework on asylum is applicable.

The activation of the 2011/55/EC constitutes a commitment to regional standards of protection. In order to engage directly with the responsibilities of receiving the individuals of the mass influx of displaced people, there is the need to accept this regional measures. As a way to endorse these regional measures there are obligations that must be taken. It is the sum of the consensus on the collective national interests that made it extremely hard to enact this regional structure, which has been confirmed by its first activation in 2022. An activation that has been pushed by the massive influx of individuals coming from Ukraine after the Russian invasion.

Moreover, this mechanism differs from the recognition of the refugee status and the subsidiary protection due to the applicability of a limitation on its duration. With reference to article 4.1 of the directive 2001/55/CE, there is a general understanding that the protection given

must be for a period of 1 year, possibly renovated either by a two times extension of six more months or a sole extension of one year. Furthermore, regarding the article 4.2, the directive would allow, a one more time prorogation by a one-year limited period, making it a total concession of three years of complementary shielding given by the application of this regional mechanism.

In France, meanwhile the subsidiary protection is given for a four-year period, the refugee status offers a resident permit of ten years (UNHCR France, 2023). This limited period in which the instrument is activated is based on the presupposition that the influx is a periodical and non-permanent situation. The final comprehension is that these individuals that constituted the massive influx will return to their country of origin after that the normality will be regained.

Lastly, and to return to the first argument that has been introduced, another characteristic that differentiates the directive 2001/55/EC from the other types of international protection is the way in which the assessment is conducted. For the time being, the refugee status and the subsidiary protection are individual-based assessment of (1) the fear of persecution or (2) an actual persecution. The temporary protection adopts a separate approach due to the vision that a large number of individuals would be at the EU external borders, endorsing a collective recognition.

As stipulated by article two, the reasons why the directive could be inaugurated, meaning the concession of a temporary protection resident permit within the countries that decided to abide by the regulations on migration and asylum, are: (a) persons running from areas of armed conflict or endemic violence; or (b) individuals that are at extremely high risks to be or to have been victims of systematic and generalized violations of their human rights.

Chapter 3–The legal background and its influence on the 2015 and the 2022 refugee inflow: understanding the necessary changes

This chapter has the objective to analyse the French legislation, since 2015, and in which encompasses the asylum procedures, as well as it will also compare the mechanisms that were used on both immigratory scenarios, the 2015 and the 2022 migratory wave. Additionally, the chapter will present and explains the reasons why there is an immediate need to stipulate a new regional policy in order to create a structure that would be much more equitable, fair and in line with the aim of guaranteeing human rights, International Refugee Law, and the fulfilment of the higher standards on the protection of applicants of asylum.

To achieve such objective, the chapter concentrates in two tasks. Firstly, it discusses that the public perceptions have a profound impact on the actions that are taken by governments, affecting, directly and indirectly, all the process of decision-making in the local and international sphere. Secondly, it revisits the question englobing the failure of the Common European Asylum System, and it explains as a proposition that the activation of the directive 2001/55/EC, creates an important precedent to pave the way to a better protection, on a possible future crisis.

The application of the Temporary directive concentrated only on the welcoming of Ukrainian is problematic since the same was not done for others massive flows of individuals claiming international protection. Nevertheless, once activated, the directive becomes an instrument to increase the respect, the protection, and the fulfilment of the rights of individuals that are demanding protection at the international level.

3.A– The national reforms on the French asylum system since 2015, the enactment of public policies and their connection with the intrinsic popular perception

Normally, within democratic countries, there is a reliance on the public opinion as a way to create, approve and implement policies that, after approved, will become mandatory to all individuals, nationals or foreigners, being reason why the public opinion shows itself as a great mechanism of assistance or as an impeditive to the conformity of the national engagements. However, whenever the public perception and opinion are reasoned and pervaded by intrinsic direct or indirect biases, such as historical hierarchy, racial structures, or by hate towards a particular religion (Islamophobia), there is no chance to respect, protect and fulfil human rights. Human dignity constitutes the main pillar in which human rights are founded, the division of the world into different groups in order to distinguish and create a ranking of sections of the population enforces the persistence of disparities, instead of advocating for acceptance and multiculturalism.

This separation into groups have influenced many of the French politicians and their politics to adopt a securitising perspective whenever there is the need to tackle the questions that involving immigration and asylum, which has punished those who present the most vulnerable situation. These dissociations and distinctions done between the groups of individuals pushed the enforcement of politics that emphasise securitization as a way of deal with migrants, which were present over the years, before and after 2015 (Haguenau-Moizard, 2018, 1). Yet the focus will be given to the promulgation of the immigration bills since the beginning of the first migrant wave.

David De Coninck's research shows that there are factors that are essential to determine the type of perception that will be attributed to the different foreigners that will enter into the host countries. This approach is based on elements such as (a) ethnicity; (b) place of origin; and (c) economic situation (De Coninck, 2020, 2). These characteristics are a determinant factors that contributes to the perception and acceptance of foreigners, which indirectly influence what types of mechanisms, treatment and reception adopted and given to migrants, nationally and regionally.

De Coninck's academic paper can be the first guidance to understand why the perception of the refugees from outside of the European continent, that does not have the same values and culture, those that are perceived as coming from least developed and poorer countries, will have more difficulties in changing the public perception in their favour. Meaning that an individual that is ethnically different, and that comes from least developed countries, where the geographical area differs, and where the economic levels are seen as lower will have a bigger probability of being perceived as a threat, and as a matter of fact will not be welcomed and included within the society.

Within a 20-year period, there were multiple reforms to the French asylum and immigration system, only between the years of 1996 and 2012, there were ten Acts of the Parliament in regard this theme (Ibid.). It is essential to emphasise that, since the start of the 2015 migratory wave, migration, which was a very polarised subject, became more politicised. Segmentation of these groups and the shifts in public perceptivity influenced the adoption of decrees, orders, and laws.

Such a dichotomy was presented within the debate of the different political parties and has been used as a political tool not only to gain more voters for the next elections, but to unite and show the actual power of the French politicians who were at the government. The action of re-writing continuously the immigration rules, allows and acts as an instrument of comparison among the previous governments, with the intention of showing which party has done more. Nevertheless, the changes that have been promoted on the immigration policies focus on a dispute of power that does not consider the most vulnerable ones and their basic needs.

Immigration bills since the 2015 migrant wave

The first Immigration bill of 2015, under the name of "loi du 29 juillet 2015 relative à la réforme du droit d'asile" (law of the 29th July 2015 concerning the reform of the right to asylum), is a well-known document that has acquired its popularity due to the fact that it has been one of the main contemporary reforms. The introduction of this new legal structure added many

provisions to the previous rules that were enumerated at the Ceseda, aiming at emphasising the creation of a more robust system that would gather the arrangements concerning the rights to asylum.

The next legal instrument that was approved, was known as "loi du 7 mars 2016 relative au droit des étrangers" (law of the 7th March 2016 relative to the right of foreigners) and was presented in 2016 to the high instances of the French power. Differently from the bill of 2015, the 2016's law encompassed immigration from a broader perspective than specifically ruling over the right to asylum and all its mechanisms and procedures. The law of 2016 accentuated subjects such as regular and irregular migration, where the main points surrounded the integration of regular immigrants, the increase of the attractiveness of France for those individuals deemed as needed and seen as talents, and it focused on combating irregular migratory movements (France, 2016, 5). There were no significant amendments regarding the rights of asylum in the bill of 2016.

Approved in 2018, the third bill was referred as "loi pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie" (law for a mastered immigration, an effective right to asylum and a successful integration) and was commonly known as "Collomb" law. This legal document was an immigration bill that, according to the government, aimed at facilitating and speeding the process of demanding for asylum at the same time that it proposed to establish better conditions of reception to those in need.

Nevertheless, this law accentuates the risk of deterioration of refugee's rights and concomitantly it does not solve the problems that were present at the French asylum system (Marquis, 2018, 1). From all the provisions within the immigration bill from 2018, the most passive ones of being discussed and problematise are the ones concerning: the shortage of time for claiming asylum or for demanding a review of the case, which has been reduced by 25% passing from 120 days to 90 days, in addition to the extension, by 100%, of the time of detention prior to deportation, going from 45 to 90 days, and where minors were not excluded.

The idea of reducing the time of the two most crucial procedures, the first one of requesting the right to asylum, and the second in having the right to appeal in front of an institution of second instance, is an improvement that must be sought by France. However, when this depletion is done by transferring the burden and addressing the responsibility to asylum seekers, such measures must be revisited and questioned. The asylum application must be done in the quickest and possible timeframe, but the duty to lower the number of days in regard to such system should be taken by

the State, specially by reducing the bureaucracy or by augmenting the name of employers within the government's premises, but never by penalising the most vulnerable ones. Reducing the application and appealing time punishes those who are the most vulnerable, especially when asylum-seekers do not speak the language, do not know or understand the legal necessary steps and procedures or when they do comprehend the administrative system.

Additionally, the second critical point surrounds the fact that the augmentation of the time in which asylum-seekers can be put in detention aggravates their endangered circumstance. Moreover, the law does not comply with the international standards of refugee's rights, by infringing two of the basis of the 1951 Refugee Convention, the non-criminalization or non-penalization of those who cross borders irregularly. One of the main principles of the 1951 Convention is translated by article 31 and it stresses the importance of non-penalization (Costello and Ioffe, 2021, 918). Since a great amount of these individuals, most of the time, could not possess the means to enter legally, it is crucial to invoke the principle of *bone fide* whenever the topic surrounds refugee's rights (UN Ad Hoc Committee on Refugees and Stateless Persons, 1950, 27).

The bona fide (meaning: "good faith") principle englobes the idea that a person who is genuinely intending to enter a State for a lawful purpose (demanding asylum) and it is not likely, under the opinion of the authorities, to remain irregularly can benefit from the idea of non-penalization and non-criminalization of its irregular entrance. However, the idea of "illegal permanence done intentionally" must be carefully examinate, otherwise, it can become an issue, once that there is an assumption that the asylum-seekers do know what are the procedures and how they are meant to be followed.

Whenever the principle of non-criminalization and non-penalization cannot be immediately applied, the State's action should enhance a more just approach to understand if there was "good faith" on the actions taken by the person requesting national protection. For the purpose to evaluate and consider the article 31, it is crucial to analyse: (1) the willingness to cooperate with authorities to determine their status and (2) the non-infringement of national law by the applicants.

At the beginning of 2023, the fourth legal text has been sent to discussion at the higher legislative instances, and if approved, it will give power to the government's authority to enforce a much tougher law on asylum seekers. According to France, the main goal is to control immigration, improving integration and allowing the government to continue to provide asylum to those who need the most, yet the text of such proposition seems to go on the opposite direction.

The texts of this bill have on its core regulation measures that if adopted can be, to some extent, positive, such as the: prohibition to detain minors under 16 years old, possibility of legalising undocumented workers, promotion of measures decreasing the time of the asylum procedure, and idea of decentralisation of the OFPRA and CNDA's office to major cities (Pascual, 2023-b, 1-2).

Nevertheless, the same immigration bill does also present negative aspects that, if approved, it will hamper the rights of immigrants in general, being refugees or not. Some of the measures can be translated to the possibility to enforce deportations under the idea of "serious threat to public order" or the reintroduction of deportation measures to those who did not comply with "the principles of the Republic". Moreover, with a view to accelerate the asylum procedure the proposal go towards the abolition of the collegiate composition of the CNDA, unifying all the decision on only one magistrate (Ibid., 1-3).

The measures that have been previously cited represent a setback, however due to page constraints only three of them are going to be better explored. Firstly, the lack of a precise definition of what can be understood as "a serious threat to public order" can amplify the authorities' power and give them a greater margin of appreciation to expel anyone that is seen as a potential threat, without condemnation or proof of a wrongdoing. Secondly, the reintroduction of deportation measures based solely under the defiance of, once again, the non-precise definition of what exactly constitutes "the principles of the Republic" becomes even more troublesome by the application of implicit biases that the public perception brings within their own imaginary.

Lastly, the third aspect that constitutes an issue regarding asylum's rights encompasses the possibility of reducing the number of judges that would take the decision upon each case that will be brought to the CNDA. What is important to recall on the asylum procedure is that the CNDA accounts for the mechanism of appeal, and as a decisional instance it deals with the most complex cases, and to diminish the number of judges does not necessarily mean to speed up the process. Furthermore, such measure does risk putting a lot more pressure on the judge that would need to go through the whole process alone and another problem that can arise regards the fact that, by having one single judge, the complicate assessment and the decision will only be base on a unique viewpoint. Lastly, the shrinking on the quantity of judges would be translated by a loss on the cooperation between the French State and UNHCR, and of a less biased perception once that the third judge is externally indicated by an organism specialised on the right of asylum.

All the measures and policies that have been previously adopted base themselves on a very negative and biased overview of the asylum applicants. Contemporarily, “refugee containment is the single dominant story in refugee studies since the end of the Cold War”, which has been reflected into an increasingly criminal and punitive approach in what concerns “irregular migration” (Costello and Ioffe, 2021, 917) instead of a humanitarian one. Meanwhile, asylum-seekers that are coming from the Middle East, Asia and Africa are going through long, arduous, and bureaucratic procedures to prove that they comply with the criteria of international protection, Ukrainians have pushed forward the activation of a regional procedure that requires much less criteria to abide to. Such contrasts exhibit a clearly distinguished perception among the groups.

When drafted, the 1951 Refugee Convention had the main goal to protect citizens that could or did not want to avail themselves of the protection of their own national state, due to the fear of persecutions, which in a limiting analysis could mean two possibilities: (1) the State itself is the persecutor, meaning the actor that perpetrates the asylum-seeker’s rights or (2) the State in question, finds itself constrained by such an extreme reality, that it fails to provide protection to its own citizens. In a more legalist approach, Ukrainians do not comply with the criteria necessary to cede protection under the Convention, firstly, because there is no direct persecution towards its citizens and, secondly, because it could be alleged that Ukraine can guarantee protection to its nationals, even if they are fighting a war.

The distinguishment regarding the case of Ukrainians can be once more evoked whenever those individuals do not have the burden to prove that there is a persecution. But mostly important, the sympathy in which Europe has shown towards Ukraine is of such amplitude that, Ukrainians have activated a special mechanism that has never been before used. Additionally, within the French context, what can occur whenever there is an assessment of the refugee status is, when the country is not completely torn apart by great instability, some government’s authority would claim that the asylum seekers could have been given protection within its own country among a “more stable zone”, such situation is reference to what is known as “internal asylum”.

The last disparity trait in the treatment concerns the application of the “internal asylum” mechanism. For Ukrainians, it does not matter the region in which they are coming from, once that their nationality is the sole basis for a direct recognition of the temporary protection, meanwhile asylum seekers are often confronted to the idea that they could have stayed in their country of birth or residency, instead of trying to demand for international protection. The questions that have been

analysed show the disparity in treatment and the exacerbation of a much negative perception that European countries have towards non-European, non-white and non-Christian background.

It is true that the perception of asylum-seekers has had a direct and indirect impact on the welcoming of these people, yet it does not account for the whole problem. Additionally to what has been previously explained, the way in which the CEAS has been constructed plays an important element that increases the mistrust among States and the failure within their obligations

3.B–A failing asylum system: the essentialness of reforming the Common European Asylum System and the importance of the activation of the directive 2001/55/EC

The different biases that accompany the public insight do not constitute the unique problem, there is also a structural struggle when considering the regional system that deals with migration and asylum seeking within the European context. The 2015-2016 refugee crisis has challenged all the regional asylum directives and it has shown that the current Common European Asylum System was not ready to deal with such an important influx of people (Parusel and Schneider, 2017, 30) the way that it is contemporarily structured. Some motives can be attributed to the failure and collapse of this system in Europe, nevertheless there are, specifically, three major changes that could have been made in order to have a totally different outcome from the one that has been seen throughout the years in welcoming and protection of refugee's rights. If taken prior to the 2015 refugee crisis, some actions could have been able to guarantee better protection and the application of international responsibilities within the migration and asylum framework.

CEAS and the principles of solidarity and fairness

Solidarity and fairness are key concepts to the CEAS and to the mechanisms within the European Union. The importance of these two elements has been consolidated by the article 80 of the Treaty on the Functioning of the European Union (TFEU), which translates the principle of solidarity, and the article 79 (1) TFEU, which sets the base for the implementation of the principle of fairness within the European Union's reality (Ibid., 33-36). Entering the EU means the need to adopt significant steps towards the fulfilment of such principles and the accomplishment of these moves could mean, in the future, the possibility to decrease the chances of a complete crash of the CEAS and the strengthening of the whole asylum framework. Moreover, the acceptance of the

idea that the 2015 refugee waves were never properly dealt by the governments of the EU could mean a better understanding and research on viable solutions for the whole structure.

In a regional organism such as the EU, the achievement of the State's interests, economic development and regional integration is a purpose that continuously demands the engagement of all the participants. To accomplish this ambition, it is primordial to recognise the connection and the inherent importance of the two principles of solidarity and fairness in order to promote the achievement of the regional goals as a Union. The first step that should be institute makes reference to the comprehension that different States have distinguished economies, geographic positions, political and social elements that impact their resources and their ways to handle the refugee crisis. Secondly, a vital part to be acknowledged surrounds the fact that even if the continuous and current crisis were better managed and the system did not collapse, the Dublin Regulation continues to be unfair, since it permits the accumulation and concentration of all international duties around few States, meanwhile the bigger portion have lesser responsibility.

Both components, that were previously mentioned, indicate the same problem within the CEAS structure: (1) the way in which the distribution of the obligations is done and (2) the unfairness of the Dublin regulation and the CEAS, which resulted in a lack of a just distribution and the continuation on the applicability gaps as for the obligations. Although the Dublin system dictates the State that should carry and bear the cost of such duties, its construction did not take the two components into consideration. Nevertheless, the directive 2001/55/EC shows that the European Union had predicted the possibility of a massive influx of individuals, which needed to be based on solidarity and fairness, what was not foreseen was how the negative insight over asylum-seekers and societal biases would reinforce and stigmatise many of the current perceptions and the political will, that ultimately results into a lack of fairness and solidarity within the members.

It is unfair and unrealistic to expect asylum-seekers to remain in a country in which they have high chances of being denied protection especially if among these countries that are disparities on the rates and chances of being granted protection, especially if they know that under a certain government they will be more likely to be detained. All these disparities in between the countries vindicate and explain why the harmonisation of the regional asylum system is one of the most fundamental and pressing changes to be achieved (Ibid., 39).

The lack of fairness and responsibility-sharing have led many of the States to transform and use their internal law and asylum system in order to become less attractive to those in need, by enacting more strict measures, which clearly goes against and breaches regional and international obligations (Ibid., 22). Even more worrisome is what has been called the "race to the bottom" among the State (Chetail, 2016, as cited in Parusel and Schneider, 2017, 49), which could be translated into collective diminishment of the international and regional standards of asylum responsibility in order to repeal the claimants of international protection.

France alongside Germany have been the countries that pushed forward the Dublin regulation, such action was implemented by the fear that the high standard of international protection presented in their countries would attract more individuals. What was meant to impede the concentration of asylum-seekers in the "higher standards" countries have defended the transference of such responsibilities to those with "lower standards" and with the fewer resources to deal with applicants. The consequence of this conveyance of obligations affects and impedes the well-functioning of the CEAS, but most importantly, it has turned the regional system into a legal framework that has been dysfunctional and that effectively stops any possibility of a fair structure (Parusel and Schneider, 2017, 47-48), where solidarity and fairness are mostly rejected.

Enhancing fairness and solidarity: the necessary changes

To better perform, the Common European Asylum System must be based on a finer distribution of the international duties among Member States, otherwise no improvement will be achieved. There are some courses of action that must be taken in order to allow the application of an asylum system that will fulfil its obligations. The first step must be taken at the internal level, where there must be a diffusion of information that highlights the importance of the a complying framework and the abidance of the international and regional responsibility, but above all a demystification of the racial, geographical, and religious biases. Although the previous measure would focus on the internal level of each member of the European Union, the EU must contribute by financing and creating their own campaigns in addition to cooperate with the members.

Secondly, in order to enhance solidarity and fairness, it is important to establish quotas in which each country must not only abide, but at the end of a pre-established period, it would need to be accountable for the measures taken, the applications processed and, above all, the number of individuals that have been granted protection. For such action to be successful, there are the

necessity to apply two important tactics. First manoeuvre encourages the harmonisation of the whole process so to prohibit the discrepancies in the acceptance of individuals among the Member States, meaning that all petitioners should start their application having the same possibility of being granted asylum, independently of the place. Meanwhile, the second manoeuvre comprises creating a binding legislation under the regional framework and a powerful institution to control such procedures. As a pathway to be less coercive and based on a more voluntarily attitude, it would be important to create a pre-defined "Dublin compensation fund" in the same way of the quota of reception to every single State (Ibid., 55-56).

As argued by the Delmi report, the rate variation regarding the processes of granting asylum can be, generally, addressed to "diverging understandings in the various Member States of the concepts such as refugee status, subsidiary protection, or protection for humanitarian or other reasons" (Ibid., 85). Whenever discussing other types of protection than the refugee status where there is no harmonisation, the EU must clearly research and statue what is the common understanding that must be stressed at the national scenario, otherwise political will and public commotion will continue to determine which procedure will be applied.

Furthermore, the "asylum seeker's ground for protection, the reliability and credibility of evidence or testimony they present, and the security situation in their country of origin, might also be assessed inconsistently among the Member States" (Ibid.), which highlights, in what regards the French context, the importance of the judge appointed by the UNHCR and once more advocates for the necessity of a homogenous perception. The presence of a judge appointed by the UNHCR tends to diminish the disparities, yet it does not withdraw the responsibility of the necessity of a transformation of the CEAS.

Between the years of 2008 and 2016, France has always stayed below the annual average of first instance positive decision regarding the asylum applications. The non-compliance variation went from -10,8% to -27,6% comparing to the European average of acceptance, showing number much lower than Sweden, Austria, Malta, Denmark or Bulgaria. The report indicates that in 2016, the harmonisation promise did not constitute itself, once that the rates hugely diverged from one country to the other, Afghans had, in 2016, 97% of chance of being granted protection in Italy, meanwhile less 2% of chance of receiving protection in Bulgaria. The same case can be seen in what encompasses Iraqis, where their acceptance rate was 100% in Spain or Slovakia and below the 13% in Denmark, Hungary and the United Kingdom. However, in what concerns Syrians, it

can be said that, if not for specific extreme points that represent unique situations, there were the development of an unified and better harmonised system (Ibid., 91-105).

In order to monitor and to call the responsibility of governments as well as to build a stronger and a more aligned CEAS a third step would be crucial. This initiative needs to either create more institutions that will have the power to emit recommendations and resolutions that would be legally binding, however meaning that a bigger budget, personnel and a new round of negotiation would be needed to allow the concretization of this ambitious action. Or a second possibility, that has its challenges, but seems to be less laborious and more doable, concerns the boost of the mandate and the power over binding recommendations of the current European asylum organism: the European Union Agency for Asylum (EEUA).

By fostering the amplification of assignments of the EEUA, the immigration crisis could be better managed and the changes would still allow States to implement its own necessary modifications in order to adequate to the national legal framework, however taking into account the position and the guidance for this new EU asylum body. The transformation of the mandate of the EEUA could be made by amplifying its mission, without necessarily implementing an enormous enlargement of the number of personnel, and augmenting its power to determine next to competent national authority the future of asylum policies.

These modifications would mean that instead of only providing technical and operational support, which are concentrated on the guidance and training of authorities of different members, the EUAA will be transformed into a body composed of asylum experts that would be in charged with the responsibility to evaluate and propose binding recommendation to truly enhance the CEAS. The "complete transfer of the decision-making competence to a European Agency acting under European law, would be the only way of guaranteeing uniform asylum outcomes across the EU, as controversial as this may appear" (Ibid., 125), which highlights the difficulty of such step, nonetheless it stresses that this specifical situation would be the only way possible to fully achieve the objective of a working asylum system based on solidarity and fairness.

To finalise this chapter, and as it has been pointed out by the same report, there are four possible outcomes for the future of the CEAS, the first is based on the maintenance of the "status quo", meaning that no changes would be made. Secondly, there is the "Dublin plus" scenario, which consists on the integration of measures that would try to correct some of the asymmetries, it partly reflects what is trying to be done with the implementation of the a new regulation under

the name of Dublin IV. Thirdly, the possibility of instituting "fair quotas", in which englobes the development of a system that replaces the Dublin III regulation, and where its main attribute will be based on the distribution of asylum determined by mandatory allocation schemes, moreover States would need to trade or compensate for the non-compliance with the pre-established quota. And lastly, the fourth option is intituled "free choice" and it encompasses a system in which the international recommendation of 1979, that highlight the importance of giving the possibility to asylum seekers to choose where they would like to apply for asylum, would be implemented.

The adoption of any of the four possible outcomes would result in challenges or difficulties, and above all, any of the possible solutions present positive and negative sides on its implementation. The most common challenge surrounds the necessity of enacting the political will of the most conservative States, being part of any of the three last procedures that were exposed, nevertheless, the negative points can encompass all the possible outcomes. In regard the 1st possibility, the negative side would be englobe the continuation of a failing system, meanwhile the negative side of the 2nd and 3rd outcome will be the non-full commitment to global standards and recommendations, last, relating to the 4th result, the possible negative result would be the incitation of the implementation of a "race to the bottom" approach to migration as a way to contain the high number of applications that might be lodged in some of the countries.

The reform of the system cannot only be subjected to the rewriting and the addition of general measures, which will highly likely maintain the process as it is. Nonetheless, the current system is in a constant evolution, in other words, the propositions and discussion regarding of the enactment a new set of rules (Dublin IV) could be a evolutive procedure, and when applying the different scenario, it could be compared as entering into the second outcome. Meaning that in the future it might advance even further until reaching the "free choice" result. The fundamental turning point to establish an equitable system based on fairness and solidarity rests in finding a method to activate the political will of all the governments, such point concerns not only the asylum system but the whole European integration phenomenon.

Part II–Uneven legal and political response: Ukrainians vs. other migrants

On the 4th of March 2022, the Council of the European Union, adopted a decision to implement the directive 2001/55/EC, meaning that for the first time after its creation, the directive would be activated. Such procedure has been adopted by unanimity and the decision was entitled "Council Implementing decision (EU) Nº 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of the Directive 2001/55/EC and having the effect of introducing temporary protection". This decision came not only as a recognition of the acts of aggression done by the Russian Federation towards the Ukrainian territory, but it also awakes and rekindles the feeling of threat, that was diminished after the end of the Cold War, that surrounds the "enemy nearby".

According to this decision, there are four crucial points that must be emphasized. Firstly, the recognition of the amount of Ukrainians arriving at the borders of the European Union as being characterised as a "mass influx". Secondly, an adoption of the measures to provide temporary protection to all the Ukrainians citizens, their family members and the individuals that benefited from international protection in Ukraine as well as non-Ukrainians that had resident permit (yet, those with only the resident permit have the necessity to prove that they could not return to their country of origin) was approved. Thirdly, there was the recognition of a range of rights, such as the access to the social welfare assistance, housing, access to the labour market, education, and most importantly the possibility to allow these individuals to choose the State in which they would like to settle. Lastly, an automatic recognition has been established (European Union, 2023-b), in addition to an automatic extension (European Union, 2022-b, 3), if there is no improvement of the status of those who fall under the criteria pre-established.

The accentuation of the differences among the waves, which are continuously highlighted by those who defend the position of the European Union, on solely applying the temporary protection directive to Ukrainians, does not sustain itself. Firstly, and as previously stated, both waves within a short time (less than a year) have received more than one million individuals that, due to the scenarios in their country of origin had the right to demand a protected status, nevertheless only the 2022 wave was positively welcomed. Secondly, some of the rights that are granted to those falling under the Temporary Protective directive are more beneficial than the ones

seeking asylum (Rodrigues and Tobler, 2022, 1-2) and are almost immediately recognised, meanwhile the asylum seekers needed to undergo a long and fastidious process to prove that they fulfil the criteria in order to have and enjoy a full set of rights.

Furthermore, the third difference in treatment between people under temporary protection and asylum-seekers is highlighted and seen, once again, by the permissibility that Ukrainians are given whenever they can choose which country they would like to claim for a temporary protection. Lastly, another argument that shows the inequalities in the reception of both groups concerns the higher costs that the 2022 migrant wave has imposed on the national structure. The "high cost" argument which is normally used by politicians that are anti-asylum, and which was constantly evoked in 2015, yet this same reasoning has not been addressed in the present European context, whenever encompassing Ukrainians. To better elucidate this trend, the French context will be used as an example.

According to an article published by "Le Monde" on 28th February 2023, Ukrainians have been much more expensive to the French government than a regular asylum-seeker, and only in 2022, France has expended 634 million euros for approximately 100,000 Ukrainian residents under temporary protection. The daily average cost of a Ukrainian under temporary protection surrounds 38€, meanwhile an asylum-seeker was reported to be consuming around 18-20€ (Pascual, 2023-a, 1). Although this discrepancy has increased the national expenses and the final costs for the French Republic, there is no direct opposition to the directive 2001/55/EC done by politician or the public opinion. Ukrainians are being positively pictured and being welcomed, emphasising the differences in behaviour from the public concerning asylum-seekers.

The Temporary Protection directive has a precise objective which is refraining the asylum system to be close to or to achieve a collapse. In other words, whenever this directive is activated, what the European Union is doing is to hold back a possible complete failure of the Common European Asylum System due to the enormous amount of people that would be demanding protection, which would be dangerous and impractical to the functioning and fulfilment of the duties towards petitioners of asylum (Kortukova et al, 2022, 2). However, when the main objective of such directive has been understood, the question that arises regard the disparities: why such mechanism has not been activated previously on the first wave within the period of 2015-2016?

After a first part that has concentrated on the local, regional, and international legal framework and background of the responsibilities of national States and its effects on the two

immigratory waves, the second part introduces a different approach where the analysis is based on a more political science, sociological and anthropological perspective. Nevertheless, because the aim of such work is to proportionate a dialogue between these different methodological approaches, aiming at critically analyse the current situation, the fifth chapter will focus on the examination of the reasons for activating one legal mechanism in detriment of another and its connection with societal perceptions and the profile of litigants of international protection.

Chapter 4–The root and cause of a distorted perception of migrants: explaining the difference in the welcoming of Ukrainians in comparison to Asians and Africans

It is undoubtful, that in the 2015-2016 migratory wave, there were the implementation of good practices that have been taken by some of the European Union's State, such as the decision of the 21st August 2015 of the German Federal Office for Migration and Refugee where it has been determined to adjourn the Dublin regulation, meaning the non-application of this measure. Another important and positive regional decision surrounds the creation of a distribution scheme of asylum-seeker among the EU States, in order to cope with the crisis. The difference in the treatment that has been accorded to Ukrainians in comparison to the other refugees does signalize two important issues. Firstly, the first wave of refugees, in 2015-2016, was heavily marked by a lack of political will of some of the actors, and secondly, the absence of a collective solidarity from the national authorities (Pastore and Henry, 2016, 53-54) that did not applied the Temporary Protection directive, but that solidarity has been promptly promoted and highlighted on the second wave.

The problem that has been raised by both waves, the 2015-2016 and the one in 2022, besides its distinctions, goes beyond the higher instances of the political decision-making process and hierarchy. In fact, they have its roots within the societal interactions among a very precise division of groups, this separation has been fuelled by an asymmetry in the relations of power. Secondly, the immigratory issue has been underscored due to the perception of asylum which is intrinsically related to the international relation of power and the separation of groups within specific stratus of society. The main three reasonings that legitimise the current division is based on: (1) colonialism and its remnant on the collective imaginary; (2) racism and the division of groups into races; and (3) islamophobia and its connection with the contemporary acts of terrorism.

4.A–Understanding the theory of Orientalism

Edward W. Saïd was one of the main post-colonial authors that, in 1978, published his most famous book called "Orientalism". Saïd's main proposal was to demonstrate, through a very thorough analysis of a vast literature of texts, books and historical documentations, that it exists a global institution that has been opposing the Orient and the Occident, and due to this opposition the Orient was dominated by the Occident. The opposition is based on an asymmetrical relation of power that has been perpetuated continuously throughout different centuries, creating an idea of an Orient, fostered on its antagonism from the Occident, legitimising and reasoning the negative attributes and connotations to the Orient, that was downgraded, overlooked, and underestimated.

The Orient is analysed through the lenses of Orientalists, which are Western citizens that were called as "experts of the Orient", in which its mission was to clarify and simplify the culture, the literature, the administrations, the declarations, the decision-making process and the religious objects to the West, so it could advance its own interests. Through the lenses of an Orientalist, the Orient and Islam were perceived as sources of fear and mistrust that must be controlled only by Westerns, or white men. Most importantly, it is by the creation, adoption and use of the Orientalist theory and mechanisms that the West legitimised, as the fundamental pillars of Orientalism, this way of thinking and acting that englobes on its roots on racism, ethnocentrism, colonialism and islamophobia (Saïd, 2003, 66-110, 238 and 252).

What is important to retain from this criticism is that these supposed specialists and their analysis are biased and continuously linked to a Western perspective and academicism. The analysis relies upon a disproportionate relation of power that makes impossible for the Orient to interpose to such interpretations, to speak for themselves or even to create their own view that can be brought to the West. As clearly stated by Saïd, the Occident "…is the actor, the Orient a passive reactor. The West is the spectator, the judge and jury of every facet of the Oriental behaviour…" (Ibid., 109) that has been internalised into people's mind and that present a "dangerous rift separates Orient and Occident" (Ibid.). The absence of an answer to this phenomenon happens due to the impossibility to "resist the projects, images, or mere descriptions devised or it" which is translated by a "sign of the West's great cultural strength, its will to power over the Orient" (Ibid., 94) in addition to "a West far more powerful military than the Orient" (Ibid., 95).

According to Saïd, these Orientalists lacked not only in understanding entirely all the customs, the culture, the religion, or the symbolism of the Orient, but they went beyond in imposing this induced and reductive analysis to the world. Yet, even more dangerously are the

interpretations, texts and all the knowledge that has been, and continues to be promulgated, once that it creates a dissociative feeling, which has been translated by the creation of the concept of "the other" that differs from "us", permitting the occurrence of the process of dehumanization whenever considering the Orient and its individuals (Ibid., 54 and 108).

This whole process has evolved from a first phase that surrounds a project of construction and presentation of the Orient, it has been followed by the ambition and the willingness to conquer and dominate it, being the second phase. Finally the third phase which is characterised by an instrumental attitude, where there is the prevalence of the political desire of physical, intellectual, active domination upon the Orient (Ibid., 201-246).

4.A.1–Colonial past and Orientalism: The perception of the other as uncivilized and inferior

Before further discussion, it is essential to understand what the concept of "Orientalism" is as well as the ideas behind its creation and defence as a theory, just as it was done by Edward W. Saïd, since they will constitute the base of the arguments developed in this chapter to explain the differences in the creation and implementation of immigration policies on the 2015 and 2022 refugee's waves. Firstly, as defended by Saïd, the theory of Orientalism and the mechanisms that enforced such theory do take different forms, and they evolve and vary throughout the time. The theory of Orientalism can be resumed as an established hierarchical theory between West and East, where different elements coming from the separation of those two groupings are compared and, above all, where one group, the East, is downgraded and diminished regarding the other, the West.

Saïd's conception of Orientalism

The beginning of the thinking of Saïd on the execution and the success, in addition to the spread, of such theory is based on "a form of cultural hegemony", which is fundamental to "the durability and the strength" of Orientalism in modern society. Orientalism is a powerful structure that is based more on an "European-Atlantic power over the Orient than it is a veridic discourse about the Orient" (Ibid., 6-7). Such power could not have been better transposed if not in the form of territorial, political, economic and cultural domination over the Orient, which has been developed by colonialism throughout the centuries. However, in this analysis, it will be mainly emphasised through the periods between the 18th century until the 20th century.

These colonial conquests can be translated by different historical facts, which can be highlighted by the French expeditions in Egypt or the direct control of India by the British Empire, where the "'Western' imperialism plot hold down the Orient" by creating among distinguished areas such as in "economic, sociological, historical and philosophical texts" the pillar for the construction "of a basic geographic distinction (the world is made up of two unequal halves, the Occident and the Orient)" (Ibid., 12). Orientalists "have contributed to making even the simplest perception of the Arabs and Islam into a highly politicized … matter" contributing to the "history of popular anti-Arab and anti-Islamic prejudice in the West" (Ibid., 26). Above all, Orientalism contributed to a "total absence of any cultural position making it possible either to identify with or dispassionately to discuss the Arabs or Islam" (Ibid., 27), which emphasised the dichotomy between the East and the West as irreconcilable half.

By comprehending the theory of Orientalism and all its interests and consequences, it is possible to conclude that all through "the eighteenth century there had been two principal elements in the relation between the East and the West" (Ibid., 39). The first one being the creation of a "growing systematic knowledge in Europe about the Orient, knowledge reinforced by the colonial encounter, as well as by the widespread interest in the alien and unusual", in which it was "added by a sizeable body of literature" (Ibid., 39-40). And secondly, the asymmetrical position of strength and power that Europe has had, that was translated into direct or indirect domination of this region (Ibid., 40). It is exactly the clear distinction between the two environments and individuals that creates a dichotomy, everything that one group assembles will lean on in the absence of those same characteristics on the other, which resulted in the legitimisation of the domination.

Colonialism was not only the result of a policy of domination upon those "others", that should be conquered due to its distinguishment from the ones conquering, but also because the conqueror is seen as a member of what is and should be the pattern of society and as the higher standard of evolution. These assumptions have constituted the base for colonialism, especially in what regards the French "mission civilisatrice" (Ibid., 169), where the objective was to illuminate the uncivilised world, everyone englobing the antonyms of the Europeans would be seen as uncivilised. This dehumanization of a collective constituted a "universal practice of designating in one's mind a familiar space which is 'ours' and an unfamiliar space beyond 'ours' which is 'theirs' is a way of making geographical distinctions that can be entirely arbitrary" (Ibid., 54).

As defended by Saïd, this theory, that is better translated into a structure, have acted in order to not only maintain itself, as it did, but also by showing the intention to perpetuate itself throughout time, which was done "by a series of attitude and judgements that send the Western mind, not first to Oriental sources for corrections and verifications, but rather to other Orientalist works" (Ibid., 67) and most importantly, it has depicted itself as a unique and universal truth. The perpetuation of colonialism hinges on this specific view of the "other" as inferior, uncivilised, and uncapable, in opposition to the colonizers who are superior, civilised and, above all, capable of not only determining its destiny as well as the destiny of the others, due to its power. The French approach, mainly personified by Napoleon and its incursions in Egypt and later with the partition of the African continent among the colonial powers, with emphasis on France and England, does highly rest on those assumptions as well as it also leans on the coloniser's interests.

Direct colonialism and its consequences have ended with the promotion of the decolonial thinking and fights taken by the colonised population, politicians, and intellectuals, throughout the twentieth century, mainly resulting in the independence of all the subjugated countries. Although the independencies of the previous colonised countries gained strength and resulted on the promulgation of their territory independences, there is a persistence on the modern and public imaginary that those inherent differences are so significant that explain and justify the differences between the countries of the Global North in comparison with those from the Global South. The perpetuity of such a way of thinking can be associated and traced to the misconceptions involving the asylum-seekers and the reasons to demand protection, mainly, in the Global North. Moreover, this perception are elucidate by the promotion of confusion whenever talking about asylum-seekers as ordinary migrants, meaning that it would no exist an international obligation to welcome them.

"Orientalism" in the 2015 migrants' wave: the perception of asylum litigants

Other examples can be taken from the increasing number, especially in the beginning of the 2015 migration crisis, of protests that have had the aim to show politicians the discontentment with the "pro-refugee" position of some parties within France, besides the posture adopted by the European Union. What is important to emphasise, and that has been explained on the first part of this thesis, is that these attitudes that are considered by many as too "pro-refugee" and that goes against the "perceived" interest of the nationals, are nothing more than the compliance of the State towards the responsibilities that were accepted under the 1951 Refugee Convention.

Another example that explains all the negative misconceptions that go along with the questions of migration and asylum, as well as the diffusion of the distinctions made between the East and the West, is indicated by the augmentation of representatives of the extreme-right at the French Parliament. In the 2012 elections, the "Front National" which was the unique extreme-right party received a very low support, only 3,66% of all the votes, getting access only to two sits (France, 2012). Nonetheless, in 2017 after the first years of dealing with the immigration crisis, the "Front National" gained twice the number of votes than the previous election, obtaining 8,75% of approval, guaranteeing 8 seats (France 2017). The latest election have showed the augmentation of the power of such party who came to be the second most represented party at the Legislative power, with 17,30% of all the votes, assuring 89 places of 577 (France, 2022-a, 1-2). The increase of the numbers of extreme-right candidates comes much more from the bad management of the 2015 immigration wave, that was never properly dealt, instead of the Ukrainian immigration flow.

The impact of the 2015 immigration wave added to its unsatisfactory administration was so immense that prior to the 2022 elections, there was the creation and rise of a new far-right party called "Reconquête" under the auspices of Éric Zemmour. The mainstream agenda of this even more extreme extreme-right party concerns the immigration policies and the necessity of regaining back the control of the French States, its culture and customs. The promoted idea of this party consists in stressing a "civilisational battle" (RECONQUÊTE, 2022) in which France must be ready to fight and to limit the arrival of those seen as the enemies, the migrants with emphasis on those who do not share the same characteristics as the French people. Such thinking shows the continuous colonial impact on the political behaviour of national political actors and population.

Both political parties, the "Front National" and "Reconquête" can be considered as the main anti-migration parties within the French context. The two political programs of the mentioned parties have mainly in common the anti-migration policy, where there is an exaltation of the French identity in contrast to the one of the migrants, once again pushing the distinction between the two groups. On the website of Reconquête, more specifically on their program, phrases and words such as "enjeux civilisationnel" (civilizational issues) or "crise civilisationnelle" (civilizational crisis) constantly appears. Moreover, when talking about migration, there are no precision if the issues concern asylum-seekers or not, the website emphasized a willingness to limiting, each year, up to few hundreds the individuals–against around 140,000 people currently (in French : « limitant à une notion d'individus chaque année-contre près de 140,000 aujourd'hui") (Ibid.).

Such ambitions would go further by detouring the rules of international law. These parties are in favour of the externalisation of the asylum-seekers, yet within their websites there is a lack of explanation of the procedure, in addition to the absence of analysis of various factors that should be considered: (1) What would happen to those who cannot have access to a French embassy, such as the case of Syria?; (2) What would happen in places where there are bilateral treaties to not only discourage individuals to continue their pathway until the country of request, but also furthering the promotion of innumerable pushbacks and collective expulsion-cases denounced by Vox (VOX, 2017)? (3) What will be the solution for the countries, where to have access to embassies it is necessary to have social and economic influences, due to the country's political situation?

This polarization that has been created concerning the welcoming of refugees can be compared with the bipolarization that has been constructed by the Orientalists. The similarities lie on the intention of creating a very well delimited and contrasting identities, which has further allowed the accomplishment of the dehumanization of "the others", by claiming that their interests and themselves, as individuals, must be pushed back, since they are incompatible with the nation and its values. The translation of such prejudices were concretised by the general welcoming feeling towards the Ukrainians demonstrated by the activation of the Temporary Protection directive, but it was also reflected on the non-activation of the same policies for other claimants.

The consequences of colonialism and specially the ideology behind it has been so strong that it continues to perpetuate in people's mind, especially when European people (Ukrainians) are considered more deserving than non-European people (Syrians, Congolese, Afghanis, Soudanese). Both groups are under highly stressful situation within the context of extreme violence, political and social tensions, human rights perpetration, alongside a generalized conflict within their territories. Yet, only the ones within the European geographic space have been accorded facilitated access and high standard protection, even without falling under the necessary compliance of criteria for such international protection, which is exposed by the hyper-humanisation of Ukrainians in detriment of the dehumanization of the others asylum-seekers.

Although, it may be possible to discuss that the Ukrainian territory has been colonised under the regime of the Soviet Union, the idea behind this type of colonisation differs substantially from the one that has motivated and legitimised the colonialist incursions throughout every other continent that has not been Europe or North America. Meanwhile, Soviet colonialism concentrated itself on the spread of the Marxist ideology and the union of the proletariat to combat a capitalistic

system, the European colonialism have been based on a hierarchical assignment of groups where "…the classifications of mankind were systematically multiplied as the possibilities designation and derivation were refined beyond the categories of what Vico called gentile and sacred nations; race, colour, origin, temperament, character and types overwhelmed the distinction between Christians and everyone else." (Saïd, 2023, 120). These "ideas are propagated and disseminated anonymously, they are repeated without attribution; they have literally become 'idées reçues'; what matters is that they are there, to be repeated, echoed, and re-echoed uncritically" (Ibid., 116).

Going beyond this analysis, such position that see applicants of asylum as too different and being individuals that would propagate the split of the values, not to mention the idea that they are unwilling to integrate, hides a complex inversion of morals and responsibilities. The blaming on "the others" for internal problems is misleading and does more harm to the fulfilment of international standards concerning refugee human rights protection. This misguidance is based on the deviation of the responsibility of States to provide to its own citizens at the same time that it should abide to its international commitment that were accepted upon signature and ratification of international agreement. As a final analysis, it can be said that, States are transferring the blame of its ineffectiveness, regarding the duty of providing for its own nationals, to the necessity of compliance with its engagement on the international sphere of international refugee law.

4.A.2–Implicit Racial Bias: the legacy of a racist structure of society's division and its impact on the asylum procedure

The social construction of a configuration that would represent the Orient as a weak, uncivilised, and least important actor in the relation of power within the political world, would also downgrade this geographical space in what surrounds a social, economic, and cultural point of view, allowing the legitimation and the defence of the reasons why colonialism should be pursued. Nonetheless, this perception was circumscribed by an inherent racism that divided the world into groups based on their race or skin-color, which has constituted an essential element to nourish the vicious cycle between colonialism and the relation of power among countries, people, cultures, languages. This weakening of the assembled Easter territories was emphasised by the continuous actions of the West in order to attribute them a "series of attitudes and judgements" where the "truth, in short, becomes a function of learned judgements, not of the material itself, which in time seems to owe even its existence to Orientalists" (Ibid.,120).

The racial division of the world: legitimising colonialism

To push further the division of the world into two dichotomic parts, such as civilised and uncivilised, stronger and weak regarding a geographical territory or a population, there was the need to develop an explanation that would make such argument plausible. The hierarchical racial separation among white and non-white individuals was based on an European pattern, meaning that all the traits, customs, habits, reasoning, religion, and ways of living would be built up on and compared to the European standard of what was recognised as correct. The imposition of this Eurocentric pattern constituted the perfect method of delegitimise the way of living of others and it gave them the possibility to impose their patterns based on a civilisational argument.

The racial argument had perpetuated itself by focusing on a second component that gave scientific validity to colonialism, which permitted and gave incentives to colonialist interests, which was the use of Eugenics. Eugenics is a scientifical theory that promulgates the idea that it exists ways of ameliorating and evolving society by selecting specific genetic traits (NHGRI, 2022, 1). The theory was imbued with different prejudices such as sexism, racism, xenophobia, classicist ideas (De Melo-Martin and Goering, 2022, 2) and emphasized the inherent inferiority of non-white people. This theory went beyond than just stressing the non-conformality with a system of rules imposed by the Europeans, since it has its roots on science, more precisely genetics, meaning that even physical characteristics played a role on the secondary status given to those groups.

With the intent to dominate and delegitimise others, the chosen characteristics needed to be something that could not be modified and that a distinguishment could be easily done just by looking to a person. Distinction, dehumanization of others, segregation and exclusion were hinged on the difference of skin tone, mainly dividing the world between white and non-white. The racial argument became the norm whenever arguing about the inferiority, unfitness, and the "necessity of evolution" of the non-white in contraposition to what was deemed as a "better race" or a "more suitable skin-color". Intellectual incapacity, cultural inferiority, inability to ratiocinate and resonate were just some of the many ideas that were spread about those who did not conform to the European pattern, reinforcing the perception that they were inferior due to the lack of the perceived inherent attributes of white individuals as well as their style of life.

Contemporarily, policies that are explicitly racist have had an exponential decrease, mainly due to the evolution of ideas, in addition to the horrors that have been reproduced by Nazism in

Germany. Nowadays, there is an increase not only on the tolerance towards differences but the recognition of diversity as an important element. The work of international organisations and democratic institutions, such as the United Nations or the European Union, which pursued a world of multicultural and multi-ethnic as the goal to be achieved, has led to the recognition of the indispensability of such realities. However, the importance given to eugenics' theory throughout history was so big that it influences the contemporary world, through a sort of continuity that is called implicit racial biases. This biased racial approach can be described as a preconditioned vision of a certain group that tends to be unconscious, but that emphasises stigmas and prejudice that is expressed by certain behaviours and attitudes (Maryfield, 2018, 1).

Moving from a direct racial division of the world into preconditioned racial biases: the influence of national myths

Concerning the case of Ukrainians and the asylum-seekers that come from distinct areas of the globe, such as the Middle East or the African continent, racism and colonial history have had great influence in leaving an implicit racial imaginary on individuals. The implicit racial perception plays a role and acts as a factor that can explain the differences in the treatment between the two wages. As previously mentioned, the study of David De Coninck is central and presents itself as a proof of that these distinctions and biases have been perpetuated. His analysis has been able to quantitatively illustrate that there is a preference for one specific group of asylum-seekers: those who come from the same geographical region. Additionally, the research conducted by De Coninck stressed the fact that an asylum-seeker that has a distinct ethnicity of the host country would decrease his or her acceptability, especially concerning refugees (De Coninck, 2020, 14).

In spite of the fact that in the present context, the heritage of the nations throughout the world are of such complexity, meaning that there is no single person that descends 100% of a unique group and that the nations are composed of a mix of different ethnicities, there are still individuals that defend the idea of a hierarchy between heritage and racial backgrounds. Within the imaginary of people, Ukrainians and French do have more in common than French and Afghanis, Syrians, Soudanese or Haitians.

Nationality and citizenship are social constructions, nevertheless it is important to highlight that these constructs are crucial to create the myth of national identity. Evoking a nationality would mean to evoke a precise set of characteristics that are opposable to other groups. All those elements

together play a crucial role and contribute to divide the world into two poles, where traits of one group would be opposable to the other one, with an emphasis among white and non-white people.

Ukrainians are distinct from French people, since the former can be considered as East Slavic people and the latter could be considered, historically, as descendants of Celtic or Gallic people, which leads to the conclusion that ethnicity is not the only factor. When Deputy General Prosecutor of Ukraine, David Sakvarelidze, spoke about how emotional the current situation of war was to him, he emphasised physical attributes, such as the fact of being blond and of having blue eyes, characteristics that are associated in the public imaginary as being attributed to white people. Moreover, what is forgotten in this type of speech is that there are Afro-Ukrainians as well as black resident that were living and were impacted as well by the Russian invasion, and that differently from white Ukrainians, those individuals were pushed back or have been disadvantaged in order to welcome the white people (Ray, 2022).

The purpose of national myth is to create, diffuse, spread and convince the people within a territorial piece of land that they share a history and common characteristics to give sense to an ideal of a group under the same identity (Pace, 2022). It is exactly this imaginary that has made people in the border to deny access to Afro-Ukrainians and/or African resident in Ukraine to entry into another's country territory to seek protection. Such behaviour raises the question whether there was an influence of racism and implicit racial biases whenever talking about these specific circumstances that happened in Ukraine and the different treatment given to the 2015 wave?

Implicit racial biases have a strong impact on anti-migration discourses, and this occurs basing the speeches on erroneous ideas and prejudices against the non-white groups. These biased perceptions are learned and they normally come from the environment in which each individual has grown up. A lot of those learned behaviours, concepts, perceptions are shown whenever the argument that these individuals would come to Europe to profit from the European welfare system without participating to it, indirectly meaning that they are lazy, unfit and they are only profiteers.

Global North and Global South: a continuous racial division of the world and the problem of the theory of colour-blindness

The perpetuation of the racial division influences and legitimises the separation of the world into geographical regions, especially those locations where the asylum-seekers' rate of exportation is significant. This dichotomy tries to validate itself by stressing biased perceptions

such as the argument of intellectual inferiority, which is based on the incapacity of people's administration abilities, mostly highlighted by corruption, as well as a lack of cognitive and rational ability to conduct their own government. These arguments explicitly touch upon the perpetuation of an idea of continuous and unavoidable division among a Global North and Global South. Once more, the argumentative line of such way of thinking relies on the assumption that the Northern part of the globe is richer due to its better rational, scientific and cultural supremacy, meanwhile the Southern portion is the opposite due to their distinct characteristics, which are rooted on the diminishment of analytical and cerebral capacities targeted on non-white individuals.

One aspect that camouflages the problem of structural racism and implicit racial biases concerns the fact that France does not consider and promulgate laws and policies that would try to tackle this issue, mainly because their policies and attitudes are entitled as colour-blinded. The colour-blind theory, emphasised in the French context, defends that any claim or expression of racial identity of individuals must be erased under the greater idea that all individuals are equal, yet, the colour-blind positioning can be problematic. The issue comes exactly from the fact that it silences any kind of revindication of a racial identity and any possible criticism to the structures of the system, that are implicitly racist.

The promulgation of the colour-blindness theory is a strategy that not only invalidates the racial experience of a non-white individual, but it goes beyond on pervading the anti-immigration debate, by de-racializing immigration and by convincing themselves and others that immigrant are criminals and that white people are victims. The colour-blind ideology contributes to the growing feeling of racial threat and prejudice of the "non-racialized groups" (white individuals) in comparison to the "racialized ones" (non- white individuals) that, in many occasions, are immigrants or their descendants, it clearly incites the division drawn up on the differences characteristics raises in between the two groups (Bloch, Taylor and Martinez, p. 1131-1133, 2020).

Lastly, those assumptions underline a historical amnesia that goes beyond a sole and mere decision to forget some specific traits of the past, since the consequences of such acts reduce the responsibilities of the Eurocentric attitudes and blame the colonies and its population. The action of reducing the liability of the European influence on the spread of racism and implicit racial biases can be translated by the transfer of responsibilities to the victims, as well as by the applicability of a theory that erases the colonial past of racial and colonial exploitation. An example of such attitudes regard the forgetfulness of the fact that European elites corroborated and practiced

corruption with the intention to secure their interests among the selected local elites, in order to maintain continuously their power and interest, and the fact that the implicit or explicit exploitation, manipulations and abuses of black and non-white individuals occurred by the hand of white individuals, either through slavery or through governmental control of their territories.

4.A.3–Islamophobia: the theory of terrorism and the hardship to connect with those with different beliefs

The last reason that will be analysed and that could be a possible answer for the hostile welcoming of refugees arriving from the African continent, the Middle East or Asia is based on the augmentation and the spread of the feeling of Islamophobia within the contemporary European scenario. Orientalism promulgates a "collective notion" that perpetuates "the European identity as a superior one in comparison with all the non-European peoples and cultures" (Saïd, 2003, 7), which create a "web of racism, cultural stereotypes, political imperialism, dehumanizing ideology holding in the Arab or the Muslim" (Ibid., 27), contributing to make a West understanding of the Orient, with special focused on the Islamic religion, as reductive and superficial.

Religion, especially Christianity, had had a very important role in creating a very negative image of Islam and of Orientals that were under the influence of a "fake God". This perception was the reason "not for nothing that Islam come to symbolize terror, devastation, the demonic, hordes of hated barbarians" in the Western world. Islam has been "judged to be a fraudulent new version of some previous experience, in this case Christianity" (Ibid., 58-59), which shows, once again, how all the traits, attitudes, instruments, systems and knowledges were always interpreted under the lenses of what was known to the Europeans, and anything that differentiates itself from this standard should be opposed and stowed away, as erroneous and immoral.

Because Islam was always seen as a challenge to the West and to its dominance, specially due to the fact that the religious lands and culture did contrast with the Islamic culture and lands that are sacred to Christianity (Ibid., 73-74). Additionally, this negative perception creates a sense of threat to the European standard, which was translated into a "problematic European attitude towards Islam" (Ibid, 74). Historically, with the invasion of Europe by Muslim forces between the VIIth and VIIIth century and the continuity of its influence, Islam became a real threat to the hegemony of the Catholic Church, increasing the hostility and making any type of action a "real

provocation in many ways" (Ibid.), since it would not abide by the imposed norms of Christianity and it meant that resistance could be expect regarding the European style of life.

In a continent that was for so long controlled and attached to Christianity, to see an augmentation of other beliefs and of people with distinct types of behaviours, faiths and traditions that do not comply with the imposed norms would cause a deep impact and a feeling of threat. This feeling of menace conducted the creation of a solution that would concentrate in either assimilating these individuals within the judged patterns of behaviour or exclusion of these individuals, through Islamophobia. French citizens that converted to Islam or that have always been Muslim would need to be assimilated, since they cannot be rejected and excluded from their own society, meaning that the compliance with the norms of the State would need to come first. Nevertheless, towards immigrants and asylum-seekers, because of the possibility of non-acceptance and exclusion from even the possibility of being within the territory, the rejection and ostracism presents themselves strongly within the contemporary behaviour.

A fundamental factor that must be observed and highlighted for this analysis concerns the occurrence of the terrorist attacks of December 2015, which impacted profoundly the perception of French people regarding Islam. After the explosions that happened at the "Stade de France", the shootings in the streets of Paris and mass killing that happened at a concert hall, known as "Bataclan", there was an exponential increase in the repudiation of the Islamic faith. The explanation comes from the fact that a causality connection has been made between the attacks and Islam, spreading a feeling of repulsiveness towards the religion, its traditions and cults. The attribution of responsibility for the attacks into a whole religious community is troublesome and based upon generalizations, it creates a collective feeling of threat and division of the ones who practices or not this religion, alongside the increase demonisation of such belief.

With the incidents and attacks that happened in Europe, under terrorists claims, Europe has restrained civil liberties of individuals, but above all such acts have augmented Islamophobia and fuelled feelings against immigration. One prediction, appointed as a possibility, englobe the fact that such happenings could, ultimately, contribute to future interventions in Middle-Easter countries (Zunes, 2017, 1). With the expansion of resentment towards Muslims, what many politicians have done in order to gather electoral voting was to develop an ideology that links the increasing number of migratory arrivals and applications for asylum from Muslim countries to the potential increase of the numbers of terrorist attacks (Eybergen and Andresen, 2020, 1144-1145).

The development of the idea of interrelation between migrants from Muslim countries that have a higher level of exportation of citizens and the practice of terrorism, has been called by Cory Eybergen and Martin A. Andresen, as the trojan horse theory of terrorism in what encompasses migration and asylum-seekers' application (Ibid.). The main idea of such theory is that by allowing asylum-seekers and migrants to enter into a national territory, the national authorities would be potentializing the occurrence of terrorist attacks within this specific territory. This speech gains a lot of power among many parties within the French and regional context that strongly criticise the compliance with International Refugee's Law, the respect of the Schengen principle or the permission of entrance of many immigrants as an "excuse" to deprive the citizens from their sovereign right to decide who are the ones who should enter or not.

The advancement of a theory that does a connection between Muslim immigration and terrorism threatens even the basis of the European Union and its politics. The constant claims that the European authorities would be opening its doors to one of the biggest threats, allowing violent clashes and terrorist attacks, whenever it accepts and allows Muslims to move freely throughout the internal borders of the EU, go against important legal guarantees. Moreover, it limits the rights of EU citizens that are Muslim and it deprives Muslims that are non-European citizens of having access to enter, study and to visit the EU countries, based only on religious intolerance.

Concerning the French reality, such a phenomenon has taken place and has been translated by many political parties in their political programs. This discourse predominates in the 2017 election, with the "Front National" (Marine Le Pen's far-right political party) and even more directly and explicitly in the elections of 2022, with the "Rassemblement National" (the refurbished far-right party of 2017) and "Reconquête" (the new far-right party, conducted by Éric Zemmour). The year of 2017 is stressed because it regards an electoral year for France, but also due to the fact that the consequences of the 2015 immigration wave and terrorist attacks could be felt. According to the European Islamophobia Report of 2017, one of the most prominent elements of the legislative and presidential debates, especially regarding the far-right speech, englobed a tendency to exacerbate the sentiment of aversion towards Muslims (Louati, 2018, 218).

In 2017, in order to abolish the almost 2 years period of a state of emergency, the French government has passed an anti-terror law based on the happening of the end of 2015, that has shown to be ineffective to solve the problem of terrorism and that punishes the Muslim community. Under the rationalisation of the argument that there is the need to combat "radicalized Muslims"

and “radical Islam” many violations of human rights have taken place and a policy of neutralising the Muslim faith was adopted. The election was dominated by mainly two topics, being them identity and security, what has been observed was a spike on the split of society, where the general speech revolves around the protection of the French ideology from Islam (Ibid., 222-223) as if the two characteristics could not co-exist and belong within the same national identity.

Although, far less extreme than Éric Zemmour, the policies adopted by Emmanuel Macron against the “radical Islam” or “political Islam” do influence the daily life of citizens (Ibid.). The year of 2022 has not presented significant improvement, and it has been marked by “the most Islamophobic presidential campaign in French history” (Najib, 2023, 234). The direct and indirect effects on French individuals that are Muslim are undeniable, but the effect on the immigrants can be bigger since new and greater deprivations of basic rights are being legally adopted. One example regarding the removal orders that can be issued towards the migrant population in opposition to the impossibility of conducting such actions in towards French nationals.

The previous situation represents a very restraint and specific picture of a bigger scenario of Islamophobia that is growing. Nevertheless, despite the public perception that “the Trojan Horse Theory of Terrorism” is a real threat, meaning that receiving Muslim’s immigrants would be the same as inviting terrorist, by allowing violent conflicts and attacks within their territory, studies have shown that there is no social and political base to such feeling. It is possible to conclude that the “overall picture is one that should seem to refute wholesale the delegation of responsibility to displaced persons for the experiences of terrorism that destination countries on occasion endure” (Eybergen and Andresen, 2020, 1156).

A securitisation approach on migration cannot be deemed as the correct way of dealing with such complex topic. There is the need to acknowledge that this perspective has not dealt with the problem and other ways must be encouraged as possibilities to find a solution where every single person can be respected. The Universal Declaration of Human Rights (UDHR) must always serve as the basis for any State that deems itself as being democratic and that abides by the general principle of rule of law. The UDHR establishes on its article 1 that all individuals must be treated equally regarding dignity and rights, on article 14, it states that asylum is a right that everybody may enjoy whenever needed and article 18 evokes the right to have or not a religion, in addition to the possibility to change it, and to manifest it (UN General Assembly, 1948, 2-5) and any governmental action that must be created and implemented must have these basic rights as pillars.

Chapter 5–France's response to the 2015 and 2022 migrant waves in a comparative perspective

According to the European Union, by March 2023, there were around 4 million persons that were protected under the Directive 2011/55/EC (European Union, 2023-b). At the same time, only in the year 2015, without accounting for other years, there were approximately more than 1,2 million requests for the recognition of an international protection status (EUROSTAT, 2016, 1). This chapter will analyse the very different answers given in 2015 compared to the solutions given in 2022, the distinguished legal mechanisms that were used and the lack of a regional consensus to receive the asylum seekers, with a focus on the French context.

The 1951 Refugee Convention versus the Directive 2001/55/EC: different protections

Throughout history, the action of changing from one specific area to another has been differently denominated depending on the perspective that was adopted. This factor can be explained by an Eurocentric "fixism" approach, meaning that by establishing a static point of view with a monolithically way of thinking, historians have determined: (a) the European continent as unvarying; (b) the Nations that are subject to a territorial limitation that is perceived as uninterrupted and unmodified, as well as (c) a defined and homogenous consideration of the members of that society. This point of view permitted to create a history of contrasts, where one group might be characterised as "civilised" against others who, by not following the pre-established rules and points of view, are called "uncivilised", creating layers of differentiation and delegitimization of the others who are not part of this consensual whole (Hoerder, 2018, 28-29).

With the expantion on the numbers of third nationals arriving and requesting international protection in Europe, which has been called "the 2015 refugee crisis", the medias, and later, the public opinion's attention turned into this phenomenon (Greussing and Boomgaarden, 2017; Gottlob and Boomgaarden, 2020). Nevertheless, the same event of a high influx of individuals arriving in Europe urging for shielding was reproduced in 2022, after the Russian invasion of parts of the Ukrainian territory. Both scenarios impacted and increased the numbers of third nationals claiming protection in the Europe Union, however, the instruments adopted in one of the waves were not used in the other, and vice versa, showing a difference in the perspectives, understandings and willingness to cope with the 2015 and 2022 waves.

The 2015 wave was dealt by evoking the 1951 Geneva Convention and the subsidiary protection, the latter applied whenever the applicant did not fulfil the criteria of the Convention but were under a proved imminent threat to their lives individually. On the contrary, the 2022 wave have activated the directive 2001/55/EC for any person with Ukrainian citizenship or under its protection. Differently from the 1951 Geneva Convention, the directive on Temporary Protection is based on a premise of punctual crisis as well as the fact that it is built on the assumption of return, being the reason why the directive is labelled as a mechanism of interim protection. One of the greatest differences about these two mechanisms relies on the provisions that highlight the responsibility of the States, but also on an expanded protection for those who are more vulnerable.

The most underlined and explicit measures of distinguishment that encompasses the 1951 Convention relating to the Status of Refugees involves obligations that are not present in the 2001/55/EC directive, such as article 31 and 34. In what concerns the 1951 Refugee Convention, article 31 establishes the State's duty to refrain to punish those who have irregularly crossed into areas of the country of refuge, moreover, article 34, surrounds the responsibility to facilitate the demand of naturalization of refugees as citizens of the country of reception. The contrary is also true, there are initiatives that are present in the directive 2001/55/EC that will not apply within the national jurisdiction when analysing the cases of asylum applications.

Since the obtention of the provisional resident permit, under French law, the individuals granted temporary protection can start working as soon as he is entitled such document (France, 2022-b), however the same cannot be said to the asylum petitioner. The right to work is only available to asylum-seekers, under the 1951 Geneva Convention, after the closure of the procedure and when all papers have been emitted. Within the temporary directive, the recognition of the status is done almost automatically, meanwhile the conventional procedure can take as long as two to three years, if there is an appeal, depending on the year of request and on the complexity of the case. Under the Convention, there is an exigence of individual examination of each case brought to the national jurisdiction, culminating on an extremely loaded and inefficient system that cannot fulfil its duty, impacting the future peak of requests of protection, on the following years.

Immigration "crisis": the problem behind this denomination

Above all, before discussing the differences in between the two situations, it is important to evoke that the denomination that has been given to the European asylum context of 2015 and

the one from 2022 as "crisis" is extremely troublesome. This nomination is based on a fixed perspective, where historians have stated and saw nations, borders, and their continent as unchangeable and, most of all, comprise into a continuous and homogenous bloodlines (Hoerder, 2018, 23). It is fundamental to understand the scenarios that englobe the situation in which the individuals refer as crisis, and most importantly, who are the agents who instigate crisis feelings, since the feeling that an individual may have towards a crisis may be erroneous.

The problem with this perception is that crisis cannot only be created, but they can be easily modified in accordance with different characteristics, such as: (a) level of instruction and education; (b) the use and the types of mass medias, (c) religious background and (d) family's composition (De Coninck, 2020, 8 and 11-12). The idea of crisis can be created and manipulated depending on the context, just as the "crises of refugees" in Europe after the World War II. According to a fixist perspective, the movement of European refugees around the regional context was seen as a crisis, yet that was not the problem, the question of refugees was just a consequence of a larger course of action that the wars created. Yet, it is possible to affirm that the outbreak and the consequences of wars were not just as a phenomenon that contributed to the crisis and the wars were the problem on itself (Hoerder, 2018, 22-23). The same thing can be said about the 2015 "immigration crisis", since the crisis is much less linked to immigration and much more connected to the political context the relation of power among States and the poor management of the context.

The issue of the creation of a general and public perception is a central argument that will be further developed, because they can influence behaviours and attitudes towards everything that does differentiates a specific group from another. Many scholars from social sciences and related fields estipulate that a group in which an individual is part of, will always be seen, by this same individual, as having positive traits and aspects, meanwhile everything that differentiated from this pattern, it is downgraded and tends to be seen negatively, and this "process of categorization fosters an inclination to make status-based comparisons" (De Coninck, 2020, 9).

Social Identity Theory: individual and collective self-determination and the exclusion of the "others"

The social identity theory is a branch of psychology in which has, at its main objective, to provide possible answers to the issue of intergroup conflicts, grounding the explanation of these tensions on the creation of distinguished individual and collective self-definition (Islam, 2014,

1781). The act of categorising groups and individuals does affect the perceptions, behaviours, and actions of every person toward another being or towards a specific group of people. Moreover, the type of distinct concepts and language that are used is crucial to determine attitudes towards the others, this assumption is based on the social identity theory (De Coninck, 2020, 5).

In the actual globalised world, in which massive ways of communication are the main sources to spread news and information, these huge companies of communication and mass media are, at the same time, one of the biggest and most powerful sources of direct and indirect influence of individuals. The influence is not originated only through its content, but also through the concepts used, the form and the angle in which they decided to demonstrate a reality and by the type of language that they adopt. According to the research of David De Coninck, the first difference that starts to mould the perception of individuals concerns the distinguishment between "migrants" and "refugees", where the author demonstrates that in France the perception of refugees tends to be less negative than the one adopted towards "migrants" (Ibid., 22).

Whenever mass medias refer to a situation with refugees, such as the 2015 refugee mass influx of individuals, there are eight different frames and types of coverage that emerge from the analysis of such situations. The analysis of the media coverage can be done through the lenses of the: (1) settlement frame; (2) reception/distribution frame; (3) criminality frame; (4) economisation frame; (5) humanitarian frame; (6) securitisation frame; (7) background/victimisation frame; and lastly (8) labour market integration frame (Greussing and Boomgaarden, 2017). The allusions done on the previous academic research refer to the 2015 wave, nonetheless the same can be expanded in terms of adoption of media framework to illustrate the 2022 wave, meaning that these representations can be enlarged to different waves of this refugee phenomenon.

5.A–The 2015 migrant wave, the perception of asylum seekers and the complexity of the immigration scenario

There is not only one specific element that acted as the main factor to create the perfect circumstance to the develop an immigration wave in Europe, precisely in 2015. The reality is quite the opposite, since the extremely high number of individuals that were approaching and permeating the EU's external borders came from different situations, it can be argued and exposed that only the articulation of many divergent factors together could have been the driven forces that culminated into the calamity scenario that was produced at the European borders, in 2015.

The factors that might have pushed the creation of a chaotic European scenario, in 2015, can be enumerated, firstly the repressive regime of the Syrian president, Bashar-Al-Assad and the continuous Syria's civil war, in addition to the late collateral effects of the Arab Spring. Secondly, the complex situation of Afghanistan and the continuous conflicts at its borders and in some of particular areas. And finally, the third factor can be attributed to the multiples areas around the globe where war, authoritarian regimes and extreme forms of violations of human rights played an important role in contributing to the increasing trend of claiming for international protection.

The previously enumerated circumstances have forced the displacement of hundreds of thousands of persons and acted as some of the main push factors to displace civilians from their home countries to the European external borders, pressuring the EU to act to, at least, try to resolve the "crisis" that was at their door. The numbers show that comparing the amount of cases of asylum in the year of 2014 with the following year, the number of requests has increased exponentially. There was a 200% growth on asylum claims and procedures that were received by the European States, reaching the peak of 1,255,640 claims, only in 2015, against 562,680 requests, in 2014 (EUROSTAT, 2016, 1). Although the number of applications rampantly increased, showing the proportion of the challenge that Europe was undergoing, the main instrument to provide international protection that was used was based on the 1951 Convention Relating to the Status of Refugees and the use of the subsidiary protection, neglecting the directive 2001/55/EC.

The decision to analyse all the asylum-seekers' applications mainly through the lenses of the 1951 Refugee Convention and the directive 2011/95/EU created an immense problem for the Common European Asylum System, in and throughout the upcoming years after the 2015 European context of mass influx of people. The protection that is given, under the 1951 Geneva Convention can be seen as more complete and fulfilling, since it allows the concession of more rights to those who are able to be recognised as a refugee, nonetheless its adoption created fundamental problems that have been widely demonstrated by the poor national ability to provide a quick, impartial and effective assessment of the asylum seekers' claims.

The regional comprehension that, in a scenario of a mass influx of people that would try to reach the European Union's territory there would be necessary to provide a rapid answer to this specific situation, made the EU adopt the directive 2001/55/EC. When activated, this directive have at its main purpose to set the structures, mechanisms, and guidelines to the European States to better cope with such situations. However, the lack of a precise definition of what does a mass

influx of people means, in addition to the huge discretionary power given to the States within the European Union to decide when to activate this mechanism, has shown how the decision to protect one population over the other can be biased.

5.A.1– 2015 Immigration profile and the differentiation of the asylum-seekers

Before analysing any further the public perception of the wave of refugees in 2015, it is crucial to understand the main characteristics of the influx, such as the nationalities, the dimension of the wave, and the ethnic and religious belonging of this specific groups that sought, in Europe, a place of refuge. As stated by the United Nations High Commissioner for Refugee, in 2015, the main nationalities, meaning over 75% of the claimants of international protection, were Iraqis, Syrians and Afghanis (UNHCR, 2015-b), although, in the French case this reality does not show the whole situation that has been presented at the European external borders.

The French reports: analysis the international protection numbers

In accordance to the OFPRA, only by the year of 2015, there were a total of 80,075 asylum procedures that have been asked in France encompassing first demands, non-accompanied minors (NAM) and re-examinations, representing an increase of 23.6%, where, without taking the demand of non-accompanied minors, the main nationalities were coming from Soudan (5,091), Syria (3,403), Kosovo (3,139), Bangladesh (3,071) and Haiti (3,049). Regarding the requests made by NAM, the most expressive numbers were: 14.6% from Afghanistan; 12.5% from the Democratic Republic of Congo (DRC); 11.2% from Syria; 6% from Angola. Although, the global level of admission was around 23% of all the international protection request, Iraqis ranked first, having a 97.9% admission rate, meanwhile Syrian ranked second, having a 96.9% rate and with Afghanis, ranking fifth, presenting an 80,3% rate of admissibility (OFPRA, 2016, 6-8, 36, 42 and 100).

The dimension of the crisis that have been at the EU's door was not well examined by the members States, since the numbers that were already high in 2015 continues to increase, and at the end of the year of 2016 reached the mark of 5,2 million people that reached the European Union border to demand for international protection (UNHCR, 2022-b). Further on, at the year of 2016 on the French territory, the number of asylum application also did not decrease, according to the report of OFPRA of the year 2016, the numbers have augmented to 85,726 individuals claiming

protection, which represented an augmentation of 7.1% in comparison to the previous year (OFPRA, 2017, 66).

Concerning that specific year of 2016, the nationals from Soudan, Afghanistan, Haiti, Albania, and Syria constituted, once again, the top nationalities that have asked for protection in France. Only at that particular year, Soudan have accounted for a total amount of 5,897 demands, followed by Afghanistan with 5,646, then Haiti with 4,927 petitions, right after 4,601 demands from Albania, and lastly 3,615 applications from nationals of the Syrian Arab Republic. In what regards non-accompanied minors, Afghanistan has been the first on the top of the list with 27.7% of all the claims for international protection of minors, followed by 10% of the Democratic Republic of Congo, then 8.4% representing the Republic of Soudan; and finally representing the last of the four top countries encompassing the minors 'claims, 5.5% of the people were coming from Syria (Ibid., 21, 37 and 58).

According to the OFPRA's report regarding the year of 2017, the number of individuals that have asked to be given international protection have attained unprecedent numbers, jumping from 85,726 demands to 100,755 requests, showing an augmentation of 17.5% regarding the previous year of 2016. Once again, in regard to the NAM's request, Afghanistan ranked first with 30.1% of all the claims regarding non-accompanied minors; followed by Soudan with 12.4%; then 9.3% representing the Democratic Republic of Congo; and ultimately to end the top four ranking the 6.4% from Guinea. Referring to the adults, Albania ranked first with 7,633 processes; Afghanistan coming right after with 5,989 applications; followed by Haiti with 4,939 and Soudan with 4,488 demands; and lastly Guinea with 3,781 requests (OFPRA, 2018, 20, 21 and 44).

Once again, the following year of 2018 presented an augmentation of the demands of asylum, which was translated into 123,625 requests, meaning a 22.7% rise compared to 2017. In 2018 there were 9,577 procedures started by Afghanis; accompanied by 7,173 requests by Albanians and 6,454 applications opened by Guineans; followed by 4,883 pleas made by the nationals of Ivory Coast; and lastly 4,338 processes from Soudanese people. For the NAMs, the same four countries that ranked at the top of the list in 2017 were also present on the records of 2018, nonetheless in different set up from the previous year: Afghanistan with 33.8% of all NAM's claims; followed by 8.1% nationals of the Democratic Republic of Congo; and lastly with the same percentage, Guinea and Soudan both with 7.5% of the requests (OFPRA, 2019, 18, 30-41 and 45).

The continuous climb regarding the pleas for the concession of international protection has continued and has marked the year of 2019, where there were 132,826 claims, which represents a spike of 7.4%. Once more, Afghanistan has topped the first place with 10,027 solicitations and Albania second with 8,032 petitions; followed by 7,757 requisitions by Georgians; 6,651 demands on behalf of Guineans and 5,810 on behalf of Bengalis. Concerning the NAMs, Afghanistan has, for its fifth consecutive year, ranked as the top one country with 27.4% of all the NAM's claims; followed by the Democratic Republic of Congo with 12.8%; behind it, Guinea with a 10.3%; and finally, Burundi with a 5.7% of petitions (OFPRA, 2020, 20, 21 and 50).

The growing persistence on the expansion of the numbers of claims of individuals seeking protection has only stopped in 2020, an opposite trend was seen and the persistent rise on the numbers has ended after a five consecutive years of growth since 2015. In 2020, there was a quite significant decrease, although it is possible to comprehend that the numbers of claims were still above the pre-2015 wave. Still considering the year of 2020, there was a sum of 96,424 processes that were opened, which shows a 27.4% of reduction, where Afghanistan had 10,166 pleas, ranking first in numbers of demands; followed by Guinea with 5,850 applications and 5,088 solicitations of Bengalis; lastly escorted by Ivory Coast, with 5,010 requests, and Nigeria with 3,996. Although a shrink at the numbers has been observed, Afghanistan ranked first on the NAM's claim with the highest previous level, englobing 35.6% of all petitions; followed by Guinea with 12.1%; Somalia with 6.5%; and lastly, DRC with 5.54% (OFPRA, 2021, 12-13, 50).

It is crucial to highlight that one of the factors that may have contributed to the decrease of the number of individuals claiming international protection is directly linked to the fact that, in 2020, the world has closed all its borders owing to the COVID-19 pandemic. Even if the France was undergoing a global health emergency, within a context of global emergency, it saw a high number of procedures requesting protection. In spite of the fact that the numbers did not increase rampantly, in 2021 there was an expansion of 7%, in regard the year of 2020, and the quantity of asylum-seekers have reached 103,164 requests, in 2021 (OFPRA, 2022, 18).

For one more successive year, Afghanistan has achieved the top of the list of the countries with the highest appeal for international protection, which was translated by 12,475 requests; followed by Ivory Coast with 5,298 solicitations; Bangladesh afterwards with 5,122 proceeded by Guinea with 4,599 petitions; and ultimately Turkey with a total amount of 4,519 demands 2021. Lastly, concerning the year of 2021, Afghanistan one more time increased its participation on the

claims made by NAMs by presenting the biggest spike on the proportions reaching a 60.3%, throughout the frame of time that was analysed. The following countries were Guinea with 6.1%; Democratic Republic of Congo with a 5% plea for international protection; and lastly Ivory Coast with a 4.6% of the total amount (Ibid., 18 and 55).

David de Coninck: analysis of the influencing elements on the host country's behaviours

Beyond the number, percentage and the nationalities of those human beings who have asked for international protection, it is crucial to analyse what are the religious and ethnical backgrounds. Through an analysis of all the previous OFPRA's reports, throughout the different years, it can be affirmed that the characteristics of asylum-seekers did vary. What it is possible to be stated is that all these individuals are: (1) mainly from outside the European continent; (2) do present different culture and ethnic characteristics than the population of the hosting countries; and (3) are seen by the hosting States as part of the least developed or poorer nations.

Throughout the seven-year period that has been analysed, by looking at the OFPRA's reports, regarding the highest contributor countries to the refugee wave of 2015 it is possible to conclude that Afghanistan, Soudan and Guinea, are the countries that have contributed the most in numbers concerning both trends: (1) the one in which non-accompanied minors are included and (2) the one in englobing adults. Furthermore, countries such as Haiti, Albania and Syria figure as frequent actors at the top 10 list of main nationalities that have asked for protection, meanwhile countries such as the DRC were recurrently contributing to the augmentation of NAM's claims.

David de Coninck, in his research paper of 2020, entitle as "Migrant categorization and European public opinion: diverging attitudes towards immigrants and refugees" presented a total of six crucial results that might help in understanding not only the perception of the French and the European public opinion but also the possible reasons why France and the EU adopted a decision of analysing some of the claims based on the 1951 Refugee Convention and the directive 2011/95/UE (subsidiary protection) and some others based on the Temporary Protection directive.

The research has proved, by a quantitative analysis, that the recognition of the status of refugee is linked towards a more compassionate attitude from the individuals from the host countries than the ones simply labelled as immigrants. Another conclusion regards the fact that, in most cases, the actions towards refugee coming from different ethnicity, as well as from poor countries (does not matter whether they are from the European continent or not) and Muslim

countries are better than to those towards migrants (De Coninck, 2020, 14). But, all people not falling under the previous categorisation, meaning coming from a richer and with similar cultural background, have a tendency to be better welcomed. The continuation of the analysis of his research has permitted the understanding of an expanded perception of the whole situation.

Going deeper into the first part of the article, and focusing on the relationship between the hosts and the newcomers, in addition to the characteristics of the individuals from the emigration country, De Coninck ascertains six important behaviours. These conducts can be translated as, firstly, attitudes towards refugees are more positive than the action that are canalised to immigrants, in addition to the fact that the higher is the educational level of the individual of the host country, the more positive attitudes will be shown (Ibid., 14-15)

Thirdly, individuals from different religious backgrounds, that are not Christians, have a significantly better attitude towards newcomers, and those having a non-European background present better viewpoint and actions towards these groups, since there might be an identity factor. Another conclusions regards the fact that the continuous habits of consuming public broadcasting, news and quality newspaper improve the perception and the actions towards both groups, on the contrary private broadcasting and newspapers, as well as tabloids is associated with a more negative point of view. Lastly, the author, when comparing Sweden, the Netherlands, Belgium and France, has discovered that French nationals hold, in general, more negative attitudes when compared with the other three countries, which hold more positive attitudes (Ibid. 15-16).

Beyond numbers: the analysis of the newcomers, the influence of ethnical, geographic and religious backgrounds

On a second part, and this time focusing on the group of incomers, De Coninck provides other essentials results that might also further assist on the understanding why a protection instrument has not been activated and why there is a preference over some specific features of a group regarding another. The secondary fragment emphasises attributes of the immigrants that are important to acknowledge and to influence the differences in the treatment that is given whenever discussing the asylum-seeking waves. Newcomers from a European country that is deemed as rich and with the same ethnicity is highly over preferred compared to their peers (Ibid., 18), making Afghans, Guineans, Haitians, Albanians, Sudanese, and Congolese people to find themselves at the completely opposed side from what is highly present within the hosting countries.

Firstly, Afghanistan does not only present distinguished ethnicities but also the values, religion, and culture. These disparities contribute to the highly asymmetrical approach, since it interposes the values, religion, and culture of the hosting nations with those of the sending countries, generating a feeling of a high perceived threat on the former (Ibid., 21). Afghanistan presents a high-level rate of different ethnicities within the country, and it is seen as a tribal nation, which can influence and create a spike in the national insight of intimidation towards those groups. The religious background does also differentiate from the main European religious background, where 99,7% of the population are Muslim (CIA, 2023), once again the difference on the values, norms, and culture, instigates an increasing perception of threat, promoting a negative public insight that would prefer to maintain distancing and non-correlation with those persons.

All the following countries will have, at least, one of the ethnic, cultural, religious characteristics that will not only create but also feed the sense of threat within the hosting country. Continuing the analysis from the States previously presented, the second one will be Guinea. The Republic of Guinea also have an internal composition that is perceived as a challenge and even a threat to the European values, since it present a pluri-dimensional ethnicity, with individuals that can be part of a wide range of groups, such as the Fulani (33,4%), Malinke (29,4%), Susu (21,2%) and many others. Additionally, the pluri-ethnical background, the vast majority of the nationals of Guinea will self-identify as Muslim, where approximately 89% of the population is part of one of the different branches of the Islam (Ibid.). And the population presents a racial plurality and distinguishment if compared to the perceived composition of the European States.

Haitians follow rather a different path in what concerns ethnicity, once that the most distinguished categorisation is attributed to racial differences, opposing “Black” Haitians, which makes 95% of the population, to the “White” Haitians which encompasses the last 5%. In this specific situation the racial biased presents itself as one of the issue that might create distinctions between the host community and the asylum-seekers. Concerning the religious background, much of the country is either Catholic, with approximately 55% of the population identifying itself as such, or Protestant, englobing a rate level of around 29%. Although Vodou is practice exclusively by only 2,1%, many individuals practice it in complement with their main religion (Ibid.). The common perception that Vodou is a type of negative sorcery could also influence the discernment of a possible threat in regard to the reception of these immigrants within the French territory.

Differently from the prior cases, Albania does slightly deviate from the characteristics of the other countries, mainly because they are within the geographical area of Europe and due to the fact that, ethnically speaking, the territory's composition does not encompass as many distinguished ethnical groups. With the majority of the country being composed of 82,6% Albanians, followed by some ethnic minority, such as 0,9% of Greeks, and a 1% of other ethnicities, such Romani, Montenegrin, Macedonian and Egyptians (Ibid.), the question of ethnicity may be less pressing, yielding a place for the religious distinction. Due to the high percentage of Albanians that are Muslim, the religious composition of the country might trigger islamophobia, a phenomenon that has been on the rise in Europe (Wieviorka, 2018, 206), and that could act as a triggering factor for the idea these immigrants as threats to the national community.

Sudan does not scape this logic that has been defended here, as a population with features that may impact the hosting public opinion and the perception of menace of their way of living. The Republic of the Sudan is divided among different ethnicities, and it is also known as a tribal country, the main tribes being the Fur, Beja and five hundred others, which opposes to the living culture of the host country. Moreover, roughly about 70% of the Sudanese people are from an Arab heritage, and within such group, an even bigger percentage is from an Islamic religious background (CIA, 2023), this factor can trigger a growing anti-Islamic feeling, in addition to a much bigger diversity concerning the racial characteristics.

Lastly, the Congolese also take the same pathway of ethnic and racial distribution with a country that is highly divided into tribes, and each with different ethnicities, as example the Bantu and the Hamitic. Further on, in regard to the religious background, the Congolese are principally composed of Roman Catholics with an average of 29,9% of the population, along with 26,7% of Protestants, 2,8% of Kimbanguism and 1,3% of Muslims (Ibid.). Both factors that have been raised might, as well as among the other groups, cause an either less relatable feeling with the asylum seekers or it could generate a feeling of threat due to the highly likeable persistent differences in characteristics amidst the newcomers and hosting territory.

The necessity of understanding the complexities of the current immigration regimes

The questions surrounding ethnicity and race within the French scenario constitutes an idea of identity the is highly complex, especially when the mere possibility of referring to a group of individuals by its ethnical and racial characteristics can be problematic. For France to have inside

of its territory, citizens that are racialised, highlighting different characteristics that differs one person from another, goes against the core values of the Republic, such as democracy, equality, rule of law. Nonetheless, this "colour-ethnicity-race" blinded approach may be troublesome since it does not highlight the problems of xenophobia, racism, and islamophobia within the European context, creating and intensifying the issue of asylum seekers, especially those who do not fit within the specific European pattern.

The fact that, if not Albania, none of the other countries are within the European continent, and mainly coming from Africa and Asia, instigates a negative perception from the receiving community. It must not be forgotten that Albania was, until very recently, an extremely closed country due to communist colonialism and the authoritarian regime of Enver Hoxha, which also make them at the same time that geographically least distant, but still part of a "Balkan identity", which is different from the receiving countries.

This negative insight can be explained because the "sending" countries are not seen, under an European perspective, as being rich and developed, with similar values to the European Union, such as democracy, freedom and respect of human right, in addition of being perceived as coming from territories under high rates of subdevelopment, corruption, non-compliance with human rights, in addition to non-democratic characteristics and values.

Nevertheless, it is important to highlight that this relatively strict perspective that is adopted by, not all, but, a significant part of society creates this complex scenario of external and foreign threat. This menace is funded and it urges the national and regional politicians to adopt not only a more radical and intolerant discourse but also making it plausible the legitimisation of mechanisms that have as an objective to restrain the fundamental right to asylum. This radicalisation is based on the idea of the need to do anything to protect the national and regional values, but it fails to consider many factors, such as decades of subjugation over colonial ruling, the external influences, and the battle for power of foreign governments within those countries. The colonial past made possible for external actors to impose distinct forms of living, implicating that these countries did have barriers that prevent their development. Last, the effects of these multiples colonial stories make inviable for these countries to combat against some of these stagnation effects.

It is necessary to go beyond and to understand the impact of the media coverage regarding these individuals, being the reason why the Report of the Council of Europe in regard the media coverage was analysed. Throughout the analysis of newspapers and press coverage, the authors

have gotten to the conclusion that the media was extremely important to frame the image of refugees within the 2015 wave as a "crisis" (Georgiou and Zaborowski, 2017, 4) and this work tends to picture them as outsiders who are either dangerous either vulnerable. Due to internal problems of prohibiting hate speech among different countries within the European Union, many media coverages promoted hostility and hate speech towards the claimants of asylum, and above all, these individuals were almost never given a voice, meanwhile politicians and government's representative were constantly allowed to speak (Ibid., 3, 10 and 12).

To conclude, and more specifically to talk about the concerns that encompass the French context, it is of fundamental importance to highlight the pathway that the French media coverage had in dehumanizing the individuals in search for international protection. France was a direct target of a terrorist attack at the end of 2015, which could explain the drastic position of the media in reporting those individuals, which engaged into the implementation of a negative perspective where fear was created, generating a construction and legitimisation of policies of securitasation, since refugees were the ones who the blame finished to be linked to (Ibid., 8). Globally, it can be said that media did very poorly in portraying what could be the benefits and the positive points of this wave (Barry, Garcia-Blanco, and Moore, 2018 as cited in Rosstalnyj, 2022, 16).

5.A.2–The threat perception and the (in)activation of protection instruments

The decisions taken by an international or a regional organism have an influence and need to be substantiated within the internal ideas, visions, and understandings of its own members. Although the acceptance of the responsibilities in a global and regional context depends on internal and external cohesion of understandings, this unity, above all, must be based on the sovereignty of the international actors. Within democratic States, the sovereignty emanates from the people, meaning that there is a direct and fundamental link between those internal and external representatives, that should hear and represent their population.

The directive 2001/55/EC was a mechanism that was established in 2001 as a tool to quickly respond to pressing and evident issues of a massive displacement of individuals towards the European borders. The main idea of the directive was to compel States to abide by their international obligations, at the same time that it would fight even against "the risk of harmful dysfunctions in the asylum system" (European Communities, 2000, 1). An essential comprehension that can be pulled from the contemporary situation is that the directive 2001/55/EC

is not a mechanism to be evoke when the system is failing but, before that, whenever there is the slightest possibility that the CEAS could suffer an abnormal pressure that can culminate in damage.

Although, in the beginning, no EU member nor any of its organisms could have predicted the amount of people that would gather at the external European border to claim asylum, the continuity and the stability of this flow transformed this phenomenon into a normal context, after the years of 2015 and 2016. This stability of the flux of refugees within this scenario, as well as the concerning progression and consequences of such numbers, questions the responsibility of the CEAS, raising the question: why the activation of this mechanism has not been made? The asylum system in Europe can be controversial, once that, it is a system that should be based on a much more human rights-based approach, but it is currently rooted into a securitisation perspective, creating a bigger issue instead of resolving it.

The perception of threat of asylum seekers and the lack of political willingness

Asylum seekers are not seen as individuals in need of international protection, they are rather treated as possible threats to the European Union, either as direct menaces to EU's fundamental pillars, either as an indirect issue that would create trouble internally to Member-States, which could trigger instability within the Union. However, this perception of threat can be attached to many distinguished reasons: geopolitical, social, cultural, but it is mainly imbued upon the erroneous point of view that international protection litigants do profit from the European welfare state without contributing to it. As an answer to this insight, policies of securitisation regarding asylum have been adopted, which can only be harmful for individuals seeking asylum and for the compliance with one of the EU's pillars: the promotion and protection of human rights, but, above all, to find a definitive solution for the refugee wave.

Nevertheless, the main reason why the directive was not activated orbits around the fact that there was a lack of political will emanating from the Member States in understanding the imminent need of protection of those fleeing wars and national internal instabilities, which have put those individuals at great risk. In spite of the fact that the directive has elucidated a positive understanding, such as the States' obligation towards this population and the rights in which it can be claim, it also opens the floor to States to be reticent to activate this mechanism (Beirens et al, 2016, 25). Furthermore, there is the problem of harmonisation, meanwhile some State want and

can fulfil the rights that must be given to the beneficiaries of the temporary protection, some others do not want or cannot put into practice the same high standards.

The exacerbation of these disparities among different governments happens mostly due to the scarcity of resources, the lack of political and public initiatives to better fulfil the State's obligations, and the inherent link between the perception of these individuals and the burden of fulfilling international obligations. All these elements contributes to create and add one more task to the internal organism of the EU, that would need to follow up all the work done in all the Members-States (Ibid.). To enter the European Union States must abide by its democratic values, once that it is a basilar pillar of this Union, the decisions-making process must be a reflection of people's willingness, yet when this perception is intoxicated with racial, geographical and religious, there is the necessity of acting towards the destruction of such prejudices.

The same way that the European Union have acted and still do in order to deconstruct inaccurate and incorrect perspectives that pervade the understanding of european citizens towards specific subjects, actions must be taken regarding the immigration and asylum context. One example of the influence of the EU on the internal insights practice of its Member States regards the practice of the EU Commission on tackling disinformation, such action must be reproduces towards projects that will tackle the questions regarding the negative perspective of immigrants.

5.B– The 2022 migrant wave, the perception of asylum seekers and the quicker response to the immigration scenario

First and foremost, it is important to recall that after the years of 2015 and 2016 the number of people requesting asylum did not shrank, it rather maintained itself at a certain level of stability, varying sometimes for an increase and sometimes varying towards a slight decrease. However, migration has always been a continuous reality that may only variate in number, but it is a constant within the European Union's framework. Although in 2022, the situation was specifically directed to Ukrainians, it does not mean that other types of asylum-seekers did not arrive or did not claim for international protection under the 1951 Refugee Convention or the directive 2011/95/UE.

The situation that occurred in 2022 presents some particularities in regard to the 2015 wave, such as a bigger proximity with the European Union's territory or the fact that Russia is seen as a direct threat to both actors, Ukraine and the EU. Although, it must not be forgotten that the two situation encompass groups of people that are fleeing their country of origin due to a possible threat

to their lives, and even if the bigger legal framework on the criteria presents more similarities, the response and the way that the waves were treated was not the same. The activation of the Temporary Protection directive emphasises the classification of the arrivals of Ukrainians as a high influx of individuals due to the Russian invasion that happened on the 24th of February 2022.

Among the similarities, both groups of people seeking asylum had to flee war because of circumstances that are bigger than them and that they could not control, as some examples: internal war, invasion or breaches of their States' sovereignty, incapacity to live in a place where their lives are constantly in danger due to what they are or what they represent, and many other situations. Although the facts that englobe the similarities are much stronger and bigger than the differences, the 2022 wave was and still is being portrayed differently.

5.B.1–2022 Immigration profile and the resemblance to protection claimers

To further analyse the 2022 situation, this sub-part will concentrate in comparing some of the attitudes that were taken in 2015 in regard to those taken in 2022 to show the different approach. Before anything else, the main objective of this chapter is to apply the concepts and theories presented throughout the thesis as a way to further analyse the mechanism and policies that were adopted. In order to inspect the whole scenario since 2015, the media coverage will be taken as the instrument of comparison between the waves.

The applicability of the inherent biased: humanizing one group in detriment of the dehumanization another

The 2015 immigration wave was represented and dealt asymmetrically whenever comparing to the 2022 wave. On the latter wave, the emphasis was concentrated much more on the important aspects of humanization of the faces and the stories behind every single person that went towards the European territories to seek for asylum. This humanizing procedure happened through the emphasis on the individual's experiences and stories, making a contrast between the moment before the invasion and the current situation that they are undergoing, which has created commotion (Rosstalnyj, 2022, 20-22). This furore created a sense of duty to help, since the consumers of these stories, the European public, would feel personally attached to this plot.

The numbers might not matter as much as it was taught, since after a quick analysis and juxtaposition of the statistics of requests in between the 2015 and 2022 refugee waves, it is possible to see that, in a more or less one-year period, Europe has received more Ukrainians than it did receive other asylum-seekers in 2015. According to the European Union, by March 2023 there were 4 million individuals that were receiving international protection under the directive 2001/55/EC (European Union, 2023-b). Meanwhile, adding the numbers of first demandants in both years of 2015 and 2016, there was approximately 2,5 million request of international protection, 1.257.030 claims in 2015 and 1.204.280 requests in 2016 (EUROSTAT, 2017, 1).

What these numbers show is that the amount of individuals that Europe said that it could not to manage within its territory in 2015, argument evoked by many governments regarding the impossibility to committing and complying to the international obligations, is not the problem, since with almost twice more people than the asylum-seekers of 2015 and 2016, Ukrainians were warmly welcome and no such thing as the scarcity of resources, have been claimed, as a possible reason to reject the EU and global obligation to grant protection.

Differently from 2022 where France decide to vote in favour of the activation of the Temporary Protection directive and to openly welcome more or less 100,000 Ukrainians, in 2015, France primarily "rejected the European Commission proposal to disperse 40,000 asylum seekers in May" once that "it considered that the country had already taken on more than its share of the burden" and solely after the pressure of Federal Republic of Germany, it decided to accept such measure. What can be concluded from the France approach is that the "…authorities have long ignored that most migrants there have a legitimate right to seek protection but they were treated as irregular migrants, who did not even wish to stay…" (Tardis, 2016, 1-2).

To perfectly illustrate the differences of the media coverage, it is crucial to observe the pattern of the media coverage that surrounds a more positive illustration of Ukrainian immigrants, portraying them as more deserving of protection than the others. The distinctions are so evident that on some of these examples, it will be shown that the journalistic and political actors clearly mention and oppose both groups, exacerbating their physical, cultural, and religious traits so to "prove their point", which indirectly make reference to the other migrants as threat, once that they do not look or behave like the Europeans, or who do not follow their values, customs, and culture.

There are many situations that could be highlighted to demonstrate how inherent and intrinsically the racial, geographic and religious biases are on the Global North, but only three

shocking actions will be further analysed, due to page restriction. First, the CBS News correspondent Charlie D'Agata, that has used the concept of "uncivilised" to refer to other refugees from Iraq and Afghanistan, in opposition to the "civilised" Ukrainians. Second, the French journalist Phillippe Corbé, that once again has drawn a clear difference from Ukrainians and Syrians, by emphasizing that Ukrainians do have the same style of living as Europeans, differently from Syrians. Third and lastly, the Deputy General Prosecutor of Ukraine, David Sakvarelidze, that explicitly referred to physical and racial traits to say that it was not acceptable that Ukrainians were dying, which following the logic of his reasoning, it could be claimed that people that do not have the same characteristics would be deserving the pathway in which they were experiencing.

The first case happened on 26th February 2022, where Charlie D'Agata was speaking directly from Kyiv, in Ukraine, under the duty to provide news from the recent Russian invasion when he stated: "This isn't a place, with all due respect, like Iraq or Afghanistan, that has seen conflict raging for decades. This is a relatively civilised, relatively European, I have to choose those words carefully too, city." (CBS News, 2022). Again, it evokes an inherent biased englobing the division of the world between "civilised and uncivilised", legitimising the idea that one group may be more deserving than another, and that some are more and some are less of a threat.

The second case happened when the French journalist of BFM TV was talking about the destructive scenario present in Ukraine and said: "on parle pas, là, de syriens qui fuient les bombardements du régime syrien, soutenu par Vladimir Poutine, on parle des Européens qui partent dans leurs voitures qui ressemblent à nos voitures, qui prennent la route et qui essaye juste de sauver leur vie, quoi…" (Caisses de Grève, 2022), in which the translation would be: "we are not talking about Syrians that are fleeing the bombardments of the Syrian regime, that is backed by Vladimir Putin, we are talking about Europeans that takes their cars, which looks like ours cars, and that are taking the route and who are only trying to save their lives". Anew, stressing the idea that Ukrainians are like European, but the others are just too different from the European standard.

The third situation occurred meanwhile there was happening an interview, conducted by a journalist of the BBC, where the Deputy General Prosecutor of Ukraine, David Sakvarelidze was called to relate the situation on the ground and the reality of the Ukrainians territories that have been invaded by Russia, when he said: "to me, I'm sorry… it's really emotional for me because I see European people with blue eyes and blonde hair being killed, children being killed every day with Putin's missiles" (Arab News, 2022). Another time these specific given discourse calls

attention to the unconscious prejudice, this time regarding ethnicity and race, emphasising that some individuals, by being more closer to what is deemed as an European idealised ethnic and racial standard, are more important and deserve more attention than others.

These three situations have been chosen because it demonstrates the biased views that are directly externalised by the media coverage, such as the BFM TV and the CBS News case, but also from the government's representatives, in the case of the BBC interview with the former Deputy General Prosecutor of Ukraine. These samples show that there are differences when treating these distinguishes groups. Another factor regards the constant presence of news regarding the situation in Ukraine opposing to the lack of the existence of the same coverages regarding other places that are ravaged by war or undergoing massive threats to human rights (Allsop, 2022, 1-2).

5.B.2–The activation of protection instruments

At the aftermath of the Russian invasion of the territories of Ukraine, a big public commotion of the European citizens and their institutions followed, allowing the EU Member State to achieve consensus and enabling them to construct a regional solidarity, that culminated in the activation of the directive 2001/55/EC, in March, the 4th of 2022. The activation of a regional mechanism such as the Temporary Protection directive demands a unification of the understanding of each of the governments within the EU, emphasising the necessity of a collective political willingness, not only for adopting the procedure but also to undergo all the obligatory steps that enable the concession of regional protection under such mechanism.

Such activation happened through the "Council Implementing Decision (EU) 2022/382" where the European Council has voted and accepted the activation, but most of all, it has regulated the rules regarding this decision, it: presented the decision and the recognition of a massive influx (article 1); determined the scope of protection and to which individuals it can be applied (article 2); established the necessity of continuous cooperation of regional institutions and the authorities that are bind by it, as well as the essentialness of monitoring the situation in order to avoid any risk of bad management (article 3); and finally, it governed the conditions in which the decision is taking place (article 4) (European Union, 2022-b, 5-6). This directive will not only grant the right to a resident permit but also the possibility to claim, according to the availability of the State in question, rights linked to residency, housing, social welfare, medical assistance, legal guardianship, and access to education for NAMs (European Union, 2023-a).

As stated in the European Council's decision, the activation of the Directive 2001/55/EC was the most appropriate instrument to cope with the 2022 refugee wave, according to the Council, due to the fact that Ukraine has been invaded and the presence of a mass influx of displaced persons coming from that country was observed (European Union, 2022-b, 3). However, many conflicts within the world are directly or indirectly caused by the aggression of a foreign country toward the national territory of the nation in question, examples such as the war in Yemen or the war in Iraq, will confirm this argument, nonetheless no equally answer has been given to these similar cases.

Just as example to illustrate the disparity, the Yemeni case could be taken. The coalition between the Saudi Arabian government and the government of the United Arab Emirates led to a clear intervention into the Yemeni sovereignty and affairs (Hokayem and Roberts, 2016, 1). These intervention has led approximately 4,3 million displaced people (ICRC, n.d.) in need of some type of international protection, leading to a number of these individuals arriving in the EU. However, no activation of a specific directive concerning people from Yemeni background was activated, so as to determine a faster and more secure procedure for those claiming protection within the EU.

The case of Iraq goes beyond in showing the consequence of what an external intervention can do and how it can turn a stable country into a territory torn apart by political, social, and economic instabilities. Basing its argument on the war against terrorism, the United States, in addition to the United Kingdom and Spain, have reunited and decided to start to launch a bombing campaign towards Iraq, since an agreement that stressed their interest could not be achieved at the United Nation (Fanucchi, 2003). This external action went against the Iraqi sovereignty and the principle of non-aggression present at UN's Charter. The Iraqi case has displaced, in 2021, 9,2 million Iraqis that are either intern displaced people or asylum-seekers (Watson Institute for International and Public Affairs, 2023). Even with the crisis and Iraqis representing the top 3 litigants of asylum in the EU in 2015, no specific directive has been activated.

Chapter 6–The steps required to diminish continuously the gap concerning the two different refugee inflows in Europe: recommendations

This chapter concentrates on the measures and attitudes that can change the biased perceptions and ideas that are connected to asylum-seekers, which are a key elements to tackle such disparities on a national and regional level, allowing France to accomplish its duty towards asylum-seekers and regain the image of international leader on the compliance with human rights.

One of the principal arguments of this thesis, as well as its main criticism, encompasses the fact that the directive 2001/55/EC has been activated only for welcoming Ukrainians and not for other groups and that this rejection of one type of migrants comes from biased perception. At the regional level such question is elucidated by the adoption of a Danish law to accept and protect Ukrainian immigrants, at the same time that it "opt-out" on the matters that concerns the asylum and immigration. The Danish behaviour contributed to the validation of the idea that has been defended by the thesis. Denmark, who had always maintained its position of distancing on questions and decisions regarding migration and asylum, making the directives, recommendations and decisions not binding on the State, have recently decide to indirectly comply to the directive 2001/55/EC, showing solidarity with the Ukrainian immigrants, but not the others immigrants.

With a slight delay, Denmark has adopted on 18 March 2022 a special law that reproduces the Temporary Protection directive, meaning that indirectly the regulation and its obligations are also binding, even when all the other measures concerning immigration and asylum have not been accepted or adopted. This law provides to Ukrainian free access to higher education, with the possibility of doing the application online and going through a much faster procedure, where the only norm that to be assessed englobes the nationality of the requester. Moreover, Ukrainians claimants cannot have their permits revoked, which distinguishes them from other asylum-seekers such as the Syrians (European Union, 2022-a).

One of the most crucial considerations of this thesis encompasses the fact that the criticism that is made do not account for an attack on the application of such measure to Ukrainians, rather the opposite, meaning that the real critic is centred on the non-activation of such mechanism on the previous migrant crisis. The application of such a directive shows the disparities in asserting the State compliance with all international obligations surrounding asylum-seekers, but it paves a new pathway in which the application of the Temporary Protection mechanism could be invoked and used, once that a precedent has been established.

Just as Afghanis, Syrians, Soudanese and other nationalities that demands asylum within the European Union's territory, Ukrainians are also victims of constant violation towards their most fundamental rights. Although the contemporary activation of the 2001/55/EC directive has a link with a geographical, racial, and religious biases, this situation have transformed this mechanism into an instrument that allows the European community of State to give an assertive answer and to abide and provide a high standard response to one of the immigration crisis.

However, this situation corroborates with the outrageous consequence of leaving another migrant wave without solution and with a failing system that does not provide the necessary actions.

The double standard that has been constantly claimed cannot be used as a way to forget and deny epistemologically, what has been called, the Eastern part of Europe (Düvel and Lapshyna, 2022, 1), which is not only a geographical space, but a system that encompasses the ex-colonies of the URSS. The activation of the Temporary Protection directive does make part of a troublesome arrangement that is double-sided, since initially it recognizes a quicker necessity to grant regional protection to the individuals under its mandate, but it presents flaws. It is time limited to the extent that it provides only temporary protection that does not guarantee all the rights that are assigned to asylum-seekers under the 1951 Refugee Convention. The durability becomes another issue, since the validity of the application of the directive cannot be extended for over three years, meanwhile the conflict can continuate throughout the years. Such protection might be effective today, however, it may pose a threat to the already failing CEAS system, in the future.

Even if, currently, the system seems to suffer from an insufficiency on the procedures and measures adopted in order to solve one of the biggest European crisis, since the creation and development of the European Union, it is crucial to signalise that the activation of the 2001/55/EC directive represents a victory for human rights activists and for asylum-seekers. The application of this legal instrument is essential since it creates the first legal precedent that cannot be ignored anymore, and that could be evoked whenever a future crisis appears. It is exactly the activation of this directive that can construct a new pathway to the expansion of the protection and responsibilities to the next mass influx of individuals arriving at the borders of the European Union.

6.A–The inevitably international replacement of the current political will as a pathway to better develop and enhance the European policy on asylum: recommendations

The aim of this final part is to elaborate on what are the steps and directions that can be taken, in the future, in order to engage the CEAS and the national authorities to achieve its main goals, which would surround the integral compliance with the 1951 Refugee Convention and the fulfilment of Europe as a place of respect, promotion and realisation of all the International Human Rights Law and Refugee International Law's responsibilities.

A multi-level approach to advice on attitudes towards better practices is required. Firstly, the thesis has showed that the societal perception composes a great type of influence on all the

policies that are taken. The policies are a reflection of society, changing one means the necessity of changing another, and this transformation passes through the spread of knowledge, true information and transformation of education, where a critical approach should be encouraged.

Secondly, the Temporary Protection directive must not be used as a long-lasting mechanism, but rather as a rapid response instrument to impede the failure of the system. Another important circumstance concerns the fact that the directive must be seen as a complementary apparatus that must be combined to another form of conceding regional or international protection. The activation of the directive should be done as a first process to guarantee that no individual will be put into asylum-seekers' camps or undergo perpetration of their most basic rights and dignity.

And lastly, the third essential practice surrounds the fact that in order to provide a protection that embraces all the complex and diverse situation in which these asylum-seekers may encounter themselves in, there is the necessity to continue to search and to increase the international scope of documents that aims at enforcing the respect, protection and fulfilment of asylum seeker's rights. This action demands a broader political will that requests a multi-level approach of all actors with the aim to stimulate the international cooperation.

Recommendation for the national level
Implementation of a critical educational policy: understanding international responsibilities and the importance of representation

The first inevitable policy that should be put into place by national authorities consists in developing local and national strategies that would focus on informing and educate critically the population on State's obligations internationally, at the same time that it should promote cultural, religious, ethnical and linguistical diversity. Tolerance and diversity are essential components to the inclusion of asylum-seekers and to build a more inclusive society. Such actions take time, but it would allow the development of a more comprehensive approach, aiming at the promotion and construction of a multicultural society, and where differences are seen as an advantage instead of a weakness.

The representation of asylum-seekers plays a major role in the current construction of the perceived reality. To present these individuals, to tell each single person's stories, to allow asylum-seekers to speak for themselves instead of others,, but above all, to show that they are a positive asset to society, instead of being perceived as "the enemy" that must be fought and combated, are the necessary steps to be taken. To explain and understand that every single State has international

obligations over asylum-seekers, means also to permit the comprehention that providing and protecting these people's rights are not a favour, but a compromise and obligation that has been accepted by different governments, and a right that must be defended and promoted by everyone.

Recommendation for the regional level
Re-structuring and simplifying the Common European Asylum System: the need to abolish the Dublin System

The second action that must be taken in order to provide an international observance and application of the highest standards of refugee human rights protection within the regional measure, regard the essentialness to revisit the whole Dublin System and the functioning of the CEAS. The common pillars of the EU lie on two principles: solidarity and fairness, the perpetuation of the current system prevents the applicability and fulfilment of the regional duties. The lack of compliance to both principles constitute an obstacle to the optimal functioning of the system because it prevents a fair distribution of human beings throughout the countries that present distinguished resources. At the same time that this thesis is being written, at the highest regional political levels, a project that concerns the possibility of reforming the actual Dublin System (Dublin III) is being discussed.

To push forward the evolution of a new Dublin system is to persist in a failed system, as it was mentioned by the European Council on Refugees and Exile (ECRE) "…the final version of any legislation adopted are likely to constitute a marked deterioration in standards and a significant departure from international law" (ECRE, 2023, 1). Although the reform presents good points, such as the broadening of the concept of family, which enlarges the obligation towards those who prove to have blood connection to refugees, the improvement of some of the responsibility-sharing towards the European States, or the creation of an instrument that would be given the task of monitoring the assurance of the respect of basic rights (Ibid., 1-3). However, the negative aspects stand out in comparison to possible future legislative measures that could be adopted.

If approved, the new Dublin regulation will create barriers to the protection of asylum-seekers and their rights. Taking into consideration a human rights perspective, even if there exists minors improvements, if compared to the major negative actions that are proposed, the final document will be resumed as a much more complex legislation that will further encourage States to interpret the rules on its own terms and according to its understanding of the obligations, which

will make it impossible to achieve a regional harmonisation, and it will on the long-run make "… member states failing to apply the new laws" (Ibid.).

If approved, the Dublin IV system will be based on a broader reliance on the possibility, that States will have, to do derogations, as well as the acceptance of propositions that dialogues with a more extreme orientation, instead of the previous moderate and progressist approach, where the "… overall model embodied in the Pact is based on containing more people at the EU's external borders, usually in situations that amount to detention…". Moreover, "the continuation of the Dublin rule is still intact, as is codification of the 'externalisation' of refugee protection to countries outside of the EU, with tools to pressure them into accepting more responsibilities" (Ibid., 1-2).

Another question that might become an issue in regard to the Dublin IV system encompasses the increasing expansion of procedures to be done in order to have access to international protection. According to the ECRE, the Parliament will "largely supports the dangerous proposal which creates an unworkable labyrinth of procedures, including expanding the use of border procedure, which will likely take place in detention…" (Ibid).

The Dublin IV system, if approved by the European members, will oppose the international refugees human rights protection, by promoting the non-observation of the international standards, and it could erode the basis of the integration of the European Union, by opposing the Copenhagen criteria. According to these criteria, one of the fundamental pillars of the EU and its members is the compliance with the rule of law, if passed, the Dublin system will directly and purposely resist to, once that the compliance of international obligations will be damaged and there will be no respect of the rule of law, which indirectly go against the protection of its democratic socles.

Recommendation at an international level
Addressing States' responsibility internationally: complying with asylum seeker's rights and the importance of an active institution

Going back to the imperativeness of action toward the implementation and protection of the most vulnerable ones, the third recommendation concerns the necessity to push further an international agenda towards the challenges and the possible solutions to the migratory crisis. This global approach constitutes itself as the hardest one to achieve, where various steps will be needed for the purpose to improve and develop the current global asylum system, but just as it has been emphasized by James C. Hathaway, it is exactly when the system seems to not be delivering its

best, that the most require attitude does base itself on a strong and compact advocacy to refine the global structure (Hathaway, 2018, 596).

The migratory crisis is one of the biggest challenges for humanity in the 21st century, and with the view to ensure that there will be workable solutions put into place to overcome such challenges, there are four steps that can be worked upon in order to bring remedies to the actual emergency. To enact such a system, the four necessary progressive steps must be taken as serious responsibilities by every State. At the end of the procedure, when the obligations will be accomplished, they would render the whole global refugee structure much more human-based, by rejecting the current securitising approach, which goes not only against human rights, but is also responsible for the uncountable deaths of asylum-seekers that tries, each year, to reach the EU.

The first step will aim to enable the access to international protection, as a primordial right that cannot be denied by any State (Ibid, 597). One of the biggest examples of the seriousness of such policies can be represented, at the international or bilateral level, by treaties that have the purpose of containing asylum-seekers. Whenever adopted, such treaties impede the possibility for national authorities to guarantee such right. The main contemporaneous examples would surround the EU-Turkey deal or the Italy-Libya agreement, the former with the consequence of retaining asylum-seekers under the "legal pathway" excuse, and the latter targeting the training of coastal Libyan agent to prevent the arrival of an influx of people in the EU. What must be understood is that the cost of these practices could be redirected exactly to the guarantee of such protection.

Step number two encompasses the implementation of a fast and simplified procedure as a crucial pathway to allow asylum-seekers to have their rights respected and protected. The only deviation to such a process would be in the most complex cases. In the most challenging situation, there might be necessary a thorough assessment due to the presence of specific elements that would require such action, but those cases should be restricted as much as possible. Still considering the necessity of creating a much less biased system, it is important to transfer the State discretionary power of ruling over the asylum recognition process to an international organism that, as has been affirmed by Hathaway, will be an inclined institute to deal with such subjects, the organ that will better fit for such task would be the International Organization for Migration (Ibid., 597 and 602).

The positive consequences of this step are the reduction of the waiting period for the analysis of each application, as well as the assurance that asylum-seekers will not be thrown into a social, economic, and legal limbo, where no access to rights will be granted because they do not

have the legal documents. Furthermore, concerning the criminal effects, such changes will promote the dismantling of the illegal pathways, organisations and individuals that try to go against the legal immigration's law. By combating illegal practices, the national State would indirectly reduce the cost of borders' protection and security, leading to a reduction of criminal procedures on the national judicial structure as well as it would promote the protection of these individuals' rights.

Moving forward, the third action that will have to be promoted to institute change would surround the implementation of the right to freedom of movement, with more emphasis on the countries which asylum claimers are either detained, denied the possibility to move from the location where they were assigned or if they are allocated on camps (Ibid., 597-598). This provision will allow the claimants to reach more easily their economic, social, intellectual independency, which would be translated into better integration into society. Pushing forward this act will mean promoting their development, simultaneously with the development of society, once that they might be introduced to the job market, and by allowing applicants to study, it advocates for better inter-cultural understanding and a better preparedness to future challenges, resulting in personal and societal development (Betts et al., 2017, as cited in Hathaway, 2018, 598).

Enhancing a global minimum "high standards": promoting an international mandatory fund to diminish the disparities between countries

One of the biggest challenges regards the access to the high standards of asylum protection, in what concerns governments that do not have the same means and resources to allocate to this matter, the ones deemed "in development". Such preoccupation is the reason why the fourth measure should concentrate in provide the means to all these countries. The main idea of this next step is to evolve the structure of asylum, the purpose of such action would encompass the diminishment of the dependency of poorer States on the aid that are provided by richer countries until they reach a point of no dependency at all, this action will be enacted by the creation of a global fund, that once again will be ruled by the current main migration agency, the IOM (Ibid.).

The contribution to this international fund will be done by the application of a burden-sharing quota, where the States would pay if its national structure would not abide by the stipulations that were made by the fair quota arrangement (Parusel and Schneider, 2017, 30). Under a human rights perspective, this answer may not be the best, once that it would allow the exchange of money in order to cover up for the failure to promote the compliance with the international

responsibilities of granting the right to claim asylum. Nonetheless, currently the first step is not to create a perfect structure, but a system that works and that can be achieved (Hathaway, 2018, 603).

This system that works, although not perfect, it would enable the applicability of some solutions that will have the main goal to provide answers to the continuous and modern migratory crisis. Furthermore, the accomplishment of the proposed goal woud allow poorer States to provide a better standard of protection of asylum-seekers and refugees' rights, which it would, in a middle or long-run, be translated into the decrease of individuals demanding asylum-seekers in richer countries, once that a treatment far or less equal would be granted to everyone (Hope Simpson, 1938, as cited in Hathaway, 2018, 600). Whenever, this structure would bring significant changes, allowing to cope with the EU context, then it will be time to further advance new ideas towards a pathway that aims for a State full commitment to design and execute the best possible framework.

Lastly, all the measures would need to be adopted in a collective action of good faith and political willingness of national government, but they are doable. The transfer of State's sovereignty to an international organ to recognise the status of refugee was done by the Nansen International Office, in the 1920's. Another example that this system can work is based on the policies taken under the government of Justin Trudeau (Canada); Angela Merkel (Germany); King Abdullah (Jordan); or Jakaya Kiwete (Tanzania) (Ibid., 600). Or in the 1970's Vietnamese exodus, where the States found a way to relocate all the people that were in need of international protection, in a very efficient and effective way (Robinson, 1998, as cited in Hathaway, 2018, 600).

6.B–Diminishing the gap: the French role in promoting the changes

The necessary posture to promote such a global framework must rely not only on world leaders that would drive the necessary changes, but most importantly on States that will continuously assume the international responsibility of setting the great example to others. Although, most of the countries in the world have underperformed on their accepted duties under the 1951 Geneva Convention, the increasing numbers of asylum-seekers and the continuation of the migratory waves require a radical change towards an advocacy of asylum-seekers' rights.

France must not only exercise such role, because of its importance within the regional legal framework (European Union) and international level [due to its participation in different organisms, such as the Organisation for Economic Cooperation and Development (OECD), International Monetary Fund (IMF), NATO (North Atlantic Treaty Organization), the OIF

(Organisation Internationale de la Francophonie), the United Nations as a permanent member of the Security Council and many others, which shows its importance and influence], but also because of some historical facts that do attach the country, as an avant-garde human rights promoter, that had a crucial role in the spread of universal human rights values.

A regional perspective: what could have been done differently ?

Regionally, France should have had a different reaction and attitude towards the 2015 immigration wave, where instead of becoming a reticent country that took time to follow the policy that was adopted by Angela Merkel, on the suspension of the application of the Dublin System, it should have had taken, in cooperation with Germany, the first step in promoting this policy. With two of the strongest economies, the Franco-German cooperation will set the example by pushing forward a humanitarian and human rights driven perspective at the EU level. This collaboration between France and Germany could have allowed, firstly, a better compliance with international agreements, and secondly, they could have been the role model for other EU countries to understand the importance of cooperation, promotion and defence a better regional framework.

Another attitude that France should have had given the example to other governments comprises the adoption of a policy of open arms and the enhancement of accountability of the authorities. These measures should have materialised, in 2015, when some of the terrorist attacks have happened. France should have adopted policies and attitudes that would have presented the terrorist assaults as an isolated fact, instead of fuelling the emotion of its citizens, that might have linked religion and ethnicity to the practice of terrorism, however this erroneous vision has been refuted, meaning that this link does not sustain itself (Eybergen and Andresen, 2020).

An international perspective: what could have been done differently?

Internationally, as a member of distinct global and regional organisms, France should have pushed forward a global agenda on migration that it would not exclude anyone, and that it would guarantee to every single person demanding asylum the respect of their rights, established by the 1951 Geneva Convention. One example that highlights what could have been done differently concerns the 2018 Global Compact on Refugee that had ambitious goals, but instead of addressing the real challenges and questions that needed to be given an answer, the Global Compact had

delivered very few compared to its aspiring aims (Hathaway, 2018, 603-604). Instead of addressing the demand of settling an international framework that would be compatible with a more equal and responsibility-sharing approach, in addition to trying to create pathways that would look forward in bringing long-term solutions for the refugees, the Global Compact did little to revert the current *status quo.* The most problematic fact regards the inaction of States who did not do enough to push for workable solutions and for a continuous international agenda on migration.

Looking forward: what can still be done by France
Revising the Immigration bill of 2023

Although France could have done differently, the most important changes that must occur at the current national scenario surround the necessity of looking forward to attitudes and policies that must be adopt now, to positively impact the future, instead of seen the past and what could have been done. The proposition of the immigration bill that was sent to the Assemblée Nationale could make up the first course of action that must be reviewed, and it can constitute the first takeover of a full-responsibilities attitude regarding the accepted obligations, at the national level.

The re-election of Emmanuel Macron against Marine Le Pen does say much about the French public perception as well as the type of conduct that the parliament should have. First, the fact that the percentages were so tight, in between the two candidates, contributes to the idea that not all French people fully agree on either ideas and viewpoints that were presented on their respective programs. But, most importantly and as it has been defended by David Desgouilles, this election demonstrated, which of the two participants, the French people was least averse to have as a representative (Entretien Figarovox, 2022, 1). The victory of Emmanuel Macron did not necessarily mean that the different groups of the national society were in favour of all his policies or electoral program, it represented more a vote of repudiation and as a way to stop the far-right advancement that was done by Marine Le Pen.

There are no arguments that would invalidate the imperious necessity of, whenever treating the theme of immigration, diffusing more information regarding (1) the benefits of immigrants in society, and (2) the national responsibilities towards those individuals in addition to allowing these people to speak for themselves, which it would create a more humanised approach to such societal problem. However, as it has been previously defended, what needs to be combatted are the speeches against the welcoming of asylum-seekers and the assurance and promotion of their rights.

These inflammable discourses contributed, directly or indirectly, to the augmentation and spread of ideas that go against the "values of the Republic", such as democracy, the indivisibility of State and the social good, by dividing the nation and the State. Moreover, such speeches also go against the rule of law and democracy by not respecting the accepted duties and by reducing the understanding of social good only to a certain group that does fit into a specific definition.

It is by understanding the rejection votes towards Marine Le Pen that Macron said, on the day of his victory, and when he has been re-elected president of the French Republic, that independently of the percentage of the votes and those who voted for him, he would work for all those French citizens (Kirby et al., 2022, 1). It is crucial to highlight that the defeat of an extreme-right party stresses the importance of ideas surrounding the promotion of democracy, the respect of human rights and of the rule of law, and lastly the willingness to promote a better social system that highlights the dignity of all human beings. With the purpose of promoting such important switch, France must take a more concise, strong and human rights-based approach.

To be aligned with the above-mentioned priorities, it is crucial that concerning immigratory issue and policies, there is a true engagement of national leaders and the whole society on taking a positive attitude and presenting better proposals for this immigration bill, focusing more on people and less on the State. Pushing forward this national procedure is crucial to, firstly, humanising individuals instead of criminalizing them, secondly, an adoption of a human rights driven viewpoint instead of a securitizing perspective, thirdly, solving the issue instead of transferring the responsibilities toward third-States. And lastly, rendering the procedure quicker by demanding the engagement and the augmentation of the numbers of employees, to promulgate internal cooperation, to better conduct national institutions and to claim accountability.

The French role at the global arena

The primary measure must be taken at a national level, especially, in order to set up the example for other European and international government, yet international steps are also required. Just as Emmanuel Macron has the tendency to apply its diplomatic skills and to present France as an important actor regarding the appeasement of conflict and tensions, the national government should engage in being an international leader in proposing solutions for immigration issues in addition to promoting the compliance with human rights. The first action that can be taken by France, in an international instance, is to be the representative that would introduce the measure

of creating a global fund for States in order to promote a more equitable and burden-sharing attitude towards the countries in development.

Secondly, to emphasise the French responsibility and essentialness on the international system of States, France should promote, globally, an international forum in which all governments would be called to the table to debate about concrete and workable recommendations and solutions. Most crucial than just creating an international floor to debate, France must push further a group of experts to create a set of solid, feasible and essential answers, recommendations, directives and solutions that will be followed, firstly by France, and then by all national authorities.

By adopting the previous recommendations, France will move towards the creation of a doable solution and a better management of the actual crisis, by promoting solutions and emphasising its role and importance as a human rights promoter. The attitudes to motivate these actions must be taken seriously, which can only be demonstrated by the adoption of a human rights-based narrative, by all the national governments and in special by the French authorities, which it could result on the transformation of the regional and international legal asylum system. A Franco-German cooperation is essential to influence and engage other governments, and such collaboration will probably result on a partial or full compliance and promotion of international responsibilities, nevertheless such partnership will need to be reaffirmed on a short, medium and long-duration course.

The pathway to meet these recommendations may present its challenges, re-stressing the need of truth engagement and political will of France and all other national leaders that must fight to explain the importance of diminishing the gaps among countries. In what englobes the procedures, resources and willingness, a harmonisation must be sought which can result into the achievement of important improvements on this international legal structure, and further on the possibility to create a platform that will engage in finding long-term solutions.

Conclusion

After a multi-level approach of the legal asylum framework (global, regional, and national), an analysis of the French behaviour was made in order to better understand, in a comparative perspective, the differences that surrounded the migratory regimes of 2015 and 2022. What is undeniable is that, there are more similarities in between the realities of the individuals requesting international protection than there are differences among them. Nonetheless, the comparative analysis have showed that the political outcome was very different.

The solutions that were presented, in regard to the first migratory wave, demanded and obligated asylum-seekers to go under difficult and long periods of examinations, where there was the need to meet different individual assessment criteria as well as the essentialness to confront the biased perception of the hosting population, in order to be recognized the refugee status. Meanwhile, concerning the Ukrainian inflow, many facilities were granted, by activating the directive 2001/55/EC, such as (1) the enactment of the safest possible pathway, (2) the possibility for Ukrainians to choose in which country they would like to stay, within the EU, and (3) the guarantee of many civil, economic and social rights, which have shown a very disproportionate answer.

Racial biases, xenophobia, colonial past, religious background, and media coverage are some of the most significant factors that were and are extremely relevant whenever the political actors are taking the decisions over the processes of applicability of immigration policies and granting international protection to the most vulnerable ones. Understanding that there are different, direct or indirect, prejudices that do affect how society constructs its perception over immigration, is it essential to act with the purpose to promote national, regional, and global changes in the immigration structure to treat all individuals equally. Although information and education create the first level of necessary change that must be adopted, the imperative change would focus on a transformation of the national attitudes on a multi-level approach, meaning that solutions at the regional and international framework are also required.

With the purpose of advancing a perspective that it would englobe different echelons, it is crucial to put forward solutions that would enable a response under a regional or international scenario. Regarding the regional framework, in order to restructure and make it a long-term doable solution, the CEAS must be rearranged so to promote fairer and a responsibility-share driven

mentality. Despite the disparity of application and the late activation of the directive 2001/55/EC, that was created in the beginning of the 2000s, the current enactment of this mechanism has settled an important legal precedent, in which human right's activist can use it to advocate for the next possible massive influx of people along the European external border.

In the global scheme, the system requires a thorough revision, in which the courses of action of each single State around the globe must change and such attitudes must be taken seriously, once that it will compose a crucial step towards the development of a better international structure. Nonetheless, because these actions would demand not only political will but also a global concertation, world leaders should be the ones promoting such an agenda, France can, should and have the duty to act. Under a strong commitment of France, as an avant-garde State, the applicability of the necessary changes could turn from, what is understood today, an idealistic agenda into a more realistic, worthy, and doable possibility. Such challenge should be accepted to reaffirm France's commitment with the maintenance of its tradition of respecting, protecting and fulfilling of human rights.

With the purpose to reform the whole asylum framework, so it can reach the goal of providing shielding to those in the need of protection, recommendations were emitted aiming at providing guidance to enhance a human rights-based approach in all the multi-level structure.

The implementation of critical educational policies, at a national level, would result in a more prepared society to understand and to fight for the right to asylum, using its power to influence the decision-making process internally. To such procedure, the European Union may also play an important role to promote the expertise, the financial support in addition to the facilitation englobing the cooperation side among all the national authorities with the intention to facilitate such concertation. At the regional level, there is an urgent need to reform the CEAS with the view to strengthen solidarity and fairness. However, to promote the necessary changes, the Dublin System must be replaced by a humanitarian framework instead of a securitising one.

Regarding the macro-level, there are two courses of action that should be adopted. The first one relying on the promotion of an international fund, in which the contributions would be based on quotas that variates according to the global compliance of the conventional obligations. To promote a transformation of the current structure, the second attitude would surround the requirement for world leaders and governments to push forward the adoption of other international instruments that would allow the expansion of duties. Furthermore, this action will need to expand

the binding powers of an international organism on migration, such as the OIM, to perform the task to better manage and secure the international compliance of the global actors with the obligations that were set by the multilateral institutions.

The current situation of immigration presents itself as a very sensitive global issue that awakes different responses, nevertheless almost 150 countries have committed themselves to come forward and provide international protection whenever there is the need and where the criteria are met. With the increase of violent conflicts, national internal turmoil, massive perpetrations of the most fundamental rights, it is highly probable that the migrant waves will increase, and if there are no immediate actions in order to tackle such problems, there will be nothing left to save from the total collapse that will be created, in the next years.

The way in which Europe is dealing with the 2022 immigration of Ukrainians is determinant to explain to national governments of around the world that a consensus is possible, and a transformation should be sought. However, and most importantly, it should have taught all the countries that if the measures are not taken now, it is certain that the immigratory waves will became continuous crisis that will happen with greater frequency and in an eternal cycle. The crucial message that must be understood is that there is no better moment to act than now.

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