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Master's degree in
Human Rights and Multi-level Governance

The Third-country Agreement policy as part of the European Union approach to asylum and migration.
Case studies on the EU-Turkey Statement, the Italy-Libya Memorandum of Understanding and the Italy-Albania Agreement

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ACRONYMS

AFSJ: Area of Freedom, Security and Justice

AMIF: Asylum, Migration and Integration Fund

Asgi: Italian Association for Juridical Studies

CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment

CEAS: Common European Asylum System

CECA: European Coal and Steel Community

CFSP: Common Foreign and Security Policy

COE: Council of Europe

CPR: Centro di Permanenza e Rimpatrio

CSDP: Common Security and Defence Policy

DCIM: Department of Combatting Illegal Migration

DGMM: Directorate General of Migration Management

EASO: European Asylum Support Office

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

ECSC: European Coal and Steel Community

EC: European Communities

EEC: European Economic Community

EEAS: European External Action Service

EU: European Union

EUAA: European Union Agency for Asylum

EUBAM: EU Border Assistance Mission

EUCFR: EU Charter of Fundamental Rights

EUNAVFOR MED IRINI: EU Naval Operation in the Mediterranean

EURODAC: European Asylum Dactyloscopie Database

EURATOM: European Atomic Energy Community

EUROSUR: European Border Surveillance System

EUROPOL: European Union Agency for Law Enforcement Cooperation

EUTF: EU Trust Fund for Africa

FRiT: Facility for Refugees in Turkey

GACS: General Administration for Coastal Security

GAM: Global Approach to Migration

GAMM: Global Approach to Migration and Mobility

GNA: Government of National Accord

GNS: Government of National Stability

GNU: Government of National Unity

IBM: Support to Integrated Border Management and Migration Management

ICC: International Criminal Court

IDPs: internal displaced people

ILC: International Law Commission

IOM: International Organization for Migration

IPA: Pre-accession Assistance

ISF: Internal Security Fund

LCGPS: Libyan Coast Guard and Port Security

LFIP: Law on Foreigners and International Protection

Madad Fund: EU Trust Fund in Response to the Syrian Crisis

MoI: Ministry of Interior

MoU: Memorandum of Understanding

NGOs: Non-governmental organizations

RA: Readmission Agreement

SAR: Search and Rescue operations

SEA: Single European Act

SuTP: Syrians under temporary protection

TEU: Treaty of European Union

TFEU: Treaty on the Functioning of the European Union

TNC: National Transitional Council

FRONTEX: European Border and Coast Guard Agency

UDHR: Universal Declaration of Human Rights

UN: United Nation

UNHCR: United Nation Office of the High Commissioner for Refugees

UNSMIL: United Nations Support Mission in Libya

UPR: Universal Periodic Review

JMD: Greek Joint Ministerial Decision

JHI: Justice and Home Affairs

INTRODUCTION

Stopping migration is an illusion.

The phenomenon of migration has always characterized the whole world and it has always developed through the course of our history. Since the end of Second World War a mass influx of migrants[1] have started to cross the borders of European States. That was the moment in history when the International community realized the need to establish common international policies aiming at protecting those people who flee their homes.

As consequence, the international migration framework started to be built. In 1948 the Universal Declaration of Human Rights (UDHR) was adopted; in 1949 it was established the United Nation Office of the High Commissioner for Refugees (UNHCR) and in 1951 the United Nation (UN) Refugee Convention regards the refugee status and its protection was proclaimed.

In the meantime, in 1952, the European Coal and Steel Community (CECA) was born on the European continent, and in 1992 it developed and transformed into the current European Union (EU). What emerged was a EU based on common values such as freedom, democracy, rule of law, peace, equality and stability.

The already cooperation and then integration on economy, political and monetary fields between EU's Member States led to the awareness that the first EU laws on asylum and migration should be established. The need to create minimum standards within the EU has therefore became apparent. Concerning the asylum policy, in 1999 it was developed the Common European Asylum System (CEAS).

The year 2015 represents the turning point. Knowing as the year of the refugee crisis after the Arab Spring and the year in which the failure of the EU in the field of migration management emerged. Since 2015 the EU agenda based on external migration governance became the priority in the EU context. It has aimed at addressing migration issues in an external context and involving third countries Agreements.

The research question of the thesis is : "Could the European Union's migration management based on third countries Agreements be an effective blueprint in the long-run?".

[1] The term migrant is used broadly to include any person who is outside of their country of citizenship or, in the case of stateless migrants, their country of habitual residence.

In order to answer to this question, the first chapter is going to analyse the European Union's migration management framework, in particular it is going to describe the time-line of the EU migration management policies. In particular, it is going to address the EU's asylum policy which considers those people who seek international protection in the EU territory and the immigration policy thus, considering the illegal immigration and trafficking of human beings. It is not going to consider the legal immigration policies of third country nationals who decide to reside legally in Member States. Thereafter, the chapter is going to consider the framework from the first EU laws towards the 2015, when the failure in the field of migration led to the development of emergency tools as the first multilateral Agreement: the EU-Turkey Statement in 2016. It has represented the pivotal point in the EU's response to migration crise, marking the point at which the EU starting to operate "abroad". It is going to show how the EU's attitude and migration management policies led to the development of the non-entrée policies. Within these latter, the EU has adopted and continuous to do, also nowadays, multilateral and bilateral agreements such as the EU-Turkey agreement (2016), the Italy-Libya memorandum (2017) and the Italy-Albania Agreement (2023). Then, it is going to analysed the different types of non-entrée practices which apply to these treaties.

The second chapter will focus on the multilateral Statement between the EU and Turkey. It is going to make an overview of the country frame, of the migration and asylum policies in Turkey, of the cooperation between the two actors and lastly, the analysis of the Statement considering both the implementation of it and the criticisms.

The third chapter is going to consider the Italy-Libya Memorandum of Understanding. The structure of the chapter will be similar of that of the second chapter.

The fourth chapter will consider the Italy-Albania Agreement, following the same structure of the other two chapters.

Lastly, the conclusion of the thesis will provide an answer of the research question.

CHAPTER I- THE LEGAL FRAMEWORK OF THE EUROPEAN UNION ASYLUM AND MIGRATION POLICY

1.1 The creation of the first EU laws

The European Union is based on four Treaties. The Treaty establishing the 1951 European Coal and Steel Community (ECSC), the two Treaties of Rome signed in 1957: the Treaty establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community (EURATOM) and lastly, the Treaty on European Union (TEU- Treaty of Maastricht[2]) signed in 1992.

The first three Treaties were intended to broaden cooperation between Member States in the economic fields, although in subsequent years cooperation has expanded and there has been talk of integration between Member States.

Since the 1968, cooperation and integration have increased at the same time: beginning from the Custom Union, then the Schengen Treaty in 1985 to the Single European Act (SEA) in 1986. The Schengen Treaty has led to the creation of the Europe's Schengen Area by which internal borders have been abolished while the Single European Act tried to add a new momentum to the EU integration and to go further towards the internal market. Indeed, the SEA was aimed at creating the Single Market, defined as "*an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty*"[3]. The SEA has opened the way on the one hand, to a deep economic integration and on the other hand, to new types of integration such as political and monetary integration that would have been enshrined in the Maastricht Treaty.

The abolition of the internal frontiers, which allowed citizens to travel freely, have required common measures on asylum and immigration policy.

In 1992 the Treaty of Maastricht was signed and it represented the pivotal point from which a new era of the European integration started. The Treaty of Maastricht set up several changes to the structure, the institutions and decision-making, the policy areas

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[2] Treaty of European Union, signed 7th February 1992, *Official Journal of the European Union*, C 202/15, https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b49701aa75ed71a1.0006.01/DOC_2&format=PDF .

[3] Single European Act, *Official Journal of the European Communities*, signed 11th December 1986, No L 169/1, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11986U/TXT .

and the aim of this new EU. Moreover, it created an EU based on three pillars: the European Communities (EC), the Common Foreign and Security Policy (CFSP) and Cooperation in the field of Justice and Home Affairs (JHI).

The Title VI under the third pillar (JHI) established the legal basis for the intergovernmental co-operation on asylum and immigration policy. The competencies of the EU followed the intergovernmental approach, by which a measure could be adopted only with the approval of all Member States.

The Treaty of Maastricht was subsequently amended by, firstly, the Treaty of Amsterdam (1997- entered into force in 1999). The powers of the EU were amplified by this Treaty and starting from it, and then with the following Nizza Treaty (2000), the asylum and immigration policy from an intergovernmental matter became a community one and it was transferred under the first pillar of the European Communities (Title IV European Communities Treaty[4]). The Treaty of Amsterdam provided that the European Commission would have responsibility for submitting proposal on immigration and asylum and within a period of five years, the European Council should have taken decisions on that field via unanimity. After that five-year period, the Council decided to follow the co-decision procedure, involving the European Parliament.

During that amount of time, the Council acting in conformity with the UN Refugee Convention of 1951 and the 1967 Protocol concerning the status of refugees, should have adopted initiatives about several criteria and mechanisms for determining which Member State should have been accountable for considering an application for asylum made by third-country nationals in one of the Member State, minimum standards about the reception of asylum seekers, minimum standards about the qualification of third nationals as refugees and it should have proposed minimum standards on procedures for granting or withdrawing refugee status. Moreover, it should have established minimum standards for granting temporary protection to displaced persons, for persons who need international protection and also conditions of entry and residence and for illegal immigration and illegal residence. These initiatives represented some of the essential

[4] Consolidated version of the Treaty establishing the European Community, *Official Journal of the European Communities*, 10th November 1997, C 340/173, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997E/TXT .

measures and proposals set up in the Amsterdam Treaty[5] on which the Council should have worked on and adopt from the 1999 to 2004. Later on, these proposals coincided with the Tampere's Conclusions (1999) and the measures adopted within the "first phase" of the CEAS (1999-2005). The Tampere's Conclusions and the "first phase" of CEAS will be discussed later in this chapter.

Furthermore, under the Treaty of Amsterdam the EU decided to extend to its citizens an area of freedom, security and justice thus, it was developed the Area of Freedom, Security and Justice (AFSJ) previously known as the Justice and Home Affairs cooperation. The AFSJ warrants the omission of internal border control while ensuring also measures respecting external border control, asylum, immigration, border control, judicial cooperation both in civil and criminal matters and law enforcement cooperation. A Union of freedom, security and justice was the milestone of the Tampere meeting (1999) which affirmed the willingness of the EU to create an area of prosperity and peace where freedom could be enjoyed in conditions of security and justice by all. The EU declared the purpose of establishing an Union open and secure, entirely committed to the obligations of the Geneva Convention and others human rights declarations and able to tackle humanitarian needs on the basis of solidarity. Starting from the EU AFSJ policy and having in mind that freedom should not have been just a prerogative of EU's citizens but instead, it should have guaranteed also to those who seek access to the EU's territory, the EU realized the necessity to develop a common EU asylum and immigration policy. A common policy which had to take into account also the control of external borders to stop illegal migration and combat international crimes while ensuring guarantees to those in need.

The objective was to develop a common EU asylum and immigration policy[6] including those elements:

- "*Partnership with countries of origin*": the EU called for a comprehensive approach to migration tackling political, human rights and development issues in countries and regions of origin and transit meanwhile recommending co-development;

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[5] Treaty of Amsterdam, signed 2nd October 1997, *Official Journal of the European Communities*, C 340/1, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997D/TXT .

[6] Tampere European Council, Presidency Conclusions, 15th and 16th October 1999, https://www.europarl.europa.eu/summits/tam_en.htm .

- "*A Common European Asylum System*": the European Council agreed on working towards establishing a CEAS based on Geneva Convention thus ensuring, in particular, the application of the *non-refoulement* principle;
- "*Management of migration flows*": cooperation with countries or regions of origin and transit in order to develop information campaigns for legal immigration while preventing illegal migration and all forms of trafficking in human beings and also for ensuring voluntary return. Moreover, it included the cooperation between Member States' border control services primarily on maritime borders;
- "*Fair treatment of third country nationals*" towards the development of an integration policy.

The European Council following the Tampere Programme in October 1999 about the asylum policy for those who seek international protection realized that "*A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States*"[7]. Therefore, the European Council decided to work on the creation of a Common European Asylum System. The Tampere Conclusions of 1999 provided that a CEAS should have included, in the short term, common standards for fair and efficient asylum procedures in all MS thus, harmonising the Member States' legal frameworks and, in the long term, Union rules leading to a common asylum procedure in the Union. Indeed, it was implemented in two phases.

The "first phase" of the CEAS was developing from 1999 to 2005 and it implemented proposals and measures worked out by the Council since the end of the Amsterdam Treaty.

The "first phase" of CEAS was governed by six legislative instruments establishing the minimum standards:

[7] Directive 2013/32/EU of the European Parliament and of the Council on common procedure for granting and withdrawing international protection (recast), *Official Journal of the European Union*, 26th June 2013, L 180/60, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032 .

- The Asylum Procedures Directive - Directive 2005/85/EC[8]- introduced minimum framework on procedures for granting and withdrawing refugee status. These included: the procedural guarantees of the asylum seekers such as the need to guarantee an interpreter for submitting their case or the necessity to have appropriate notification of a decision in a reasonable time but also the obligations of the applicants for asylum; the right to remain in the Member State pending the examination of the application; the right to legal assistance and representation; specific procedural guarantees for unaccompanied minors; procedure in case of withdrawal of the application; etc.;
- The Reception of Asylum Seekers Directive - Directive 2003/9/EC[9] - laid down minimum standards for the reception of asylum seekers. These referred to the general provisions on reception conditions such as the duty of Member States to inform asylum seekers about legal assistance or about reception conditions available; the freedom of movement within the MS; the duty of MS to guarantee the access to school to minors and to maintain families unity; the duty of MS to guarantee health care and an adequate housing; it took into account also the reduction or withdrawal of reception conditions thus in which cases a MS could reduce or withdraw reception conditions; etc.;
- The Qualification Directive – Directive 2004/83/EC[10] - ensured common criteria for the identification of persons in need of protection and minimum level of benefits for those persons in all MS. These included on the one hand, all circumstances and the assessment of facts in order to be recognized as persons in need of protection such as a well-founded fear of being persecuted or a real risks that it should be establish by MS and on

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[8] Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, *Official Journal of the European Union*, 1st December 2005, L 326/13, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005L0085 .

[9] Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, *Official Journal of the European Union,* 27th January 2003, L 31/18, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0009 .

[10] Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, *Official Journal of the European Union*, 29th April 2004, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0083 .

the other hand, the benefits such as access to education, employment, access to social welfare; moreover it considered the circumstances of cessation and exclusion and revocation of, ending of or refusal to renew refugee status or subsidiary protection;

- The Dublin Regulation - Council Regulation (EC) No 343/2003[11] - (Dublin II- replacing the Dublin Convention of 1990[12]) laid down the criteria and mechanisms for determining the State responsible for examining applications of asylum seekers. This regulation identified the general principles which determine that a State is responsible when the third-national applies at the borders or in the territory of that State but also identified other general principles; it established then the hierarchy of criteria which MS should followed: in the case of unaccompanied minors, the State responsible is where his/her family is present or in absence of family, the state responsible is where the minor has first lodged his/her application; then if the asylum seekers has family in one MS, the State responsible is where the family is located; if an asylum seeker possessed a valid residence permit or a valid visa, the State responsible is the one which issued the residence permit or visa and lastly, if an asylum seekers had irregularly cross a State and lodged an application, it is that State which is responsible for examining the application;
- The European Asylum Dactyloscopie Database (EURODAC) Regulation - Council Regulation (EC) No 2725/2000[13] - it established "Eurodac" which it consisted in a Central Unit within the Commission in order to computerised central database of fingerprint data and electronic means of transmission between MS and the central database. It was set up with the

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[11] Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member States responsible for examining an asylum application lodged in one of the Member States by a third-country national, *Official Journal of the European Union*, 18th February 2003, L 50/1, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0343 .

[12] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, *Official Journal of the European Communities*, 97/C 254/01, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819(01) .

[13] Council Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, *Official Journal of the European Communities*, 11th December 2000, L 316/1, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000R2725 .

aim of having a system for the identification and comparison of the fingerprint data of applicants of international protection or other types of protection;

- The Temporary Protection Directive – Council Directive 2001/55/EC[14] - has laid down procedures for obtaining temporary protection in the event of a mass influx or imminent influx of displaced persons from third-countries who are unable to return to their country of origin. This directive has established the duration and implementation of temporary protection; the duties of Member States towards persons who grant temporary protection such as allow them to engage in employment/self-employment or to have access to an accommodation etc.; the return and measures after temporary protection has ended and also the possibility to access to asylum procedure in the context of temporary protection etc.

1.2 From the "first phase" of CEAS toward the first reforms of 2008-2013

During the last year of the "first phase" of the CEAS, two momentum took place within the EU. In December 2005, the European Council adopted the Global Approach to Migration (GAM) and in November 2004 it was set up the Hague Programme.

The GAM represented an arrangement for the cooperation in the area of migration and asylum between the EU and third countries. The Approach considered different aspects of the migration agenda. It took into account the legal and irregular migration, it tackled the trafficking in human beings and smuggling of migrants, it reinforced protection of refugees and it boosted migrants' rights while harnessing the positive link between migration and development. It was a product of a learning process. Essentially, it developed from the awareness that the broader scenario and the power relations between the EU and MS, but also with neighbouring countries such as the African third countries and Mediterranean, have changed over the last ten years. Thus, the EU should have

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[14] Council Directive 2001/22/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 consequence thereof, *Official Journal of the European Communities*, 20th July 2001, L 212/12, https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32001L0055 .

cooperated and enhanced the dialogue with third countries across the Mediterranean while increasing cooperation within the EU's Member States.

Three factors represented the necessity of adopting the GAM. Firstly, the pragmatism which meant that the EU started to have a pragmatic approach towards the migration management, noticing that "*international migration will continue*" (Cassarino, 2009). So, it should have developed *ad hoc* measures and incentives in order to improve cooperation on migration and border management with third countries of transit and origin. Secondly, the changing of power relations. If on one hand, the cooperation in migration management within the EU about the expulsion and redocumentation of unauthorized migrants and the rejection of asylum seekers still required progress, on the other hand the EU cooperation on border management improved. This latter included various Mediterranean and African third countries which have started to be proactively actors. Moreover, bilateral and multilateral cooperation on border control led to create a scenario in which some African countries became and acted as key and equal players in migration talks, gaining a strategic position within the EU arena. Thirdly factor, Member States' concerns about European Commission's progress in combatting illegal migration and about the European Council mandate to deal community readmission agreements with some third countries.

This framework led to the creation of the GAM, which was then further advanced in 2007 and 2008. In the first half of 2011, a first type of reform took place. The GAM was evaluated by the Commission that viewed the need of strengthening the external migration policy in an integrated, comprehensive, strategic and balanced manner. It also viewed the need for a more strong coherence policy with other policy areas and a better thematic and geographical balance. So, in November 2011 it was adopted the Global Approach to Migration and Mobily[15] (GAMM). It focused on four main objectives: improving and facilitating the organisation of legal migration and facilitated mobility, preventing and reducing irregular migration in a human way and trafficking in human beings, reinforced the development impact of migration and mobility and bolstered international protection systems and the external dimension of asylum policy.

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[15] The Global Approach to Migration and Mobility, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *European Commission*, 18th November 2011, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0743 .

It will consider two of the four pillars of the GAMM.

First pillar: "*preventing and reducing irregular migration and trafficking in human beings*". Within this objective, the EU should have focused on redirecting skills, capacity and resources to third countries in order to prevent and reduce trafficking, smuggling and irregular migration, ensuring return and readmission and improving border management. Then, the EU should have developed proposals to provide better protection for and empower victims of trafficking in human beings. Additionally, efficient monitoring of the implementation by MS of the Directives on return[16] and employers sanctions[17], in cooperation with partners. Finally, the Immigration Liaison Officers[18] (ILOs) should have expanded exchanges of information with their counterparts with more partner countries and the capacity of the European Border and Coast Guard Agency (FRONTEX)[19] to work with third countries authorities, should have been employed in full.

Second pillar: "*promoting international protection and enhancing the external dimension of asylum policy*". This pillar took into account the importance that the EU placed on strengthening solidarity with refugees and displaced persons; in cooperation with the major third countries in order to enhance their asylum systems and citizens' asylum legislation and in compliance with international standards thus offer higher standards for those remaining in the region of origin. This should have developed through Regional Protection Programmes (RPPs). Then, the EU should have enhanced resettlement in the EU and combined its efforts with third countries. Moreover, the EU should have involved in intensify its efforts to solve protracted refugee situations including assistance for displaced persons and lastly, the European Asylum Support

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[16] Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country national, *Official Journal of the European Union*, 16th December 2008, L 348/98, https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32009L0052 .

[17] Directive 2009/52/EC of the European Parliament and of the Council providing for minimum standards on sanctions and measures against employers of illegal staying third-country nationals, *Official Journal of the European Union*, 18th June 2009, L 168/24, https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32009L0052 .

[18] Immigration Liaison Officers are representative of one of the MS posted abroad by the immigration service or other authorities in order to set up and maintain contacts with the authorities of host country for helping to the prevention and combating irregular migration, the return of irregular migrants and the management of legal migration.

[19] Frontex was established on 26th October 2004 and it promotes, supports and coordinates EU MS and Schengen-associated countries in the management of the EU's external border and struggle against cross-border crimes.

Office (EASO) should have become more engaged in building asylum capacity in non-EU countries, such as support for resettlement activities.

The second momentum started during the last year of the "first phase" of the CEAS was the Hague Programme in November 2004. This multiannual Programme adopted by the European Council outlined ten priorities for the Union with the aim of enhancing the area of freedom, security and justice for the following five years (2004-2009). One of the ten priorities concerned the Common European Asylum System. The Hague Programme called for the implementation of the "second phase" measures of the CEAS, underlining the necessity to go beyond minimum standards as they did not create an efficient and desire asylum framework, to adopt a common asylum procedure and a uniform standard for those who granted asylum or subsidiary protection. In addition, the "second phase" should have developed and increased cooperation between national asylum administrations and the external dimension of asylum.

However, the Commission thought that before proposing new initiatives, there should have been the time for a reflection about the CEAS's results and especially, how it should have been developed and amended for the following years. Indeed, in June 2008 the Commission presented the Policy Plan on Asylum[20] - an integrated approach to protection across the EU. This Policy presented a three-pronged strategy:

- *"Better and more harmonised standards of protection through further alignment of Member States' asylum laws"*: the Commission wanted to amended already existing legislation and consider new measures. In particular, the Commission proposed to amend the Reception Conditions Directive in order to upgrade standards of reception and fulfil more harmonisation; the Asylum Procedures Directive that it should established common criteria for the identification of persons who seek international protection and thus establish a common asylum procedure and the Qualification Directive with the aim of creating a common interpretative approach for the international protection and creating uniform statuses;

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[20] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of Region, Policy Plan on Asylum-an integrated approach to protection across the EU, *Commission of the European Union*, 17th June 2008, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:EN:PDF .

- *"Effective and well-supported practical cooperation*" in order to improve convergence in asylum decision-making by MS as discrepancies about asylum decisions between MS have existed;
- "*A higher degree of solidarity and responsibility among MS, as well as between the EU and third countries*": the Commission proposed amendments with the final objective of having a common Union response thus sharing responsibility on the base of the principle of solidarity. The amendments concerned the improvements of some aspects of the Dublin system and of the EURODAC. Then, the Commission proposed sharing responsibility for managing refugees with third countries and countries of first asylum with a financial support and capacity building. Ultimately, the Commission suggested to consider the development of measures such as the RPPs, resettlement and facilitating a managed and orderly arrival for those in need of protection in order to improve solidarity with third countries.

In that vein and on the base of the Commission's Policy Plan on Asylum, in September 2008, the European Council approved the European Pact on Immigration and Asylum[21]. The European Council knew that a new impetus was needed for a common immigration and asylum policy, with the main objective of harmonising EU immigration and asylum policy while considering specific needs of each MS. This Pact referred to five commitments:

- *"Control irregular immigration and encourage voluntary returns to the countries of origin or transit";*
- *"Make border controls more effective";*
- *"Build a European framework for asylum";*
- *"Create a comprehensive partnership with non-EU countries in order to develop the synergy between migration and development";*
- *"Organise legal immigration taking into account priorities, needs and reception capacities determined by MS and encourage immigrants' integration".*

[21] Council of European Union, European Pact on Immigration and Asylum, 24th September 2008, 13440/08, https://data.consilium.europa.eu/doc/document/ST-13440-2008-INIT/en/pdf .

Since 2008, the most important achievements and reforms concerning asylum framework occurred thanks to the Hague Programme Conclusions, the Commission's Policy Plan on Asylum and to the European Council's European Pact on Immigration and Asylum and they were the following:

- The endorsement of the "second phase" of the CEAS (2008-2013) with the development of common standards and a deep cooperation to make sure that asylum seekers should have been treated equally in an open and fair system within the EU area;
- Innovation on border management have been made. Especially, it was bolstered the governance of the Schengen system by establishing a European Border Surveillance System[22] (EUROSUR) to hamper cross-border crimes and new charge and fund were afforded to the FRONTEX agency;
- In the field of return policy and in the struggle against the exploitation of immigrants improvements were made with the employment of MS's best practices and operational cooperation;
- Concerning the relationship with third countries, a dialogue has started under the GAM and bilateral agreements with Southern Mediterranean and Eastern Partnership countries started to being employ in order to address the deep-rooted causes of irregular and forced migration.

These represented the actions and policies under which the EU and its Member States were commitment from 2008 to 2013. That period was characterized by the first reforms that the EU firstly developed and then adopted. New measures, steps forward and a second period of reforms were established for the period related to the years 2014-2020.

[22] Set up in 2013, Eurosur is a framework for information exchange and cooperation between Member States and Frontex to improve situational awareness and increase reaction capability at the external borders.

1.3 The Lisbon Treaty

The Lisbon Treaty signed on December 2007, which entered into force on 1st December 2009, was developed in the same years when the Commission's Policy Plan on Asylum and the European Council's European Pact on Immigration and Asylum were adopted. These three documents rose within a similar asylum and immigration framework since thanks to the three documents, the EU should go beyond the minimum standards.

The Lisbon Treaty renamed as the Treaty of the Functioning of the European Union (TFEU) amended the Treaty on the European Union and the Treaty establishing the European Community. It brought asylum and immigration policy under Chapter 2 of Title V (area of freedom, security and justice) of the TFEU related to the Policies on border checks, asylum and immigration. The general provisions related to immigration and asylum are laid down in Article 67(2)[23] of TFEU which establish that the EU should have developed a common policy on asylum and immigration based on solidarity between MS and Article 78(2)[24] TFEU about the common European asylum system witch should ensure compliance with the principle of *non-refoulement* and with the Geneva Convention. Additionally, Articles 80[25] and 79(1)[26] TFEU which respectively provide for the principle of solidarity and fair sharing of responsibility, and the legal basis for aiming at illegal migration flows through the adoption of measures which tackle and prevent illegal immigration and trafficking of human beings. These legal provisions were took into account during the whole reflection and preparation of the Commission's Policy Plan and of the European Council's Pact of 2008. Therefore, these key principles were considered during the amendments of previous legislation and the development of new ones.

Following the entry into force of the Lisbon Treaty, the "second phase" of the CEAS, based on Article 78 TFEU was adopted with a transition from minimum standards to a common asylum procedure on the basis of a uniform protection status. Along with the adoption of the CEAS, the reforms of the three Directives which constitute the CEAS,

[23] Article 67(2) TFEU https://www.legislation.gov.uk/eut/teec/article/67/2019-05-01 .
[24] Article 78(2) TFEU https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX%3A12008E078 .
[25] Article 80 TFEU https://www.legislation.gov.uk/eut/teec/article/80 .
[26] Article 79(1) TFEU https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX%3A12008E079 .

were implemented and other measures and actions adopted in the Policy Plan and in the EC Pact of 2008 were developed.

The "second phase" of CEAS is governed by five legislative instruments and one agency:

- The Asylum Procedures Directive - Directive 2013/32/EU[27]- previously Directive 2005/85/EC, establishes the conditions for fair, quick and quality asylum decisions. It sets clear rules for registering and lodging applications, a time-limit for the examination of applications, rules on the rights to stay and appeals in front of courts or tribunals, it ensures an adequate support for those in need, border procedures and safe country concepts and training for decisions markers and access to legal assistance;
- The Reception Conditions Directive - Directive 2013/33/EU[28] - previously Directive 2003/9/EC, guarantees common standards of reception conditions in EU countries in accordance with the Charter of fundamental rights. Common standards include the access to housing, food, clothing, health care, education and employment; rules about detention of asylum seekers and alternatives to detention system and provide an individual assessment in order to recognize special needs of vulnerable persons;
- The Qualification Directive – Directive 2011/95/EU[29]- previously Directive 2004/83/EC, lays down the grounds for granting and withdrawing international protection or subsidiary protection status as well as the exclusion and cessation grounds and the rights allocated for

[27] Directive 2013/32/EU of the European Parliament and of the Council on common procedure for granting and withdrawing international protection (recast), *Official Journal of the European Union*, 26th June 2013, L 180/60, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032 .

[28] Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), *Official Journal of the European Union*, 26th June 2013, L 180/96, https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN .

[29] Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, *Official Journal of the European Union*, 13th December 2011, L 337/9, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF .

those who grant one of those statuses such as the right to a residence permit, travel documents, access to social welfare, employment etc;

- The Dublin Regulation – Regulation (EU) No 604/2013[30] (Dublin III) – previously Council Regulation (EC) No 343/2003, defines a workable criteria for determining the MS responsible for the examination of an asylum application. The criteria for establishing MS's accountability are, in hierarchical order : family considerations, recent possession of visa or residence permit in one MS and whether the person has entered EU irregularly or regularly;
- The EURODAC Regulation – Regulation No 603/2013[31]- previously Council Regulation (EC) No 2725/2000 on the "Eurodac" system for the comparison of fingerprints of asylum seekers. This Regulation endorses the determination of MS accountable under the Dublin Convention of 1990 and let law enforcement members to acquire asylum seekers' fingerprints towards EU database in order to prevent, detect or investigate crimes as murder or terrorism;
- The European Asylum Support Office (EASO) - Regulation (EU) No 439/2010[32] (Regulation EU 2021/2303[33] repealing the 2010 Regulation) - give operational and technical support to MS in the assessment of applications for international protection in the EU.

The two main problems of CEAS are, also presently, the harmonisation approach which required the Member States's willingness to cooperate in order to gain an acceptable degree of harmonisation which it is difficult to obtain; and the Dublin

[30] Regulation (EU) No 604/2013 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for the international protection lodged in one of the Member States by a third-country national or a stateless person (recast), *Official Journal of the European Union*, 26th June 2013, L 180/31, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604 .

[31] Regulation EU No 603/2013 of the European Parliament and of the Council on the establishment of 'Eurodac', *Official Journal of the European Union*, 26th June 2013, L 180/1, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0603 .

[32] Regulation (EU) No 439/2010 of the European Parliament and of the Council establishing a European Asylum Support Office, *Official Journal of the European Union*, 19th May 2010, L 132/11, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF .

[33] Regulation (EU) 2021/2303 of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, *Official Journal of the European Union*, 15th December 2021, L 468/1, https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32021R2303 .

Regulation. It was not amend within the second phase of the CEAS even though it has always posed several difficulties and pressure especially for those States which are located at the frontier of migrants' route towards Europe. There was an attempt to reform the Dublin Regulation in 2016.

1.4 The period 2014-2015 onwards

The years 2014 and 2015 are known as the years starting from which people, academics and politicians began to talk about the migration and refugees crisis which disrupted and shook the EU and EU's citizens. Since 2014, an increased numbers of refugees and migrants reached Europe and in particular, Europe's Mediterranean coast. Indeed, between 2013 and 2014, the arrival by sea raised from 60,000 to 219,000 (Figure 1).

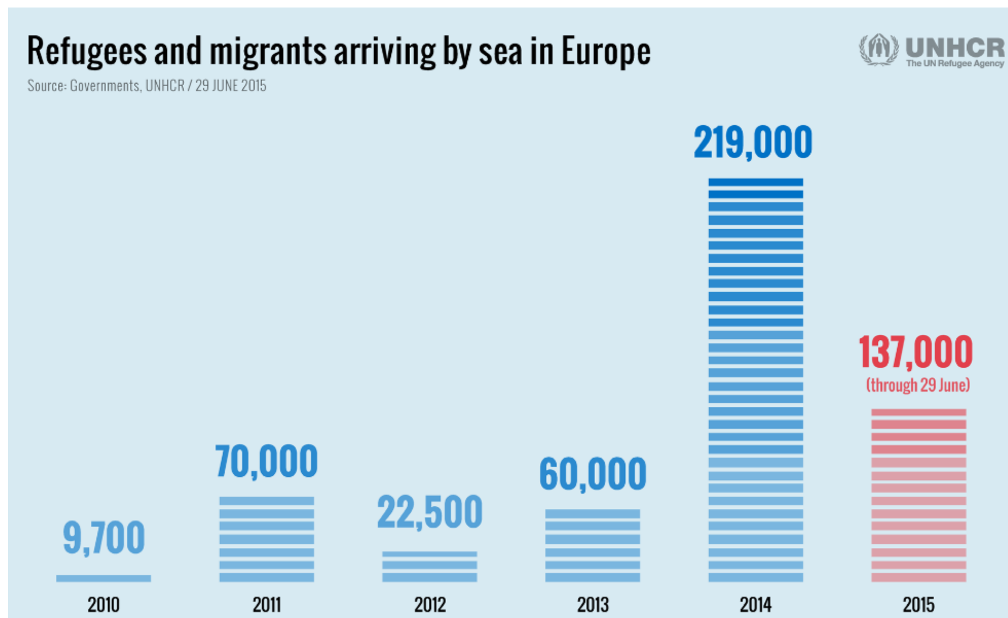

Figure 1- Refugees and migrants arriving by sea in Europe

Source: Governments, UNHCR/ 29th June 2015

People started to arrive in Europe as consequence of several factors. After a long Syrian civil war began in 2011, Syrians felt they could no longer live in their country and they set out; Turkey, Lebanon and Jordan already hosted million of Syrians refugees and they did not represented a place where to migrate; the conditions in Afghanistan and Iraq were unstable due to extremist groups and the instability in Libya allowed the increase of human trafficking.

The record of refugees and migrants who reached Europe was in 2015. Until 22nd December 2015, the arrivals reached at roughly 1,005,504 (IOM, 2015). The total was the highest migration flow since World War II. What also increased were the deaths at sea. From January to April 2015, 900 people died while trying to cross the Mediterranean sea and on 19th April 2015, a boat from Libya overturned off the island of Lampedusa (Italy) and over 700 people died. That represented one of the deadliest tragedies on the Mediterranean of that year. Indeed, the 2015 is known as the year of the "refugees crisis" and it has represented the year from which the EU migration approach started to change.

The 2015 refugee crisis in the Mediterranean sea has revealed the EU deficiencies and the structural limitations of the EU migration and asylum policy and it placed a huge pressure on the mechanisms and tools established within the Union. As an example, the migration crisis showed the weakness of already established tools for addressing migration and asylum in an external context such as the GAM of 2005 and its transformation, the GAMM of 2011. These measures were aimed at developing an external migration policy of EU, considering the cooperation with non-EU countries as a key factor. In 2016, knowing the internal EU limitations of asylum and migration policy, has started the second period of reforms of the Common European Asylum System.

The awareness of the EU deficiencies and limitations, if on one hand led to a period of reforms, on the other hand led to the adoption of the European Agenda on Migration[34] on 13th May 2015 by the European Commission. The Commission designed a coherent, a comprehensive but also a more security-centred approach taking into account ten points plan for immediate measures and for long-term actions. The immediate

[34] A European Agenda on Migration, Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions, *European Commission*, 13th May 2015, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240 .

measures were developed with a consensus of the European Council and the European Parliament and they were:

1. "*Saving lives at sea*": increasing of the EU funding for FRONTEX joint-operations and increasing the assets as ships and aircrafts;
2. "*Targeting criminal smuggling networks*": support for possible Common Security and Defence Policy (CSDP) operations of smugglers identification, capture and vessels' destruction but also more information in order to target them with the help of European Union Agency for Law Enforcement Cooperation[35] (EUROPOL) and FRONTEX;
3. "*Responding to high-volumes of arrivals within the EU – Relocation*": a redistribution base on a system for sharing responsibility among MS;
4. "A *common approach to granting protection to displaced persons in need of protection – resettlement*": an EU-wide resettlement scheme offering 20,000 places within EU;
5. "*Working in partnership with third countries to tackle migration upstream*": the EU and the European External Action Service[36] (EEAS) should have worked together with partner countries in order to prevent dangerous journeys;
6. "*Using the EU's tools to help frontline Member States*": the Commission wanted to set up a new "Hotspot"[37] approach and to develop emergency funding.

The long-term actions were:

7. "*Reducing the incentives for irregular migration*" by: tackling the root causes of irregular and forced displacement in third countries through EU external cooperation and humanitarian assistance; fighting against smugglers and traffickers through cooperation with third countries but also with the help of Member States's authorities in order to identify and prosecute local and internal criminal groups; implementing the return system with the application

[35] Europol's mission is to support its Member States in preventing and combating all forms of serious international and organised crime, cybercrime and terrorism. Europol also work with non-EU partner states and international organisations. It was established in 1998.

[36] The European External Action Service was created by the Treaty of Lisbon in order to strengthen the EU on the global stage. It represents the diplomatic service of the EU.

[37] Hotspots are centre at the external borders where personal data of migrants are recorded, they are photographed and fingerprinted within 48/72 hours of their arrival.

of the Return Directive[38] and helping third countries to meet their obligations to readmit their nationals;

8. "*Border management - saving lives and securing external borders*" by: reinforcing FRONTEX, reinforcing coastguards and increase the cooperation with them; increasing the Union's external border management also by using the new initiative of "Smart Borders" so using better and more IT systems and technologies; consolidating the capacity of third countries borders management;
9. "*Europe's duty to protect - a strong common asylum policy*": a consistent enforcement of the CEAS with the support of a new monitoring process and standards on reception conditions and asylum procedures but also a more adequate approach toward abuses of the asylum system and an improvement of the Safe Country of Origin provisions of the Asylum Procedure Directive to support the swift processing of asylum applications from countries considered as safe; a possible assessment of the Dublin system in 2016;
10. "*A new policy on legal migration*" through a well managed regular migration and visa policy, an effective integration of migrants and optimizing the development benefits for countries of origin.

Moreover, the European Agenda on Migration set out further steps towards a period of reforms of the CEAS, which were included in two packages of legislative proposals in May and July 2016.

What anticipated the two packages of reforms of 2016 were two Funds adopted in April 2014. The Asylum, Migration and Integration Fund[39] (AMIF) established for the period 2014-2020 with a total of € 3.137 billion and of the Internal Security Fund[40] (ISF)

[38] Directive 2008/115/EC of European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, *Official Journal of the European Union*, 16th December 2008, L 348/98, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115

[39] Regulation (EU) No 514/2014 of the European Parliament and of the Council laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combatting crime, and crisis management, *Official Journal of the European Union*, 16th April 2014, L 150/112, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0514 .

[40] Regulation (EU) No 513/2014 of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combatting crime, and crisis management and repealing Council. Decision 2007/125/JHA, *Official Journal*

for the period 2014-2020 and with a budget of € 1.004 billion. The AMIF focused on fostering a better migration flow management and boosted a common Union approach towards asylum and immigration especially considering four areas of implementation: asylum, legal migration and integration, return and solidarity. While the ISF aiming at police cooperation, preventing and combatting crimes and crisis management.

1.5 The 2016's reforms and challenges

The high number of arrivals of asylum seekers and migrants exposed the EU's limitations and difficulties about asylum and migration policy. Hence, in May 2016 the European Commission proposed the first step of reforms in the context of a major reform of the CEAS and in July 2016 the second step was designed.

The first step of reforms[41] included the reform of the Dublin Regulation, the strengthening of the Eurodac Regulation and the reforming of the European Union Agency for Asylum. The proposals aimed at creating a more fair and sustainable system for allocating asylum seekers where no Member States would left with a disproportionate pressure.

The European Commission called for reforming the Dublin system because its disproportionality among Member States' asylum application emerged and reforming it meant to have a more sustainable sharing of responsibility among MS, greater transparency, fairness and effectiveness. The reform of Dublin Regulation included:

- "*A fairer system based on solidarity*": it should have determined which MS is under pressure according to its size and wealth. If a country had received a disproportionate number of applicants, the following applicants could be relocate in a different EU country. Moreover, MS had the opportunity to temporarily not took part in the relocation but if it would be the case, it should have paid €250.000 for each applicant;
- "*A mechanism that also takes account of resettlement efforts*" implementing legal and safe pathways to Europe;

of the European Union, 16th April 2014, L 150/93, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0513 .

[41] Towards a sustainable and fair Common European Asylum System, European Commission press release, 4th May 2016, https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1620 .

- "*A more efficient system*" meaning a system with quick transfer requests, receiving replies and transfers of asylum seekers;
- "*Discouraging abuses and secondary movements*" with legal obligations for asylum seekers such as the duty to stay in the MS responsible for the application;
- "*Protection of asylum seekers' best interests*" especially for unaccompanied minors and an extension of the definition of family members.

The second propose considered the reinforcing of the Eurodac system. In order to support the reformed Dublin Regulation, the European Commission extended Eurodac purpose. That reinforcement should have helped MS to save and find data of third-country nationals which are considered irregular in their territory and thus proceed with their identification and readmission. Furthermore, in the new Eurodac system Member State should have been able to store detailed data thus, increasing the information available in order to facilitate returns and tackle irregular migration quicker.

Last proposal within the first step of reforms aimed at transforming the European Union Agency for Asylum into a fully-fledged European Union Agency for Asylum with a clear mandate and precise tasks such as convergence in the assessment of applications for international protection among the EU, deeper practical cooperation and information exchange between Member States.

In July 2016, the European Commission proposed a second step of reforms[42]. These included the Asylum Procedures Directive, the Qualification Directive, the Reception Conditions Directive and the Resettlement Framework. That second step aimed at creating a more efficient, human and harmonised asylum policy.

Firstly, the European Commission intended to substitute the Asylum Procedures Directive with a Regulation[43] in order to reduce differences in recognition rates of international protection between MS and to ensure:

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[42] Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy, European Commission press release, 13th July 2016, https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2433 .

[43] An Eu Regulation is a legally binding act and it is directly applicable in each Member States while a Directive is a legal act but it needs to be transposed nationally and each State can decide how to reach the Directive's goals and towards which instruments.

- "*Simplify, clarify and shorten asylum procedures*" within six months or less;
- "*Ensure common guarantees for asylum seekers*" as personal interview, legal assistance and special guarantees to those in needs and unaccompanied minors;
- "*Ensure stricter rules to combat abuse*": imposed obligations towards asylum seekers as cooperation with authorities and it imposed sanctions for abuse of process, secondary movements etc.;
- "*Harmonise rules on safe countries*" valid for all MS thus the Commission propose to establish European lists of safe third countries or to replace the national designations with European lists.

Secondly, the reform aimed at superseding the Qualification Directive with a new Regulation with the main objective of harmonising protection standards within the EU. Thus, each MS should have provided the same form of protection to asylum seekers. That Regulation comprehended :

- "*Greater convergence of recognition rates and forms of protection*" within the EU. Each Member States had an obligation to follow the same harmonised procedure offered by the European Agency for Asylum and harmonised the duration of international protection beneficiaries' residence permits;
- "*Firmer rules sanctioning secondary movements*": if an applicant would have been found in a State where he/she should not have been or resided, the five-year period needed to obtain the long-term resident status should have restarted;
- "*Protection is granted only for as long as it is needed*";
- "*Strengthened integration incentives*" concerning social assistance and social security.

Thirdly reform was about the Reception Conditions Directive in order to guarantee harmonised reception standards. The reform included:

- Harmonised "*standards and indicators on reception conditions developed by the European Asylum Agency Support Office*" and prepare update contingency plans;

- Availability of "*asylum seekers and discouragement from absconding*";
- "*Reception conditions should only have provided in the Member States responsible*";
- "*Earlier access to the labour market*";
- "*Common reinforced guarantees*" for applicants with special needs and for unaccompanied minors.

Lastly, the European Commission wanted to reform the existing EU ad-hoc resettlements schemes and established a permanent EU Resettlement Framework. The proposal aimed at affirming common EU rules for the resettlement and humanitarian admission of third country nationals, legal and safe pathways to the EU, decreasing the risk of massive irregular arrivals in the long term, establishing global resettlement and humanitarian admission initiatives and supporting third countries hosting people in need of international protection. The framework was based on two-year EU resettlement and humanitarian admission plan which the Council should adopt. The plan covered:

- The maximum total number of persons to be admitted;
- The contributions of Member States to this number;
- The overall geographical priorities.

1.6 The results of 2016's reforms and steps forward into the New Pact on Migration and Asylum

In 2017 the European Commission proposals were negotiated by the two co-legislators: the Council and the European Parliament. That path led to a first broad political agreement on five out of the seven proposals, such: the fully-fledged European Union Asylum Agency, the Eurodac reform, the Reception Conditions Directive, the Qualification Regulation and the EU Resettlement Framework. Nevertheless, the Council and the Parliament did not reach a common agreement on the reforms of the Dublin system and the Asylum Procedure Regulation.

Following, in September 2020 the European Commission submitted amendments to some of the proposals while it encouraged the two co-legislators to adopt the other proposals on which they agreed.

Indeed, on 29th June 2021 the Council and the Parliament reached a provisional agreement on the EU Asylum Agency Regulation and on 9th December 2021, the Council adopted it. Thus, from 19th January 2022 the European Asylum Support Office became the European Union Agency for Asylum (EUAA).

Additionally, the Commission advocated the Council and the Parliament to implement a quick adoption of the proposal of the Reception Conditions Directive in 2018 while the negotiation about the Qualification Regulation, blocked since 2018, reached a final agreement in December 2022 and on 14th May 2024, it was adopted.

Furthermore, in November 2017 the Council started negotiations with the Parliament on the draft rules of the EU Resettlement Framework and they ended in 2022. On 8th February 2024, the EU Member States' representatives supported three laws:

- Uniform rules on asylum applications;
- Better reception conditions;
- A new EU resettlement framework.

The adoption was on 14th May 2024.

Moreover, in September 2020 the Commission proposed the adoption of a New Pact on Migration and Asylum[44]. The New Pact has contained the amendments to awaiting proposals and new legislations and it has established a new comprehensive migration management system towards external borders, asylum and return systems, the Schengen area of free movement and the external dimension as "*the current system no longer works… the EU must move away from ad-hoc solutions and put in place a predictable and reliable migration management system*" (European Commission- press release, 2020). The Commission has proposed to improve the whole system through substantial consultations. The New Pact is based on five new legislative proposals and other key elements. The five new legislative proposals are :

- A new Screening Regulation of third country nationals at external borders without authorisation. It consists in a pre-entry screening and it includes identification, health and security checks, fingerprints and registration in

[44] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, *European Commission*, 23th September 2020, COM(2020) 609, https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF .

the Eurodac database. This process will accelerate the process of determination of the status and of the procedure that it should be apply;

- An amended proposal revising the Asylum Procedures Regulation which has included a more effective and flexible use of border procedures. The border procedures will establish a fast-tracking of the treatment of an application and they will assess well-founded claims, deliver faster decisions and contribute to effective return policies and a proper functioning of asylum;
- An amended proposal revising the Eurodac Regulation: the 2016's Commission proposal reached a political agreement between the two co-legislator however, the Eurodac Regulation has been amended in order to guarantee an upgrade Eurodac which it has overseed unauthorized movements, irregular migration and enhance returns. Moreover, the data will serve also for specific needs such as to resettled persons, etc. the Eurodac should be improved for meeting the data needs for the new migration and asylum management;
- A new Asylum and Migration Management Regulation : the Commission has decided that the Dublin Regulation would be replaced with a new instrument for a common framework for asylum and migration management : the Asylum and Migration Management Regulation. It should be based on a mandatory solidarity mechanism and flexibility for MS concerning individual contributions and it will establish a fair sharing of responsibility and it will target relocation or return sponsorship;
- A new Crisis and Force Majeure Regulation in order to address with resilience and flexibility situations of crisis. This will be possible with preparation and foresight towards an evidence-based approach;

The other key elements that have been included in the New Pact on Migration and Asylum are :

- Migration Preparedness and Crisis Blueprint : it has helped the EU to be reactive towards crisis management tools and lay down key institutional, operational and financial initiatives in order to ensure preparedness at EU and national level;

- A new Recommendation on Resettlement and complementary legal pathways such as the Talent Partnership supporting legal migration and mobility with key partners;
- A new Recommendation on cooperation on Search and Rescue (SAR) operations in the Mediterranean. It has to be established a more coordinated approach of SAR operations with the support of FRONTEX, with the cooperation between MS and cooperation with third countries of origin and transit;
- New Guidance on the Facilitators Directive[45] which it has established the facilitation of unauthorised entry, transit and residence and it has prevented the criminalisation of SAR humanitarian operations;
- An effective return policy and an EU-coordinated approach to returns towards stronger structure inside the EU and a deeper cooperation with third countries on return and readmission. This should be implemented with a recast of the Return Directive;
- A renew 2021-2025 EU Action Plan against migration smuggling;
- Partnerships with key third countries of origin and transit in order to develop beneficial cooperations base on creating economic opportunity and increasing stability and the achievement of both the EU and partner countries;
- Comprehensive governance at EU level for better management and implementation of monitoring by FRONTEX and Schengen' systems of quality control of management of migration.

The five new legislative proposals of the New Pact on Migration and Asylum have been agreed by the Council and the Parliament on 20th December 2023 and on 8th February 2024 the EU Member States' representative approved the Deal already reached between the Council and the Parliament on December 2023. The final adoption of the New Pact was on 14th May 2024.

[45] Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence, *Official Journal of the European Communities*, 28th November 2002, L 328/17, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0090 .

1.7 The EU's internal failure

The 2014/2015 migration pressure and the 2015's refugee crisis have fuelled the awareness of the EU internal migration management failure. That situation has led the EU to adopt two different answers: on the one hand, in 2016 the Commission proposed several reforms to migration and asylum policies, as already take into account, while on the other hand, the EU has decided to find other types of solutions outside its internal arrangements. The European Union has put to the top of its political agenda external action and the focus to operate "abroad".

The necessity and the choice to focus on external action and to develop an externalising approach was already declared by Jean-Claude Juncker in 2014 in his Agenda for Jobs, Growth, Fairness and Democratic Change[46] as candidate for the Presidency of the European Commission. In his Agenda, he explicitly called for a new policy on migration based on solidarity, a strong common asylum policy, penalization towards human traffickers, a need to secure Europe's borders and lastly, on dealing robustly with irregular migration trough cooperation with third countries and readmission. He made clear the necessity to tackle migration framework through the Union's Common Foreign and Security Policy (CFSP).

The EU competences about external action are regulated by Article 2(4) TFEU[47] and these competences are considered by Article 21 TEU[48] which states that Union's external action shall be followed principles that inspired the Union's creation, development and enlargement and by Article 24 TEU[49] which considered the mutual political solidarity and the general interests and convergence among MS when developing the common foreign and security policy.

Although the decision to address migration issues focusing on external actions was placed at the core of the EU agenda between 2014 and 2015, the EU, before the emergence of the crisis, already tackled migration and asylum policies through an externalising approach using two tools. These tools refer to the 2005 GAM which was

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[46] A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change, Opening Statement in the European Parliament Plenary Session, 15th July 2014, https://commission.europa.eu/document/download/ad3f4ceb-aed8-4cc5-b6bb-4c60f448a5f2_en?filename=juncker-political-guidelines-speech_en.pdf .

[47] Article 2(4) TFEU https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX%3A12008E002%3AEN%3AHTML .

[48] Article 21 TEU https://eur-lex.europa.eu/eli/treaty/teu_2008/art_21/oj .

[49] Article 24 TEU https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M024 .

"*designed to address all relevant aspects of migration in a balanced and comprehensive way, in partnership with non-EU countries*" and the 2011 GAMM. The external migration governance of this latter considered migration and asylum policies, cooperation aid and also the CFSP. Even if, this approach was a valuable one, the migration crisis has showed its weakness. Thus, in 2015 it was adopted the Agenda on Migration which has developed a system between development and externalisation.

The first Union's action towards externalisation has been the EU-Turkey Statement signed on 18th March 2016. It has represented the first emergency tool adopted by the EU and it has represented the pivotal point by which the EU has started to operate abroad and to find a Union's response to migration crisis. It has developed in order to stop migration flows coming from Greece.

The EU-Turkey Statement has been the first example of non-entrée practice and of the externalisation migration management to third countries.

In international migration law, the externalisation approach, better known as outsourcing, refers to the transfer of border control and the management of migration flows from destination states to transit states. The States of destination are entering into international agreements or political agreements with the transit countries according to which the second actors agree to welcome and retain migrants within their State. Under these type of agreements, destination States offer loans, technological means and logistical support to strengthen borders and create reception centres. In addition, they are responsible for the training of coastal warfare, border guards and personnel employed in reception centres. Thus, the destination States developing this framework, outsource their borders to transit States.

1.8 The policies of non-entrée

The term policies of non-entrée was first used by James Hathaway in 1992 in his article "The Emerging Politics of Non-entrée" and it refers to a commitment by which a State develop policies aim at ensuring that migrants shall not be allowed to arrive in its territory and they shall not entitle to access to their jurisdiction. Over the last three decades, meanwhile powerful States committed themselves to refugee laws, they also started to design and implement non-entrée policies.

The practices of non-entrée are divided into two generations: the traditional non-entrée and the cooperation-based on non-entrée.

The traditional non-entrée employed from the early 1980 and they were: visa controls and carrier sanctions, the establishment of "international zones" and high seas interdiction.

Visa controls consisted of not giving a visa for the purpose of seeking refugee protection and carrier sanctions referred to the those sanctions imposed to those who transport persons. The combination of these, force airlines and other transportation companies to carry out migration control at departure points.

Second type of non-entrée practice was the establishment of "international zones" such as airports where part of or all legal obligations of States shall not apply. Declaring an international zones meant to have the freedom to act without regarding of refugee and other human rights obligations.

Last traditional form was the high seas interdiction, an area considered an international zone and where State could act without taking into account refugee law. For instance, this non-entrée policy happened when the United State Coast Guard ships stopped persons in flight from the violence of Haiti in the 1990s.

Nevertheless, these traditional non-entrée politics proved to be vulnerable to both practical and legal challenge. The reasons are the following. Visa controls and carrier sanctions are not really efficient presently because refugees arrive with the help of organized smugglers who have adopted technologies to implement travel documents which are difficult to detect and who know how to explore new routes and how to pay off border officials. Concerning international zones, the concept by which a State can limit the geographical scope of its territory in order to escape for legal liability, it has been rejected and lastly, it has been considered doubtful that States can discourage refugees in high seas without violating its duty to protect. A proper example is the case of *Hirsi et al. vs Italy*[50], where a Grand Chamber of the European Court of Human Rights (ECtHR) has considered that push-backs in high seas were in breach of the principle of *non-refoulement*.

[50] European Court of Human Rights, Case of Hirsi Jamaa and others v. Italy, 23th February 2012, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-109231%22]} .

Thus, it became clear that the first generation of policies of non-entrée could no longer provide developed States with a successful and legal means to avoid their obligations under refugee law.

The second generation is the cooperation-based non-entrée practises. This new generation aims at overcoming the weakness of the first one and these new politics often take into account practises in the territory or under the jurisdiction of States of origin and/or transit.

This geographical reorientation, considering to be legally instrumental, has taken place because it was assumed that actions developed under the jurisdiction or the territory of other countries could be considered legally risk-free and at the same time the developed states, in doing so, could isolate themselves from the responsibility arising from international obligations.

The second generation of non-entrée include seven variants which can take place separately or in tandem. These variants are based on:

1. Diplomatic relations: developed states try to control migration by deploying diplomatic relations with key third countries of origin and/or transit. The EU is actively engaging in diplomatic relations with key Mediterranean and Eastern European states;
2. Direct financial incentives provide to partner states of origin or transit. One example has taken place in 2009 under the Treaty on Friendship, Partnership and Cooperation between Italy and Libya. Under this Treaty, Italy granted to Libya $5 billion over a period of twenty years in exchange of taking back intercepted refugees and other migrants and guarantee patrols in order to prevent migration towards Europe;
3. Provision of equipment, machinery and training to authorities of partners countries. An example is again concerning Libya who has received from Italy and EU countries border control equipment like radars, night vision goggles and patrol boats;
4. Deployment of immigration officials of the destination country to work with authorities in the country of origin and/or transit. In 2004, the EU posted at airports and border crossing point of countries of origin and transit a network of immigration officers of Member States;

5. A program of joint or shared enforcement between the destination country and the countries of origin and/or transit. Since 2010, border guards of twenty-four EU Member States have been established to the border between Greece and Turkey in order to preclude the entrance into Greece;
6. Direct migration control role of the destination country within the territory of the cooperating partner. It has been grant to EU ships to intercept migrants in the territorial waters of third countries such as Libya, Senegal and Mauritania;
7. International agencies tasked by developed states in order to intercept refugees and other migrants when they are still under the jurisdiction of country of origin or transit. The key EU international agency tasked to deploy joint operations at the external border of the Union is FRONTEX.

The following chapters are going to describe and analyse three examples of non-entrée practices: the EU-Turkey Statement of 2016, the Memorandum of Understanding (MoU) between Italy-Libya of 2017 and the Italy-Albania Agreement of 2024. Each of these Deals is based on several variants of politics of non-entrée and this thesis is going to take into account only these variants.

Firstly, the EU- Turkey agreement is an example of diplomatic relation, direct financial incentives, program of joint or shared enforcement operations between Greece and Turkey and international agencies present in Greece.

Secondly, the Italy- Libya Memorandum consists of diplomatic relations, financial incentives, direct provisions of border control equipment, joint enforcement operations in Libyan territorial waters and international agencies present in the Mediterranean Sea as FRONTEX.

Thirdly, the Italy- Albania treaty includes diplomatic relations, direct provisions of equipment, border officials, direct financial incentives and deployment or second immigration officials of the destination country to work with authorities.

These three represent proper examples of non-entrée policies, externalisation of migration management and border control and of the EU approach of "governance from distance" through several actions and tools which aim at controlling migration and limiting it.

Moreover, it is possible to label the three agreements within the soft-law instrument in the externalisation of migration management.

1.9 The soft-law instruments

The use of soft-law instruments in the EU and Member States external and internal relations is not a new phenomena. In the last 50 years, this type of instrument started to be use more in order to tackle more complex issues and technical problems as the migration management of the EU and its Member States. This migration management can be intended as a new type of governance because it uses tools to operate outside of legislative frameworks and to Deal with specific migration emergencies and towards which the EU shift from hard law to soft law instruments.

The soft-law instrument and thus, the three agreements do not follow the ordinary legislative procedure but it can overcome the procedure by adopting administrative or executive type of agreement in "simplified form". This mean that through the employment of soft-law instruments, the executive power can elude the parliamentary *ex ante* and *ex post* control and checks which they may arise criticisms.

Indeed, the soft law agreements are characterized by their fluidity, hyper-simplification and by their flexibility and promptness.

This type of instrument arise three consequences. Firstly, the enforcement of soft-law is more intricate rather than hard law; secondly, concerning migrants' rights, the soft law agreements may complicate the appeal of migrants to national or European courts and thirdly, the soft law instruments does not have binding legal effect and therefore an international dispute could arise if one of the parties fails to comply with its obligations.

The EU-Turkey migration Deal is considered to be a soft law instrument because the process of adoption was unusual. It was adopted by the European Council in the form of press release without following the ordinary procedure established by article 77 and 78 of TFEU. Indeed, what happened was that the European Council limited the prerogatives of the European Parliament, a organ of control which has to be involve in the procedure according to article 218 TFEU. Although, the Treaty has this soft nature is not binding, it has legal effects.

The Italy-Libya Memorandum of Understanding has soft nature because it was adopted directly between the Prime Minister of the countries without considering the National Parliaments which is mandatory for the adoption of international agreement as indicated in Article 80 of the Italian Constitution.

Instead, the Italy-Albania Agreement has not soft law nature as it was adopted by both the Italian Chamber of Deputies and by the Italian Senate and also by the Albanian Parliament.

Two of the three Deals represent extraordinary instrument of soft law.

1.10 Conclusion

The chapter has showed the EU legislative path, starting from the first EU laws about the common asylum and migration framework. The turning point was represented by the years 2014 and 2015 when the EU has suffered a setback following the refugees crisis. Since then, the EU has developed a new era based primarily on non-entrée practices and towards a EU governance "from distance". These two approaches are represented by the three Treaties which will be consider in the following three chapters: the EU-Turkey Statement, the Italy-Libya Memorandum of Understanding and the Italy-Albania Agreement.

CHAPTER II – THE EU-TURKEY AGREEMENT

2.1 Country frame: Turkey

Turkey is a multiparty Republic with one legislative house lying partly in Asia and partly in Europe. Throughout history, its distinct geographical position has led Turkey to represent as both a barrier and a bridge between the two continents. It is located at the crossroads of the Balkans, Caucasus, Middle East and eastern Mediterranean and it is bounded on the north by the Black Sea, on the northeast by Georgia and Armenia, on the east by Azerbaijan and Iran, on the southeast by Iraq and Syria, on the southwest and west by the Mediterranean Sea and the Aegean Sea and on the northwest by Greece and Bulgaria (Figure 2).

Figure 2 – Turkey

Source: Encyclopaedia Britannica, 8th April 2024

Turkey is the largest countries among the region in which is located in terms of territory and population that in 2024 is 86,187,000. The President of State and Government is Recep Tayyip Erdoğan and the capital is Ankara.

Furthermore, Turkey is part of the Balkan Route, in particular of the Eastern Mediterranean route. The Balkan Route is composed of the Western Balkan route and of

the Eastern route. This latter is that part of route that from Turkey connects by sea the Greece while the Western Balkan route refers to the path through the regions of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia. The Balkan Route is the main route by which migrants reach the EU by land while in the first two months of 2024, the Eastern Mediterranean route represents the second most active migratory route after the Western African route[51], with a number of detections of irregular crossings more than doubled to 9150 (+ 117%) according to FRONTEX data. The top nationalities are Syrians, Afghans and Egyptians.

Highest increase were also reported in 2022 where about 42 800 (+ 108%) irregular border crossings were detected on the Eastern Mediterranean route.

Turkey is one of the country which host the largest number of refugees, as of 31st August 2023 the total number is of 3.298.817 million Syrian refugees under temporary protection along with slightly over 300,000 persons from other nationalities.

Turkey is a party of the 1951 UN Refugee Convention and of the 1967 Protocol however, it has apply the geographical limitation which states that only asylum seekers from European countries can obtain refugee status in Turkey.

Lastly, Turkey has also signed the European Convention on Human Rights thus it is obliged to follow and respect the international law standards such as the principle of *non-refoulement* towards asylum seekers.

2.1.1 Migration and asylum policies in Turkey

Throughout the course of history and due to its strategic geographical position, Turkey has been both a country of emigration, a country of immigration and also a transit country.

In contrast to the Ottoman Empire era where a certain degree of separate jurisdiction to the empire's religious minorities was granted and where different ethnic and religious groups were allowed to maintain their cultural identities within the administrative, political, and economic system, the period prior the institution of the modern Turkey was characterized by phases of Turkification and Islamisation. The whole

[51] The Western African route connects Western African countries and regions with the Canary Islands in Spain .

nation-building process was based on a concern about developing a homogenous sense of national identity: the Turkish Muslim identity, the so-called "Turkishness". This took place through two patterns: the emigration of non-Muslim populations from Anatolia and the immigration of Turkish Muslim populations from the Balkans countries. The priority was given in order to stimulate and receive immigrants who were either Muslim Turkish identity as Albanians, Bosnians, Pomaks, Circassians and Tartas. From 1923 to 1997 there were more than 1.6 million immigrants in Turkey and they were assimilated into the "Turkish" national identity. Thus, it was within this framework that the State apply the term "immigrant" for these Turkish Muslim populations which immigrate to Turkey.

The management of immigrants was the main interest of the State and it was during that period that emerged the institution for settling the immigrants in 1872 which was transformed into the General Directorate on Tribes and Immigrants in 1916. It followed laws and institution such as the Constitution in 1924, the Ministry of Population Exchange, Development and Settlement in 1923 and the Law on Settlement in 1934.

The Law on Settlement has been a great example in order to understand the intention of the State to homogenize the entire nation around a single Turkish Muslim identity. It had a great importance for Turkifying the population and it represented one of the cornerstones of the nation-building process as it concerned the Turkish citizenship. The Law 2510/1934 Settlement Act set up two statuses by promoting the immigration and integration of those of "Turkish origin and culture", meaning as the Turkish descent, and hindering the entry of those who did not meet these standards as migrants or refugees. Therefore, this law drew a distinction between the Turks descent identifies as migrants, the non-Turkish Muslims identified as guests and other immigrants identified as foreigners. Even though this law was updated in 2006 in order to confer more rights to minorities, the idea about the immigration and settlement of non-citizens without Turkish descent and culture has not changed. This Law continues to be criticized for issues about ethnic discrimination and for representing a policy of forceful assimilation of non-Turkish minorities through a compulsory and collective resettlement.

Following the emergence of the Republic, the period between 1950 and 1980 was characterized by a mass emigration of Turkish and Muslim populations abroad. The diaspora concerned mainly the labour migration, both low-skilled and high-skilled labour, to Europe and other industrialised countries. The state policy in Turkey about the

emigration of labour force was based on facilitating remittance flows and on the easy return of labour migrants. Turkey has been one of the top ten remittance-receiving countries and the remittances coming from abroad have had a remarkable impact on Turkey's economy, especially in the 1960s and 1970s. In the post 1980 era, the Turkish State started to be active in social, cultural and political measures towards emigrants abroad. It boosted its engagement by developing legal and official incentives in order to preserve ties and enhancing their conditions abroad.

During the same period of Turkey's integration with the global migration regime, Turkey signed the 1951 UN Refugee Convention and the 1967 Protocol which established the status of refugees and asylum seekers.

The period of government-supported major immigration into Turkey lasted until the 1970s when immigration started to be less appreciated and discouraged as population grew enough and the land gave to immigrants became scarce. The last significant wave of immigration was in 1998 when 300,000 Pomaks refugees were expelled from Bulgaria. Turkey developed an open-door policy shaped by the Muslim identity of the refugees and granted to them a full international protection. The Turkishness continued to shape the type of immigration and settlement policy. Changes happened in the late 1980s when an increased number of asylum seekers arrived in Turkey.

In the 1980s and especially in the late 1980s, a new pattern of immigration of Muslim "non-Turks" emerged: as consequence of the politics of Afghanistan, Iraq and Iran and of the humanitarian insecurity after the Iran-Iraq war and of the Gulf crises, new migrants enter to Turkey seeking asylum. This new path of immigrations of non-Turks led the State to take new proposal concerning the management of migrants and asylum seekers, even though they were not considered refugees and international refugee law was not take into account.

In the 1990s, Turkey experiences another new form of immigration: the irregular immigration of nationals of neighbouring countries, EU nationals and transit migrants. Turkey approved the entrance of people coming from Armenia, Azerbaijan, Georgia, Iran, Russia, Ukraine, Moldova and Central Asia republics who could enter freely either with visas or without visas. Many of them were involved in the small-scale trade and overstayed in Turkey resulting then illegal workers. Since the second half of 1990s,

irregular migrants using Turkey as a transit country have grown and these people were coming from Iran, Iraq, Afghanistan, Pakistan and Syria as well.

These irregular migrants were considered by Turkish law as "illegal" and until the 1994 Asylum Regulation, Turkey established the conditions of entry, exit, stay and residence of aliens but there were no laws regard asylum or labour. Only with the emergence of the 1994 Asylum Regulation were granted the conditions for applying asylum in Turkey even though the geographical limitation of the 1951 UN Refugee Convention ensured limited opportunity for being recognised as such. This law has recognized two types of asylum seekers: the one under the 1951 UN Refugee Convention and the non-European asylum seekers aiming at the resettlement to third countries. Since the late 1990s, resettlement agreements with countries of origin and destination were established by Turkey.

The 2000s marked the turning point in migration and asylum policies. Several external and internal developments have shaped Turkey's response towards migration and asylum. Globalisation, Turkey's liberal market economy and its economic growth, democratization, the country's position at the doorstep of the EU and the country's effort in order to become a regional force have made Turkey an attractive destination for migrants but even more, these factors have transformed Turkey as a migration transition country. Another factor which took place in the 2000s was the Turkey's ambition to become an EU Member States. These several changes have led to altering the State's traditional concept of national identity.

It has been evaluated that in two decades, there were more than a half million transit migrants coming from the Middle East, Asia and African countries who have tried to make their way to Europe.

A focal point in the 2000s has been the willingness of Turkey to becoming an EU Member States and the following Turkey-EU negotiations. It was in this context of EU accession that Turkey went through an institutional and policy reform process and the EU has been an important driving force within this context. Especially from 2001, Turkey has began gradual changes to align its asylum legislation to the one of the EU.

It developed border controls; it strengthened the capacity of the Ministry of Interior and Coast Guard and in 2005 the government adopted the "National Action Plan of Turkey for the Adoption of the EU Acquis in the Feld of Asylum and Migration" which

arranged the tasks and the timetable that Turkey foresees to follow in order to prepare for the development of a national status determination system, remove the geographical limitation and adopt EU directives on asylum and migration. Furthermore, in 2007 it was endorsed the frame of the "Action Plan on Integrated Border Management" in cooperation with EU Member States, the UNCHR and the International Organization for Migration (IOM) and in 2013 Turkey signed a Readmission Agreement[52] (RA). It established that migrants crossing Turkey during their transit towards the EU via irregular means would be readmitted to Turkey and in return, if Turkey will succeed in the criteria of visa liberalization roadmap[53], Turkish citizens will not need visas in order to enter in the EU. In the same year, Turkey adopted the Law on Foreigners and International Protection (LFIP) which put together two separate laws: the Law on Aliens and the Law on Asylum in order to grant Turkey with a modern, efficient and fair management system in line with international and European guidelines. Before the adoption of the LFIP, Turkey only recognised refugee status but this law allowed to recognise a deeper protection of asylum seekers and refugees and to grant additional protection categories and the consequences rights attached. The LFIP envisages four main protection statuses: the refugee status, the conditional refugee, the subsidiary protection and the temporary protection status. This law slightly represented a new trend of Turkey's migration policy less state-centric. Another tendency of this less state-centric was the institution of the Migration Policies Council, composed of local and international organizations as well as ministers who propose migration initiatives. In 2014, it was established the Directorate General of Migration Management (DGMM) which is the State Department responsible for immigration issues, under which since 2018 the Combating Irregular Migration Department has developed actions in order to combat irregular migration such as it has carried out voluntary repatriation activities in cooperation with international organisation, public institutions, agencies and civil society organisations, it has made sure a proper coordination between state bodies including law enforcements units and it has

[52] Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, Official Journal of the European Union, 7th May 2014, L 134/3, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507(01) .
[53] The Roadmap towards a visa free regime with Turkey is a document which has set up 72 requirements organized in five thematic groups which Turkey has to fulfil. The five thematic groups are: document security, migration management, public order and security, fundamental rights and readmission of irregular migrants.

accomplished the provisions of the RA. Moreover, for the period 2015-2018 it was supported an Action Plan for striving against irregular migration and for the period 2019-2025 it has been enforced another Strategy Document and National Action Plan for Irregular Migration.

The Combating Irregular Migration Department under the DGMM is also responsible for the implementation of transit migration policies. The transit migration policies[54] include fifth measures:

1. "*Curbing smuggling activities*": in 2004 a human smuggling- related law was implemented and in 2010, several sections of the LFIP were updated as it has been expanded the definition of smuggling;
2. "*Strengthening controls over internal mobility of migrants and asylum seekers*": Turkey has a memorandum of understanding with FRONTEX since 2012, it has been raised a security wall at the Turkey-Syria and at the Turkey-Iran borders and in 2013 the authorities have enhanced border security using technological infrastructures;
3. "*Taking measures for the more efficient return of irregular migrants*": after the adoption of the EU-Turkey Statement in March 2016, Turkish security forces have instituted more internal controls over the mobility of migrants and refugees within the country and over the borders;
4. "*Increasing detention capacity*": Turkey has built detention centres in the context of the EU negotiations using financial and logistical funding grant by the EU;
5. "*Signing RAs with source countries*" in order to manage irregular migration such as Syria, Greece, Pakistan, Nigeria, Romania, Yemen, Norway and so on and so forth. Presently, the official discourse highlight the attention on voluntary return and detained irregular migrants even though according to some experts, voluntary return are rare and migrants sign voluntary return without deeply understand it.

In the course of 2000s when Turkey was implementing institutional reforms with the aim of getting closer and closer to EU standards, the 2011 Syrian civil war broke out

[54] Migration-relevant policies in Turkey, MIGNEX Background Paper, February 2023, https://www.mignex.org/sites/default/files/2023-02/d053j-mbp-migration-relevant-policies-in-turkey-v2-2023-02-15.pdf .

and it caused a Syrian refugee crisis. Starting from 2012 and especially in 2015, million of Syrians asylum seekers sough refuge in Turkey. Turkey's policy towards Syrians refugees included three principles: an open-door policy, meeting basic needs, and the principle of *non-refoulement*. At first, Syrians were treated as "guests" and as temporary residents because Turkey thought that the war would not lasted for long time thus, permanent solutions were not developed. However, civil war lasted longer than expected and an humanitarian crisis effected social life and public order in Turkey.

The UNCHR stated that in 2022, Turkey hosted 3.7 million registered Syrian refugees in addition to nearly 320,000 non-Syrians under international protection. Recent data dated on 4th April 2024 from the Turkish Interior Ministry- Presidency of Migration Management reports that the number of Syrians under temporary protection are 3.120.430.

Since October 2014, Syrians have received the official government status of temporary protection which has to be renewed every year. The Turkey's Temporary Protection Regulation[55] which oversees the status and rights of Syrians, has many resemblances to the Directive 2001/55/EC about temporary protection of the EU.

Moreover, Turkey's asylum legislation has produced a multi-layered and differentiated international protection scheme. Therefore, there is a legal differentiation system concerning registration, legal status and rights granted to them, depending on the type of asylum seekers. The international protection can take the form of refugee status, conditional refugee status or subsidiary protection and temporary protection depending on their origin as Turkey apply the geographical limitation on the 1951 UN Refugee Convention. In Turkey there are three categories of displaced persons: Syrians under temporary protection (SuTP), non-Syrians under international protection and undocumented migrants.

Firstly, Syrians under temporary protection are Syrians national, stateless persons and refugees from Syria who came to Turkey after the Syrian civil war of 2011 and to whom Turkey grant temporary protection. This status is regulated in the Regulation on Temporary Protection dated 2014, published in the framework of Article 91 of the LFIP, which establishes the terms of registration and stay in Turkey but without mentioning the

[55] Temporary Protection Regulation, Council of Ministers Decision No. 2014/6883, 13th October 2014, https://www.refworld.org/legal/decreees/natlegbod/2014/en/108062 .

length of protection. On this basis, to SuTP are conferring rights and services with the *sine qua non* to register with the authorisation in a province choose by themselves in order to be afforded temporary protection status. When they have obtain their card and identity number, they can benefit from the right to access public services as the healthcare and education but only in the province where they are registered. Furthermore, the mobility among the provinces is subjected to the approval of the Provincial Departments of Migration Management of their province of submission.

Secondly, the non-Syrian asylum seekers, who apply to UNHCR of Turkish authorities to seek asylum in Turkey. Asylum seekers from non-European countries, if recognised, are considered "conditional refugees" and eventually they are relocated to third countries where they can enjoy refugee status and durable solutions. The conditional refugee status has to be understand as that status that limits the stay in the country "*until the moment a recognised conditional refugee is resettled to a third country*". In Turkey, they are placed to a "satellite city" where they shall reside and prove their presence signing on regular basis. These provinces designed as "satellite cities" are often located away from the western coast and land borders. If they are granted the conditional refugee status, they can stay in the country but with some basic rights and they are not allow to access to residency.

Thirdly, undocumented migrants who can be: international migrants not registered, a person in detention, a rejected asylum seeker or someone who never registered.

Following the implementation of the Temporary Protection Regulation for Syrians in 2014, the national system has started to accept the permanent nature of Syrians as evidenced by the 2016 Work Permit Regulation and by the 2017 Citizenship Regulation. These three regulations were a response to the Syrian refugee crisis. Nevertheless, the debate about refugees' return has becoming more frequent since 2018, when hostility against Syrians has increased.

The 2016 Regulation on Work Permit is also available for non-Syrians under international protection. However, the working condition for SuTP and non-Syrians are similar to the one of undocumented migrants meaning that they have to rely on informal labour market. Similar is also the case of housing as they have to rely on informal housing

because Turkey do not provide shelter to urban refugees[56] except for unaccompanied minors.

2.2 The EU-Turkey relationship

Since 1990s, Turkey's crucial geographical position between Asia and Europe has led to the creation of complex networks of relations between the two actors.

The first tie took place in 1959 when Turkey applied to join the European Economic Community (one of the predecessors of the EU). A first response to the Turkey's request was the 1963 EU-Turkey Association Agreement named as "the Ankara Agreement". It entered into force on 1st December 1964 and it was aimed at fostering trade and economic relation between the two partners and to progressively establish a custom union.

Following, in 1987 the negotiations about the Turkey's EU accession began and in 1999 Turkey became a formal candidate Member State of the EU. In 2001, the EU Council established the conditions, the objectives and the standards contained in the Accession Partnership with Turkey. Since 2001 onwards, the long-awaited accession path has began.

Driven by the pre-accession and by the accession processes in the EU, Turkey has embarked in the reforms about its migration and asylum policies. An important milestone, already mentioned, was the adoption of the "National Action Plan of Turkey for the Adoption of EU Acquis in the Field of Asylum and Migration" in 2005. Thus, Turkey willing to adhere to the EU has started a process to adapt and comply with the EU standards.

Taking into account its strategic role as transit migration country and the increase of migration flow, EU and Turkey decided to adopt the 2013 Readmission Agreement trying to develop a system of readmission of irregular migrants and stateless persons. This Agreement was linked with the Visa Liberalization roadmap, one of the main commitment and concern of the Turkey government.

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[56] Urban refugees are consider both Syrians under Temporary Protection and non-Syrians under international protection .

Since the second half of 2015 it took place several bilateral meetings aimed at defining new engagements, actions and strategies, also financial ones, about the EU-Turkey cooperation. The first main result of these meetings has been the conclusion of the EU-Turkey Joint Action Plan in November 2015. Known as the year of the refugee crisis, in 2015, according to the UNHCR, nearly one million of refugees and migrants arrived irregularly in Europe by sea and more then 856,723 refugees and migrants passed through Turkey and arrived in Greece. Thus, it became clear the reason why the cooperation with Turkey became an essential part of the European policy to manage migration. As establish in the memo of the European Commission about the EU-Turkey Joint Action Plan[57] of October 2015, "*challenges are common and responses need to be coordinated*".

The Plan tried to tackle the crisis in three ways: "b*y addressing the root causes leading to the massive influx of Syrians*", "*by supporting Syrians under temporary protection and their host communities in Turkey*" and "*by strengthening cooperation to prevent irregular migration flows to the EU*". They agreed to deploy several actions in order to achieve the aforementioned goals. In turn, MS have confirmed their effort to facilitate the visa liberalization process for Turkish citizens and they backed Turkey with financial means. Indeed, the Commission established the Facility for Refugees in Turkey (FRiT) which it focused on humanitarian assistance, education, migration management, health, municipal infrastructure, and socio-economic support.

In 2007, in addition to this financial means, the EU also activated the Pre-accession Assistance (IPA) to promote reforms in the EU-candidate countries. Fort the period 2014-2020 it was developed IPAII which distributed fundings for capacity building in the migration management field and later, it has been incorporated into the FRiT. Under IPA and IPAII, Turkey received 9,3 billion Euros and for the period 2021-2027, the EU established IPAIII for the seven candidate countries, including Turkey. Furthermore, in 2014 it has established the EU Trust Fund in Response to the Syrian Crisis (Madad Fund) which grant fundings for the asylum and migration activities in Turkey. Until January 2022, for this Fund the EU has provided a total of 2,4 billion Euros plus it has provided

[57]European Commission, EU-Turkey Joint Action Plan, 15th October 2015, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5860 .

more than 730 million Euros for other projects about education, health and livelihoods in Turkey.

The EU-Turkey cooperation further developed between February and March 2016. The main goals should have been to find new and brave initiatives in order to tackle irregular migration, destroy the business model of smugglers, close human trafficking routes, protect the external borders and pose an end to the migration crisis. Moreover, it aimed at breaking the link between crossing the sea and the settlement to Europe.

The EU and Turkey shared these objectives which were first announced on 7th March 2016 and then defined in the meeting of 18th March 2016 when it was adopted the EU-Turkey Statement.

During the same meeting when the Statement was adopted, the EU and Turkey reaffirmed their engagement in the Joint Action Plan adopted in November 2015. They noticed that some progress have already been achieved such as the Turkish Work Regulation of 2016 for Syrians under temporary protection, the new visa requirements for Syrians and other nationalities, the rise of the security efforts by the Turkish Coast Guard and the intensification of information sharing. The EU has started to deploy 3 billion Euros under the FRiT and the work towards the Visa Liberalization was moved up.

2.3 The EU-Turkey Statement

On 18th March 2016, the EU Heads of State or Government and Turkey agreed to stop the irregular migration from Turkey to EU and switch it with legal channels of resettlement of refugees to the EU. In order to achieve these goals, they agree on:

1. "*All new irregular migrants or asylum seekers whose applications have been declared inadmissible or unfounded crossing from Turkey to Greek Island as of 20th March 2016 will be returned to Turkey*". This it should have been a temporary and extraordinary step designed in order to end human suffering;
2. "*For every Syrian being returned to Turkey from the Greek Islands, other Syrians will be resettled to the EU from Turkey directly"* (1:1 resettlement scheme). The resettlement will take into account the UN Vulnerability Criteria;

3. "*Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU*";
4. "*Once irregular crossings between Turkey and the EU are ending or have been substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated*";
5. "*The fulfilment of the visa liberalisation roadmap will be accelerated with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016. Turkey will take all the necessary steps to fulfil the remaining requirements*";
6. "*The EU will, in close cooperation with Turkey, further speed up the disbursement of the initially allocated 3 billion Euros under the Facility for Refugees in Turkey. Once these resources are about to be used in full, the EU will mobilise additional funding for the Funding up to an additional 3 billion Euros to the end of 2018*";
7. "*The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union*";
8. "*The accession process will be re-energised, with Chapter 33 (financial and budgetary provisions) to be opened during the Dutch Presidency of the Council of the European Union and preparatory work on the opening of other chapters to continue at an accelerated pace*";
9. "*The EU and Turkey will work to improve humanitarian conditions inside Syria*".

From the 4th April 2016 returns from Greece to Turkey and the resettlement of Syrians refugees from Turkey to EU have started to take place.

The authorities of Greece and Turkey are the two main actors involved in the implementation of this Agreement. They have to deploy both legal and operational work while the EU should assist with expertise, advice and fundings the work of both Greece and Turkey. Moreover, the EU guarantees its help towards staff of the EU Agencies such as FRONTEX and EASO which they should deploy both experts and officers for readmission processes.

When this Declaration has came into force, it has became clear that since 2015 emergence of refugees and refugees crisis, Turkey's role as a buffer has became essential to the EU migration management efforts.

Moreover, the Statement has laid down specific guarantees that, in particular Greece should ensure to irregular migrants being returned to Turkey. Firstly, asylum seekers which applications would declared inadmissible or unfounded are going to return to Turkey under the bilateral readmission agreement between Greece and Turkey. From 1st June 2016, it has been replaced by the EU-Turkey Readmission Agreement.

Secondly, the two legal basis under which an asylum seeker is going to return to Turkey are considering Turkey as:

- first country of asylum (Article 35 of the Asylum Procedures Directive) is the country where the asylum seekers has already obtain the refugee status or where the person is sufficiently protected there;
- safe third country (Article 38 of the Asylum Procedures Directive) is the third country where the asylum seeker has not received protection there yet but the third country can ensure effective access to protection to the readmitted person.

Thirdly, to asylum seekers should be guarantee safeguards as that their applications should be treated on a case-by-case basis, in line with the EU and international law standards and the principle of *non-refoulement* and a special account must be given to vulnerable groups and finally, applicants have the right to appeal the decision.

Lastly, asylum seekers awaiting return to Turkey are going to accommodate either in open or in closed Reception and Identification Centres on the Greek islands.

2.4 The implementation of the EU-Turkey Statement

Since 18th March 2016, Greece and Turkey have undertook legal changes with the purpose of ensuring full respect of the EU and international law and implementing the Statement.

On 3rd April 2016, Greece adopted the Law 4375[58] which developed a legal framework for the implementation of the concept of "first safe country of asylum" and "safe third country", of fast-track procedures for the examination of applications and for the implementation of appeal procedures. While, on 6th April 2016 Turkey amended the Temporary Protection Regulation[59] in order to specify that Syrian nationals when returning to Turkey shall request and be granted temporary protection and this it should cover both the already registered and non-registered Syrians.

The implementation of the EU-Turkey Statement began to be analysed by the EU Commission on 20th April 2016, when the first Report was made public. The EU Commission then published six further Reports on the progress made in the implementation of the EU-Turkey Statement, concluding with the last on the 6th September 2017. After these seven one-sided reports which stood out the success of the Statement, in particular concerning the decreased arrivals on Greek islands and on the number of returns of irregular migrants to Turkey, the EU Commission did not publish any other reports on the implementation on the EU-Turkey Statement and instead, the EU has began to provide less detailed information.

In order to have a deep and broad understanding of the implementation of the Declaration, data from the "Seventh Report on the Progress made in the implementation of the EU-Turkey Statement"[60] produced on 6th September 2017 will be taken into account and compared with the latest available data, going to analyse any commitments agreed between the parties in the Statement.

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[58] Law 4375 (O.G. A'51 / 03-04-2016) On the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC on common procedures for granting and withdrawing the status of international protection (recast) (L180/29.6.2013), provisions on the employment of beneficiaries of international protection and other provisions .

[59] Regulation no 2016/8722 Amending the Temporary Protection Regulation .

[60] Report from the Commission to the European Parliament, the European Council and the Council, Seventh Report on the Progress made in the implementation of the EU-Turkey Statement, *European Commission*, 6th September 2017, COM(2017) 470 final, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017DC0470&from=en .

The Seventh's Report documented that the number of arrivals from Turkey to Greek island from 9th June 2017 to 31st August 2017 was 7,807- an average of 93 persons daily. Daily arrivals increased compared to before the summer 2017 even though, the total number of irregular arrivals continued to be low. In fact, the number of total irregular arrivals in March 2016, before the adoption of the Statement, was of 26,971 people in the Greek islands while sea and land arrivals in February 2024 was of 2,282. Recent data from the "Turkey 2023 Report[61]" published by the European Commissions staff indicated that in 2022 the average daily irregular arrivals to Greece from Turkey were 42 people, while they increased by September 2023 to 78. On 21st April 2024, UNCHR has detected 11 sea arrivals and the 2024 total arrivals is of 12,264, with a prevalence of arrivals by sea. One year before, on 19th April 2023 the total arrivals were 4.344. Comparing the years 2023 and 2024, there is an increased in the arrivals but overall comparing these latest data with data of the year 2016, it can be note a decrease of arrivals over time. Moreover, the number of lies lost in the Aegean Sea continued to decrease compared to 2016.

Thus, from the data available it is clear how the Statement had a significant impact on limiting the number of arrivals in Greece while the narrative around the implementation or the failure to implement other elements of the Deal varies notably.

From the adoption of the Statement until September 2017, the total number of irregular migrants who had to return to Turkey was 1,896 persons. It increased to 2,140 persons by 31st March 2020, although the majority of returns took place during the first year of application of the Statement. The failure of returns to Turkey became apparent in the seventh report, when the EU Commission identified some shortcomings. The Commission stated that the returns did not improve and that they remained much lower compared to the number of arrivals, causing pressure on the hotspot facilities on the Greek islands.

This trend did not improve neither after March 2020, but rather in March 2020 Turkish government suspended repatriation due to Covid-19 pandemic. On the other hand, in January 2021 Greece repeatedly requested the opening of the returns procedure to Turkey having 1,450 rejected asylum seekers on Greek islands ready to return to Turkey

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[61] Commission staff Working Document, Türkiye 2023 Report, *European Commission*, 8th November 2023, SWD(2023) 696 final, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_696%20T%C3%BCrkiye%20report.pdf .

but Turkey did not accept. Not only Greece asked for resumption returns but it also continued to procedure negative decisions. Indeed, from 2020 to 2021 the rejections considered as inadmissible made by the Greek Joint Ministerial Decision (JMD) increased of 126%. Despite the suspension of return, both the European Commission and Greece appeared to assume the Statement a stand-alone basis for readmission and this was demonstrated during the whole 2022, when Greek authorities issued voluntary departure for Syrians and inadmissibility decisions for applicants from Afghanistan, Somalia, Pakistan and Bangladesh. Decisions claimed as inadmissible increased because on 7th June 2021, Greece declared Turkey as safe third country for asylum seekers coming from these latter countries. Since that date, Greece declared Turkey as safe third country only for Syrians' asylum seekers.

In Greece, the main actor responsible for returns is the Ministry of Citizens Protection which supervises the Hellenic Police. In March 2023, FRONTEX and the Greek government signed an agreement on cooperation in the area of returns however, the cooperation is unlikely to produce effects under the Deal as long as Turkey suspended returns. The resumption of returns to Turkey remain a key element for fighting irregular migration and smuggling networks and both the EU Commission and Greece have called Turkey for activating again the procedure.

If on one hand, on March 2020 Turkey for health grounds closed repatriations, on the other hand, Turkey opened its borders and people started to cross to Greece. This was a consequence of disputes with the EU concerning Turkish disappointment with the benefits it was supposed to receive as agreed on the Statement and a consequence of a general discontent by Turkey of the relation with the EU about the migration management. Erdoğan stated "*The doors are now open. Now, you Europe will have to take your share of responsibility*".

These two events show how the dialogue and cooperation between the EU and Turkey has not always been linear but it has suffered a setback during the years.

The second element of the Treaty which implementation varies among the years is the "One for One" Resettlement of Syrians nationals from Turkey to the EU. The first report of the Commission of 20th April 2016 reported that the 1:1 scheme backed by the Commission, EU agencies and MS as well as the UNHCR took place immediately after

the adoption of the Deal. From 4th April 2016 until 20th April 2016, a total of 103 Syrians were resettled from Turkey to Germany, Finland, the Netherlands and Sweden.

In the seventh report on 6th September 2017, Syrians resettled to several MS were 8,834. The Commission reported that after a peak in May 2017, a negligible decrease of resettlement took place in the same year thus, it reaffirmed the importance of that system in order to demonstrate the openness of the legal route towards the EU for Syrians. The Commission also restated the effort that each actor need to maintain aimed at meeting the 25,000 pledges for 2017.

Latest data has collected a total of 28,300 Syrians resettled from 2016 until mid 2021 although they appeared to be smaller than excepted, especially considering the nearly 3.7 million refugees that Turkey hosted in the same period. The resettlement was considered "*a drop in the ocean*" (Albanese D. I, Istituto per gli Studi di Politica Internationale (ISPI), 2021) . In 2021, Germany took the majority of Syrians, more than 10,000 nationals.

In the "Turkey 2023 Report", the 1:1 system has reached 39,648 resettlement as of September 2023 even if it is far away to reach the 72,000 seats pledges on Europe's side.

Another commitment of the Deal which it does not seem to led to tangible results and so its implementation it does not seem to be achieved is the prevention of new sea or land routes for irregular migration. The Statement invoked Turkey to adopt any measures in order to prevent any new routes from Turkey to the EU.

The seventh report of September 2017 claimed that there was no evidence of new routes from Turkey even though, from 9th June until 3rd September 2017, 23 boats with 1,363 migrants arrived in Italy from Turkey and two boats with 228 Syrians migrants arrived in Cyprus from Turkey. This happened despite the Turkish effort in deploying two humanitarian interventions against migrant smugglers, the Operations "Aegean Hope" and "Safe Med". The report also stated that in 2017 irregular crossing at Turkey's land borders with Bulgaria and Greece remained low.

Although the report did not mention any evidence of new route, since the EU-Turkey Agreement came into effect, migrants began to use another dangerous path. Indeed, between 2017 and 2018 the Black Sea has became the new refugee route into the EU. The Black Sea is not subject to the Statement thus refugees tried to cross the so called

"inhospitable sea". The Italian newspaper "La Stampa" and a Turkish public broadcaster "Trt World" reported of Syrian, Iraqi and Pakistani refugees leaving Turkish's coasts and crossing the Black Sea in order to reach Romania. In the first six month of 2017, nearly 2,474 refugees were intercepted during the crossing compared to only 507 refugees who attempted to cross the Black Sea during 2016. Two incidents took place on 8th and 9th September 2017 where 217 refugees on their way to Romania where rescued by Turkish authorities while on late September, 500 refugee arrived to Romania by boat.

The Romanian mayor of the port city of Mangalia, Christian Radu to a reporter of "La Stampa" said "*Nobody passes through Greece anymore. Bulgaria has walls and soldiers lined up at the border, as did Hungary along its borders with Serbia and Croatia. And so, the only passage left to reach norther Europe, is through us. And they are trying*.".

Another route through which refugees have tried to cross in order to enter to the EU is the Bulgarian-Turkish border. Between 2021 and 2023, in this border a number of pushbacks and violence against migrants have increased and interviews to migrants, humanitarian workers and human rights experts have confirmed this *modus operandi*. Bulgarian border police have pushed refugees back to Turkey and Greece even though this practice is violating international law as the principle of *non-refoulement* and the EU law. Moreover, Bulgarian authorities have also arrested refugees and beaten them. The main countries of origin of these refugees are Syria, Afghanistan and Morocco.

Lastly, reports from the European Council on Refugees and Exiles on 1st March 2024 has indicated an increase of Syrian refugees crossing the Balkan Route in order to seek asylum in Europe.

The fourth commitment of the Treaty is the establishment and activation of the Voluntary Humanitarian Admission Scheme. This scheme represents a system of solidarity and burden sharing with Turkey for the protection of displaced persons as consequence of Syria conflict and it provides to Syrians a safe and legal pathway to the EU. The 2017 seventh report highlighted the progress of negotiations with Participating States and Turkey on the Standards Operating Procedure of the Scheme. Then, the Commission stressed its effort in order to boost the negotiations.

Recent update about this Scheme has not been founded so, this may suggest that its implementation and activation have presented challenges. Firstly, a challenge that makes this plan difficult to implement is the voluntary basis of the work, meaning to leave

participation to the will of States. Participating States also decide how many people should be admitted in its territory. Secondly, this system and thus, the Standard Operating Procedure only function and produce practical effects if there is a willingness to cooperate between the actors. So, if this willingness to work together fails, the whole Scheme and the Standard Operating Procedure will present difficulties.

The fifth commitment of the Deal is the Visa Liberalisation. It was launched in parallel with the Turkey-EU Readmission Agreement on 2013 and it is a dialogue between the EU and Turkey in order to remove the requirements for the Turkish population to obtain visas for short-term period for all EU Member States, except Ireland, and the Schengen countries. It is about a roadmap of 72 criteria divided under five main thematic groups that Turkey should fulfil.

On 2017, the Commission's report indicated that seven benchmarks out of 72 were still not meet and they were:

- "*issuing biometric travel documents fully compatible with EU standards*";
- "*adopting the measure to prevent corruption foreseen by the Roadmap*";
- "*concluding an operational cooperation agreement with Europol*";
- "*revising legislation and practices on terrorism in line with European standards*";
- "*aligning legislation on personal data protection with EU standards*";
- "*offering effective judicial cooperation in criminal matters to all EU Member States*";
- "*implementing the EU-Turkey Readmission Agreement in all its provisions including the provision on third-country nationals that enters into force on 1 October 2017*".

On 2019, the Commission confirmed that an advancement on the biometric passports' compatibility was achieved and on 31st August 2023, 66 out of 72 criteria have been implemented.

Furthermore, on the "Turkey 2023 Report" of 8th November, the EU Commission stated that Turkey and the EUROPOL were almost ready to sign an international agreement on the exchange of personal data.

The Visa Liberalisation is one of the key commitment of the Statement and it is one of the most important element for Turkey in its relationship with the EU. Over the

years, the Turkish authorities have expressed their dissatisfaction on the way this dialogue has progressed and especially with the fact that it has been stalled for a long time, blaming this failure on restrictive European policies. On the other hand, the EU has place the disappointed accomplishment of re-admission agreement provisions among the security cooperation conditions demand to lift visa controls. Although the EU' Visa-Free movement for Turkish citizens has so far been disregarded, it is one of the main points towards which Turkey has put great effort and commitment over the years and it is currently seeking to implement progress and a pro-active dialogue with the EU.

Another element of the deal is the Facility for Refugees under which the EU has guaranteed its commitment to deploy financial assistance to Turkey. The Facility for Refugees would help Turkey with funds towards the implementation of projects about humanitarian assistance, education, health, infrastructure and socio-economic support. The EU committed to assign a first tranche of 3 billion Euros and additionally other 3 billion Euros if the resources would used in full by the end of 2018.

According to the Seventh report of 2017, 2,9 billion Euros were allocated and contracts for a total of 1,664 billion Euros for other 48 projects, both for humanitarian and non-humanitarian assistance were signed.

Recent data from the "Turkey 2023 Report" of the Commission established that the full operation of 6 billion Euros were provided under the Facility at the end of 2020. It can be understood therefore, that there were two years of delay being that in the treaty had been set as time limit for the ending of the full operation of 6 billion Euros the year 2018.

The Customs Union represents another important point in the Treaty and in the economic relations between the EU and Turkey. The Customs Union is a trade bloc composed of free trade area with common external tariffs and it allows the free movements of goods. Already in May 2015, Turkey and the EU Commission started the procedures in order to modernise and enlarge the Customs Union and in July 2017 at the EU-Turkey High Level Political Dialogue, the Commission encouraged to open negotiations with Turkey on the modernisation of the Customs Union. The Commission then asked to the Council to complete its work on the proposals on an upgraded bilateral trade frame with Turkey.

In the “Turkey 2023 Report” is reported that in March 2021, the EU leaders have requested to the Commission to strengthen talks with Turkey with the objective to tackle the difficulties such as that Turkey is still not in line with the Common Customs Tariff. In addition, the EU leaders have requested to the Council to engage in the task of modernizing the Customs Union.

Another significant element of the Deal and of the whole relationship between Turkey and the EU is the accession process. Under the 2016 Treaty, they engaged in opening chapter 33 about financial and budgetary provisions and also in opening other chapters in order to re-energized the relationship. The first report on April 2016 reported that the accession process was re-energized as chapter 33 under the Dutch Presidency of the Council was opened and that preparatory work had initiated in order to open chapter 15 about energy framework, chapter 23 about judiciary and fundamental rights, chapter 24 on justice, freedom and security, chapter 26 on education and culture and chapter 31 about foreign, security and defence policy.

In 2017, the seventh report of the Commission announced the opening of 16 chapters except one of these that it had been provisionally closed. The report also established that Turkey should have put more effort in respecting standards such as democracy, rule of law and respect on fundamental freedoms. Recent data contained in the “Turkey 2023 Report” has confirmed the opening of 16 chapters out of 35, however, no advances were registered.

On 25th April 2024, Turkey and the EU has intensified cooperation on green and digital transition. Despite this, at present the accession process remain at a standstill and there are no real expectations of Turkey becoming an EU Member in the near future.

Last commitment of the Statement concerns with the duty of improving humanitarian conditions inside Syria for both the actors. Humanitarian situation inside Syria is difficult and displaced persons have continued to increase. Since 2016, Turkey and the EU have cooperated in order to enhance their effort and provide humanitarian assistance towards the delivery of financial resources. This include 5.7 billion Euros provided by the EU, divided it between 3.8 billion Euros in humanitarian aid and 1.3 billion Euros for life-saving activities in Syria. Moreover, the EU and Turkey have continued to work together in the humanitarian Task Force of the International Syria Support Group for guarantying a full humanitarian access to people in need.

Between the two actors, Turkey has always had a particular role in allowing NGOs to operate cross-border in order to deploy assistance. In fact, 27% of the EU humanitarian assistance in Syria was provided by Turkey in 2015. In 2016, the EU allocated an initial 140 million Euros for life-saving activities inside Syria.

In 2017 in Syria there was 6.3 million internally displaced people and 13.5 million people in need of assistance and the humanitarian situation in the areas where non-state armed groups are present, are even more worrying. This situation has caused the impossibility and/or the difficulty in reaching people living in these areas and the difficulty in delivering humanitarian assistance. The seventh report stated that only 13% of United Nation's assistance has reached these areas and it has only reached the 39% of people.

The cross-border assistance supply by Turkey and Jordan is extremely important and it continues to be deploy. Furthermore, the EU and Turkey have tried to pressure Syrian regime and since December 2022, Turkey has started to involve in meetings with the regime with the aim of having a stable Syria.

A particular attention goes to a decision made in 2019 by Turkish government to deploy a military intervention in northeastern Syria where to create "safe zones". This operation did not fall within the humanitarian assistance obligations ensure by the Deal but Turkey wanted to create zones where return Syrians. So, it started a military manoeuvre which since the end of October 2019 was criticized by the EU. The EU Parliament adopted a resolution[62] which stated that the military intervention were "*in breach of European values*" and that "*any forcible transfer of Syrians refugees or internally displaced persons*" to safe zones in Syria were "*a grave violation of conventional international refugee law*".

The military operation together with the acceleration of the Syrian conflict, the deterioration of humanitarian conditions in Syria and the Turkish decision to open the border with the EU led to a downturn of the EU-Turkey relationship. Turkey blamed the EU for having left them alone to cope the Syrian crisis, in particular in bordering areas, declaring that migration is "*mostly a problem of Europe*" and that their operation in Syria

[62] European Parliament, The Turkish military operation in northeast Syria and its consequences, 24th October 2019, 2019/2886, https://www.europarl.europa.eu/doceo/document/TA-9-2019-0049_EN.pdf .

were vital to protect "*the border of Europe and the borders of North Atlantic Treaty Organization*[63] *(NATO)*".

2.5 The Criticisms of the Statement

From its very inception in March 2016, the EU-Turkey Statement has encountered many criticisms from many quarters. Criticisms on its legal structure, about its implementation and also criticisms for having arise human rights violations.

The Statement has been seen as a method by which the EU has outsourced its responsibility to protect refugees to another third country, Turkey, and an immoral initiative in order to circumvent its obligations under international and European asylum and human rights law.

The first critical remark concerns the transparency of the Statement. The EU-Turkey Deal drafting process was not transparent and it involved only the Turkish government and the EU officials. Many stakeholders such as the Turkish Parliament, Turkish public, Turkish Ministries, Turkish media and some UN agencies and international organizations were not included during the preparation work of the Deal. Moreover, over the years the transparency of its implementation has failed as there has been little publicity about the data of the Statement.

This criticism may be link with its legal nature as soft law instrument. Being a soft law act, the Statement did not follow the ordinary legislative procedure both within the EU and in the Turkish system. In fact, the Statement was not submitted to the Turkish Parliament for the approval. Thus, it might be seen as a lack of transparency of the Statement during its legal and approval process.

A second element of criticism is about its accountability, meaning that the accountability of the EU, the Member States and Turkey for the provisions agreed under the EU-Turkey Statement is challenging to establish before international or supranational courts. The accountability is difficult to establish because its legal nature and its authorship have been contested.

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[63] NATO is an international organization compose of the USA, Canada, Britain and other European countries, all of whom have agreed to support one another if they are attacked.

Within this framework, there are two perspectives about the authorship problem. The first refers to the fact that the authorship problem arise from the legal nature of the Deal and so, the ambiguity of its legal nature led the Court of Justice of the European Union to state that it has no jurisdiction to hear and determine cases concerning the Statement. The second perspective consider the Statement as a legal act agreed between the EU and Turkey; however, the EU has denying the authorship and the European Courts have confirmed it. Thus, this ambiguity leads to two implications: first, the Statement remains outside of checks and balances applicable to EU laws and second, the EU cannot be accountable for the breaches of international law and human rights standards arising from the implementation of the Statement. Therefore, this make difficult and challenging to establish before international or supranational courts any provisions of the Statement.

Another criticism refers to the unprecedented level of legal re-design of the Greek asylum system. The EU through the Statement has restricted procedural safeguards and dismantling refugee protection guidelines to promote returns from the Greek islands to Turkey under the Deal. The Statement has allowed the EU and more precisely, the Commission to interfere in the Greek domestic legal system, thus, Greek islands have became an arena of experimentation of EU-sponsored procedures, often unlawful, to the treatments of asylum seekers with the aim of facilitating and speeding up their deportation.

The primary interference developed by the EU is the mechanism to process asylum applications in Greece: the fast-track (accelerate) border procedure. Thanks to this procedure, the EU wanted to fulfil the return component of the Statement and Greece, to better control the returns to Turkey, placed all applicants on the islands under the geographical restriction. The geographical restriction led to an overpopulation of the island camps with the accommodation centres reaching 547% over their capacity in mid-2020.

A characteristic of the fast-track procedure is that they involved a substandard process with truncated deadlines, neglect of special needs under a framework of prolonged confinement in squalid living conditions and/or arbitrary deprivation of liberty and lastly, since the summer 2016 Greece applied different procedures to asylum seekers on the base of their nationality. Furthermore, the fast-track border procedure applied only for those arrived in the maritime border so for those who arrived in Greek islands after

20th March 2016, while for those arrived in the land border, the regular procedure applied. Those who were also excluded from this process were those deemed as "vulnerable" even though, it was observed that this was not always what happened in practice. Even worse, what was documented was that the EU pressures Greece to limit the recognition of asylum seekers as vulnerable and to subject them to the fast-track procedure and to the "safe third country" concept. Moreover, the Greek law made clear that the fast-track procedure would be activated only in case of "*mass arrivals of third-country nationals or stateless persons*" but despite of decreasing of arrivals after the conclusion of the Statement, the border process continued until the 2022 without justification and fuelling the contradiction.

Since January 2022, the fast-track procedure has stopped being applicable; however, the Refugee Support Aegean[64] stated that "*in most cases the authorities did not comply with these provisions anyway. At the same time, deadlines for asylum seekers did not change even under regular border procedure, in comparison to the fast-track procedure previously applied*". Although the fast-track process have ceased to be applied, the Greek authorities has processed several voluntary departure orders for Syrians and the inadmissibility decisions have started to increase throughout the whole 2022. In addition, in 2020 the Greek government has issued a 100 Euros tax in order to discourage asylum applications. Thus, what happen in practice is that the suspension of returns by the Turkish's decision, the Greece geographical restriction and the introduction of the tax have led applications in a limbo on the Greek islands, in poor conditions.

The second interference by the EU in the Greek system concerns the neutralisation of Appeals and judicial review. It took place legislative amendments which intervened with the institutional structure of the three-member Appeals Committees, the administrative bodies responsible for reviewing asylum claims at second instance. After the Statement, the Asylum Service, responsible for the decisions in Greece, began issuing inadmissibility decisions. Several of these first-instance decisions were appealed and the Appeals Committees frequently rejected them. This happened because, like the civil society such as activists and scholars, the Committees shared the view that Turkey did not have an adequate legal framework to supply refuge to non-European applicants and

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[64] The Refugee Support Aegean is a non-profit organization focusing on strategic litigations in support of the refugees .

Syrians, that rights violations and violence occurred during the transit of applicants and also they doubt that the concept of "safe third country" could really apply to Turkey. However, such differentiation from governmental policymaking did not last long.

Indeed, the EU Commission recommend to alter the Appeal authority and the Committees, thus Greek government changed the composition of the Appeals, which have since been of two judges and one member of the UN High Commissioner for Refugees. It was not a case that after the composition changing, the data indicated a reduction of the number of successful appeals. Clearly, the independence of the Committees was undermined by the interference of the EU. Moreover, the EU advocated other legislative and administrative changes in the Greek system such as the increasing number of decisions per Committee, the reduction of appeal deadline from 10 to 5 days in the fast-track procedure, the exclusion for asylum seekers of the right to appeal from assisted voluntary return programmes and lastly, in 2016 the Commission recommended to "*limiting appeal steps in the context of the asylum procedure*", stripping asylum seekers from the sole remedy available before a court, which would have been in contrast with the minimum standards recognized by the Greek Constitution.

The EU institutions also played a role in the policy's adoption and implementation. Firstly, FRONTEX staff have helped Greek authorities on the islands in registration and nationality screening; secondly, the EASO, now change into EUAA, has supported Greece in processing the asylum applications. Although there has been concerns on EUAA's actions about the quality of admissibility opinions, its role has increased after two legislative reforms adopted by Greece.

In addition to the change of the Committees composition and of legislative and administrative changes developed by the EU, on 7th June 2021, the Greek government amplified the concept of Turkey's "safe third country" to other four countries which compose more than two thirds of asylum applications in Greece, increasing then the inadmissibility decisions.

Another criticism of the Statement regards its incompatibility with international law. It is going to examine the incompatibility issues under three headings.

Firstly, the legality of the EU-Turkey Statement is based on the assumption that Turkey is a "safe third country" to which asylum seekers can return. The notion of "safe

third country" is stated in Article 38 Directive 2013/32/EU and highlights the criteria which a country should fulfil in order to be consider a "safe third country". These are:

- "*life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion*";
- "*there is no risk of serious harm*";
- "*the principle of non-refoulment in accordance with the Geneva Refugee Convention and Protocol is respected*";
- "*the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected*";
- "*the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Refugee Convention and Protocol*";

The EU Commission's view that Turkey can be seen as "safe third country" has been contested for the following reasons.

The first criteria is link with the duty of not implementing persecutions acts. Instead, Turkey had a past characterized by political conflicts which involved repression and persecution of minorities, dissident and religious minorities which continues today. Moreover, there is evidence of persecution of Turkish nationals, with life and liberty threatened for membership of a particular social group or for their political opinion. Based on these assumptions, also life and liberty of non nationals may be persecuted and thus it is unsuitable stating that Turkey is a "safe third country".

The second criteria involves the serious harm which based on Article 15 of Qualification Directive involves: death penalty or execution; torture or inhuman or degrading treatment or punishment of an applicant in the country of origin and serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. In Turkey, asylum seekers and refugees face many hazards which may increase their risk of serous harm. They face uncertainty about their legal status, about basic rights such as the right to work and difficulties in accessing services such as the access to healthcare and education. Although these obstacles do not represent serious harm, they might exacerbate hostility and as consequence then, involve the serious harm. Furthermore, towards Syrians is increasing

an environment of xenophobia which intensify violence. It has been observed as Turkey usually detains refugees and asylum seekers for irregular entry or exit or for leaving the "satellite cities" in which they are assigned.

In addition, in the "Turkey 2023 Report" it has been stated that torture and ill-treatment are the normality in detention centres, prisons, informal detention and also on street during protests. There have been reported cases of abuses, violence and torture committed by the police. Again, the concept of "safe third country" could harshly apply to Turkey.

Third criteria is about the principle of *non-refoulement*. The principle is an obligation under European and international human rights law which Turkey had to comply with. It is the prohibition on returning someone back to a place where they face a risk of persecution, torture or inhuman and degrading treatment. Since 1990s, Turkey has started not to comply with this principle, especially against non-European asylum seekers. This happened in 1996 towards Iraqi and Iranian refugees and if they did not satisfy the requirements to register within five days, they were immediate return back without considering their applications. Furthermore, in the 2000s several reports have stated Turkey everlasting engages in *refoulement* and "mass refoulement" in the Aegean Sea and Amnesty International has observed that Turkey has forcibly returned refugees to Syria.

These examples demonstrate how Turkey under this parameter cannot be consider a "safe third country" for refugees and asylum seekers.

Last criteria concerns the refugee status under the 1951 Geneva Convention and its 1967 Protocol. Turkey ratified the 1951 Refugee Convention and its Protocol but preserves the geographical limitation for non-European asylum seekers. Thus, Turkey do not grant to non-European asylum seekers the refugee status recognized under the Refugee Convention. Instead, Turkey assigns to them other types of protection and in particular, to Syrians the temporary protection while to others non-European asylum seekers the subsidiary protection or the conditional refugee protection. Since the majority of asylum seekers in Turkey are non-European, this highlights the limitations and deficiencies in the status procedure which make the protection standards different. Important to note is that the notion of *status* under the Refugee Convention is used as

such in order to distinguish it from other types of protection as the temporary, conditional or the subsidiary.

It is clear how Turkey, by not granting refugee status to the majority of asylum seekers in its territory, it does not comply with this criteria either and therefore, the necessary requirements in order to consider a “safe third country” are not satisfied.

Secondly, the incompatibility with international law of the implementation of the Statement includes the detention on Greek islands. As already state, Greece has imposed the geographical restriction on its islands which has created a situation of overpopulation in the islands centres. Asylum seekers have to stay in these centres while their applications are examined and if these resulted as inadmissible, the applicants should return to Turkey. These reception centres are hotspot centres where living conditions have deteriorated drastically after the adoption of the Statement. Several non-governmental organizations (NGOs) criticize the Hotspot Approach and the detention components of the Statement, stating that in Greece the Statement arrangements have led to “*severe overcrowding, substandard reception conditions and delayed asylum procedures*”. Detention conditions and detentions of all irregular arrivals are capable of being in contrast with Article 3 about the prohibition of torture and Article 5 on the right to liberty and security of the European Convention on Human Rights (ECHR). Moreover, obstacles about access to asylum procedures, to interpreters and to legal assistance and the critical delays in processing the applications in the Greek islands have raised issues concerning the Directive 2013/32/EU, in particular with Article 6 on the access to the procedure and Article 12 on the guarantees for applicants.

Thirdly, the implications with international law regards the difficulties to apply for the right to seek asylum for displaced persons confined to Syria. After the adoption of the EU-Turkey Joint Action Plan and of the EU-Turkey Statement, Turkey’s border with Syra closed, visa requirements for Syrians were introduced and Turkey has started to prevent irregular arrivals in Greece. These actions have restricted the right to seek asylum introduced in Article 18 of the EU Charter of Fundamental Rights. The EU-Turkey Statement has make the right to asylum difficult for thousand of displaced persons.

Several criticisms have been raised against the implementation of the Statement also concerning the human rights situation of asylum seekers and refugees in Greece and Turkey, as consequence of the Deal.

A first concern is about the precarious lives of refugees in Turkey. The legal status of non-European refugees in Turkey represents the first element of precarity within their daily lives. Therefore, their legal status leads to limited access or even no access to basic services and rights, so the precarity of the status has led to a precarious in enjoying their rights as refugees. Precarity become a form of governmentality and governing through it leads to low-cost labour force that harms even more the already unstable lives of refugees. The limitation of the low-cost labour force determine the informality as a main feature of refugees life. Moreover, the difficulties about their legal status, their rights, the access of services and employment deteriorate their socioeconomic exclusion and restrict their integration within the local community, fuelling the already establish framework.

By aiming to keep refugees in Turkey, a country which already host millions of refugees, within this poor conditions, the EU-Turkey Statement helps to create and maintain a system where refugees suffer from uncertainty and poverty. The EU-Turkey deal endorses such precarity either establishing Turkey as "safe third country" for asylum seekers.

To the aforementioned difficulties faced by refugees, in Turkey is increasing an anti-immigration racism among the population, especially towards Syrians, and human rights abuses by Turkish's State apparatuses such as abuses in the border regions of Turkey, arbitrary detention, refoulement and violation of refuges bodily integrity are increasing.

Another concern following the implementation of the Statement regards the violation of human rights of asylum seekers in the reception centres on the Greek islands. In 2015, as part of the European Agenda on Migration, both Greece and the EU agreed on the introduction of the Hotspot Approach. In the practice, this approach has established reception centres, renamed as Reception and Identification Centres, aiming at a pre-entry phase of screening and border procedure for asylum and return on the Greek islands of Kos, Leros, Samos, Lesvos and Chios. The Hotspot Approach should have developed temporary hotspots but then, they have been transformed into a long-term sites operating in a system of de-facto detention and where the conditions of asylum seekers has been critical. This approach has never stopped working, but rather it deteriorated even as when Turkey has decided to stop returns. Therefore, this worsened the situation in the centres as asylum seekers have been in a limbo, even legal limbo.

The situation of the islands dramatically deteriorated after the adoption of the Deal and the 2020 fire on Moria reception centre has spotlight the dire conditions under which asylum seekers lived. Amnesty International has reported that the Reception and Identification Centres are detention facilities where poor sanitation, food insecurity, inadequate medical care and lack of privacy is the new normality. Moreover, people in Lesvos and Chios do not have an adequate access to legal aid, access to information about their application and status and restricted access to services.

Although arbitrary detention can be justify if other less restricted measures are considered, in any case asylum seekers should be detained and above all, vulnerable people as babies, women and people with disabilities. Instead, Amnesty International spook with vulnerable people inside the centres who reported trauma and serious illnesses, meaning that detention is the normal path under which asylum seekers find themselves instead of being exceptional and temporary case.

In March 2021, it was reported that 15,000 women, children and men were trapped in overcrowded camps and that asylum seekers on the islands reported symptoms of post traumatic stress disorder, suicidal thoughts and women and girls have been exposed to sexual and gender-based violence. Even if strict detention has relaxed after the first months of the adoption of the Statement, detention and dire conditions are the routine for asylum seekers on the islands.

The Statement has led to another violation of human rights: the practice of pushbacks. Even thought there is not an internationally agreed definition of "pushbacks", the report of the Special Rapporteur on the human rights of migrants[65], Felipe Gonzáles Morales, of 12th May 2021, define "pushbacks" as an "*overarching term for all such measures, actions or policies effectively resulting in the removal of migrants, individually or in groups, without an individualized assessment in line with human rights obligations and due process guarantees*". States which involve in practice of pushbacks manifest their unwillingness to respect international obligations to protect and fulfil human rights of migrants at international borders. States, under international law, have to take all steps to

[65] Report on means to address the human rights impact of pushbacks of migrants on land and at sea, Report of the Special Rapporteur on the human rights of migrants, Felipe Gonzáles Morales, United Nations General Assembly,12th May 2021, https://documents.un.org/doc/undoc/gen/g21/106/33/pdf/g2110633.pdf?token=4HP7EGLWr0wOPBVX8V&fe=true .

protect life and prevent violence, migrants deaths and injuries and have to collaborate in order to save lives without discrimination and regardless migration status.

Moreover, despite States must respect the principle of *non-refoulement*, the prohibition of collective expulsion and must refrain from pushbacks practices while protecting and promoting human rights of everyone, at the border, States deploy pushbacks activities.

It has been reported that both Turkey and Greece have been involved in pushbacks measures. Turkey is responsible of pushbacks in the Aegean Sea and at the Turkish-Greece land border while Greece is accountable of pushbacks at both its land and sea border with Turkey. It has been stated that pushbacks by the Hellenic Coast Guard continue to increase and in relation to Greece, the report of the Special Rapporteur claimed that he "*has received allegations that pushbacks over the land border are also reportedly carried out from urban areas, including reception and detention centres. An increase in pushbacks in the Aegean Sea, from Greek territorial waters, as well as from the islands of Rhodes, Samos and Symi, has also been documented, with one stakeholder recording 321 incidents involving 9,798 people between March and December 2020*".

Pushbacks are human rights violation which exacerbate situations of vulnerability of asylum seekers and contribute to the preservation of dire living conditions such as physical abuse, sexual ad gender-based violence and discrimination. The EU-Turkey declaration maintains and worsens an already disastrous situation for asylum seekers, where such illegal activities are sometimes obscured by the agreement itself.

2.6 Conclusion

The relationship between the EU and Turkey has begun long before the advent of the EU-Turkey Statement. The 1959 represents the starting point continuing until the 2000s, when the Deal was adopted in 2016.

It represents a turning point within their relationship for the size of migration challenge and because it was one of the first instances of the EU acting as a bloc in order to shift the responsibility for managing European migration management to Turkey.

Turkey acting as a gatekeeper in managing migration has become a fundamental partner for the EU which has always recalled the strategic importance of Turkey, both for

its geographical position and for the cooperation in sectors of common interests such as economy, migration and security.

Although their mutual interests, their awareness of needing each other in several fields and their positive efforts regarding the implementation of the Agreement, since 2016, there have been lots of downs within their relationship. The EU has raised concerns about the Cyprus issue, where there is a sovereignty disputes between Greek and Turkish Cypriots, about the Turkish military operation in Syria and about its involvement in the conflict and on human rights decline while on the other hand, Turkey has raised annoyance on the lack of progress on the Visa Liberalization, on the Customs Union and accession progress, on the management of the Facility and lastly, on the lack of cooperation on Syria situation. These tensions and discontents have led to a feeling of mutual alienation and frustration and to a slowdown in the implementation of the Deal.

Furthermore, the lack of communication between the two actors is perceived on the non efficient implementation of the Statement, instead, numbers of criticisms and challenges have been stated and despite the clear failure to achieve many of the objectives set out in the Agreement, it is being continuously renewed by both parties who are extremely selfish in their own interests.

After 8 years from the adoption and the continuity of this challenging relationship, the Statement has become "*a blueprint for Europe's strategy of externalizing migration management to its neighbours*" even thought there are more criticism than visible results.

CHAPTER III – THE ITALY-LIBYA MEMORANDUM OF UNDERSTANDING

3.1 Country frame: Libya

Libya, officially Great Socialist People's Libyan Arab Jamāhīriyyah is a country in North Africa. It is bounded by the Mediterranean Sea on the north, Egypt on the east, Sudan on the southeast, Niger and Chad on the south and Tunisia and Algeria on the west.

The majority of the Libyan territory is covered by the Sahara desert and its population, which in 2024 is 7,820,000 is primarily located along the coast and in the hinterland where Tripoli, the de facto capital, and Benghazi, the second major city, are situated. In Libya, the religions are Islam, with a predominance of Sunni, and Christianity.

From 1969 to early 2011, the Colonel Muammar al-Qaddafi autocratically ruled Libya. However, in 2011 following the pattern of protests in countries throughout the Middle East and North Africa, in Libya began protests against the regime of the Colonel which quickly escalated into a civil war and in an international military intervention. After al-Qaddafi killing in October 2011, rebels force took power in Tripoli and set up a National Transitional Council (TNC) recognized internationally which declared to be the rebellion's military leadership and the representative of Libyan opposition. The Council wanted to guide the country's transition to democratic government and indeed, in 2012 elections were held. As a result of the elections, it was established the General National Congress. It was the legislative authority of Libya for two years, succeeding the TNC.

On the other hand, the presence of several rebels and militias within the country and in the west, who refused to disarm and were sceptical about first of the TCN and then of the Congress and the struggle to exert authority of the Congress led to the outbreak of the civil war in 2014. By July 2014, almost 1,600 armed groups were present in Libya and some of them were link to political parties. In those years, all of them fought for power and influence. Confrontations between Islamist and secular militias rose and after the 2014 contested parliamentary elections, the country split into two administrations. In the west, Islamists backed the rival of the General National Congress government and took control over Tripoli and in the east, the Libyan House of Representatives took power. This latter elected Khalifa Haftar as commander of his loyal armed force Tobruk-based Libyan National Army (also called the Libyan Arab Armed Forces).

A key turning point was the UN deal, the Libyan Political Agreement, to merge the eastern and western factions into a new Government of National Accord (GNA). In

2016, the Islamist regime ceded power to the GNA, which in the meantime set up in Tripoli, while the eastern House of Representatives denied accepting the UN-backed government. The rivalry between the eastern and western did not stop but rather, it intensified even more when Haftar declared the political agreement void.

Political instability, political division and security vacuums continued for all 2018 and 2019 which led to a political gridlock. In 2020, the two counterparts signed a ceasefire, but nothing really changed.

Something changed in 2021 when Abdul Hamid Dbeibah was chosen by the UN as Libya's new interim prime minister of the Government of National Unity (GNU) based in Tripoli. The following year, the eastern-based-parliament created a rival, the Government of National Stability (GNS) under the leadership of Osama Hamad, which it is aligned with the House of Representatives and with the Libyan National Army led by the General Haftar. In November 2020 was set up a roadmap to hold presidential and parliamentary elections which should have taken place in December 2021. Yet, the future of elections in Libya remains uncertain, implementing to the institutional and political vacuum.

The never-ending stalemate between the GNU and the GNS, together with internal divisions within the two bodies, has led to Libya's political, economic and security instability.

Presently, political division, the militia-rule culture, lack of rule of law, corruption, the decentralization of state institutions and the deterioration of human rights both for nationals and non-nationals and the inability to persecute human rights violations and perpetrators are the normality in Libya. Some other consequences of this endless civil war are civilian casualties, internal displaced people, refugees and migrants population who face several challenges and a spread of impunity and lawlessness which make Libya not a welcoming country.

In October 2021, in Libya the internal displaced people (IDPs) were 179,000 who were waiting for some types of solutions as return or reintegration. In August 2022, the UNHCR declared the IDPs to be about 134,000, a decrease of 57% since October 2020. In addition, the number is going to decrease as durable solutions are going to apply.

Moreover, between January and February 2024 the Displacement Tracking Matrix in Libya stated 719,064 migrants in the territory. The five top nationalities of migrants

are Niger (25%), Egypt (22%), Sudan (19%), Chad (11%) and Nigeria (4%). Therefore, almost 50% of migrants are from Sub-Saharan Africa and 41% are from North Africa but it can be found migrants also from the Middle East and Asia. In Libya, the migrants are primarily located in the coastal regions of Tripoli, Benghazi, Misrata, Ejdabia, Almargeb and Azzawya.

Libya is not a party of the 1951 Refugee Convention and of its Protocol. However, it has ratified the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa (OUA), which has the same definition of refugee as the 1951 Convention and its Protocol, even though it has not yet been implemented through the adoption of asylum-related legislation or procedures. Libya is also party to the African Charter on Human and Peoples' Rights (Banjul Charter).

Lastly, Libya endorsed the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness n 1989.

3.1.1 Immigration policies in Libya

Since the mid-twentieth century, as consequence of the Libya's modernization and its economic development, the migrants flow started to increase. Firstly, people came from neighbouring countries such as Chad, Egypt, Tunisia and Niger and then, the migratory flow also involved people from other African and Asian countries as well.

The economic development of Libya led to a growth of the labour foreign demand. Therefore, Libya decided to implement an open-door immigration policy and to adopt a pan-Arab policy in 1969, which primarily benefited immigrants from Arab countries. Within this policy, Libya signed international conventions with Tunisia, Algeria and Morocco in order to grant to immigrants several rights when in Libya.

In 1990s, the government endorsed a pan-African policy to encourage migrants from African countries to go and to work in Libya territory. Thus, Libya following the case of Arab agreements, it signed bilateral and multilateral cooperation agreements with African countries as Chad and Sudan. The pan-African policy was reflected also in national legislation.

Within that period, the Libyan immigration legislation referred to Law 6/1987 (amended by Law 2/2004) on entry, residence and exit of foreigners, which in Article 1

defines that "*entry or exit from Libyan territory shall be through the prescribed entry and exit areas, and with permission from the competent bodies. Entry and exit shall be with a visa in the passport or its equivalent*." Following, Article 17 mentions that "*an alien shall be deported in the following cases: if he enters the country without a proper visa; if he refuses to leave the country despite expiry of his authorized residence period and the competent authorities refuse renewal thereof; if the residence visa granted to him is revoke for any reasons as specified in Article 16; if a judicial decision is issued for his deportation*.". Moreover, Article 18 states that the deportation of an irregular migrant is "*until his departure*" thus, the length of detention is theoretically indefinite, and it establishes an alternative to detention, even if in Libya it seems not to be apply this possibility.

Libyan's policy started to change in the 2000s. Until the early 2000s, it was unquestionable that Libya was a destination country, thanks to its geographical position, to its economy, to its open-door policy and to its land and sea border extension. However, Libya began to emerge as a transit country and, as the most used route by illegal migrants towards Europe. Illegal migration started to be perceived by Libyan authorities as a threat, therefore the government approved measures aimed at curbing the inflow and the presence of irregular migrants. The Government set up a policy of expulsion and detention of irregular migrants, targeting migrants from sub-Saharan countries. This policy changing was partly aim at following European diplomatic efforts.

This changing on thinking by the Libya government was visible in the Laws adopted in 2005, especially the law concerning the illegal migration. The measures established were: the Regulation 125/2005 which implementing the procedures of the Law 6/1987; Law 24/2010 on Libyan nationality; Labour Relations Act, Act No. 12 of 2010 and lastly, the Law 19/2010 on illegal migration which Article 1 sets up that "*aliens who fail to comply with requirements for entry and exit and/or regularization of their stay are considered illegal migrants and accordingly subjected to relevant sanctions, including fines, deportation and immigration detention".* Then, Article 2 states that "*bringing illegal migrants into the country or taking them out by any means*" is an unlawful act.

Deportation shall be subject to a decision by the Ministry of Interior (MoI), which is one key national actor involved in the migration management.

The Mol has three local antennas covering southern, eastern and central area. The Mol has authority over and support in its decision-making the Department of Combatting Illegal Migration (DCIM) which coordinates interventions to prevent and tackle illegal migrations and enforces the Law 19/2010. Moreover, the Mol supports NGOs working on migration in Libya and it supplies humanitarian relief to migrants. Within the Mol, the Police reports about detection and apprehension of irregular migrants.

Other key institutions accountable for the management of irregular migration are:

- The Libyan Coast Guard (LCG): is the agency responsible of search and rescue (SAR) operations at sea. It tackles human smuggling, trafficking by sea, trafficking of fuel, weapons, drugs, etc. It is also included in the detection of irregular migrants at sea;
- The Ministry of Defence: is responsible for land borders control along Libya's sea and land borders;
- The Border Guard: is a military actor which aim at patrolling border zone outside the border crossing points;
- The Customs Administration: checks movements outside border crossing points.

Despite the immigration legislations adopted by the government, the international legal framework in which Libya is involved and considering that the right to asylum is provided for in Article 10 of Libya's 2011 interim Constitutional Declaration, in Libya there is no asylum legislation or any other procedures. The Libyan Government allows the UNHCR to register as refugees and asylum seekers only migrants coming from nine countries. These are: Eritrea, Sudan, South Sudan, Somalia, Ethiopia (only member of the Oromo ethnic group), Iraq, the Syrian Arab Republic, Yemen and Palestine. Even though they can be recognized as refugees and asylum seekers, they are not exempt from detention centres. They can only benefit from evacuation grant by the UNHCR. Migrants of other nationalities are considered illegal migrants and subject to the country's immigration laws which does not consider the status of refugees and of asylum seekers and neither the principle of *non-refoulement*. As consequence, migrants are subject to arbitrary arrest and detention, and they face risks of abuses and exploitation by traffickers, militias and smugglers. The term "abuse" refers to rape and other forms of sexual

violence; death; forced labour; torture and degrading treatment; deprivation of liberty; etc.

The substantial number of migrants in Libya are irregular migrants who face arbitrary detention and serious violation of human rights. This measure provided by Libyan Law of indefinite detention, inadequate standards of conditions in detention centres and lack of rules regulating the conditions in the centres violate international standards.

Even though in the 2019 Universal Periodic Review (UPR) Session it was recommend to Libya to end arbitrary detention and guarantee treatment of detainees in line with international standards, it has been reported that detention conditions continue to be inhuman, both in the official centres and in the non-official detention centres. Presently, it is estimated that in Libya there are twenty-seven detention centres which some of them are under the control of militias while the others are under the control of the DCIM of the Ministry of Interior, which receives fund by the European Union and Italy. In 2019, the UNHCR reported over 7,000 migrants in detention centres under the control of the DCIM.

The whole non-Libyan population face the similar path towards overcrowded detention, discrimination, legal insecurity and violence when they irregularly entry, stay and exit Libya. Migrants who try to exit and cross the Mediterranean are generally intercepted by the LCG. When returning in Libya, they face detention without a legal process and are detained in degrading conditions, without adequate space, services and access to humanitarian assistance. Moreover, in detention centres there is a lack of adequate health conditions, food ratios and water leading to malnutrition and starvation. In most centres are also detain children, women and vulnerable migrants. Torture and sexual violence are two of the key main abuses delivered in detention facilities and there are several reports which state women being rape, sexually abused and obliged into sexual slavery by armed groups. Release from detention is a possibility only in case of resettlement to third countries, evacuation and repatriation.

Furthermore, in line with international obligations accepted by Libya, non-Libyans arrested or detained should be entitled to a legal process before a court. Rather, migrants are detained without a legal proceeding and even if, Libyan law establishes the right to challenge a decision, this right is not effective. The Libyan judicial system is

unable to act and it is weak and also the inability concerns the Libya willingness to prosecute human rights violations and perpetrators.

A different risk is what civil society organizations, both local and international, face in Libya. Those which focus their work on humanitarian assistance and protection and those working with Libyan NGOs are constantly under scrutiny. Under the Libyan system, there is not an institutional set-up for these actors but even, the Libyan government has delivered arbitrary measures against them to limit their actions and engagement. The authorities have limited their access to detention centres, their access to humanitarian assistance and the monitoring activities delivered by them. For instance, between 2020 and 2021 the Libyan government has asked to the UNHCR to leave the country or to stop their activities in Libya.

The consequence of these limitations and measures against the civil society organizations is at the expense of migrants. They feel abandoned both inside and outside detention facilities and in a vulnerable position. Moreover, they feel unsecure to report crimes and abuses.

Another critical concern is trafficking activities. When migrants try to exit Libya, they become victims of human traffickers. In this situation, migrants, who face abuses such as sexual, physical, verbal, torture and denial of food or/and water, are in a tricky vulnerable situation under which Libyan legal framework does not protect them and does not prosecute human traffickers but rather, it creates an atmosphere of impunity.

Libya was designed as a Special Case in the Annual Trafficking in Persons report 2021 and even if it is a signatory to the UN Convention against Transnational Organized Crime and its Protocol, Libya lacks legal system to address trafficking or other human rights violations against migrants. The irregular status of the majority of migrants in Libya increases their risk of trafficking and, in this case, they do not have access to the recourse or any guaranteed assistance within the status apparatus.

3.2 The Italian-Libyan Cooperation

From 1911 to 2024, Italy from a colonizing country became a vital partner for Libya, having a strong credibility in Libyan territory and becoming its reference country. Currently, Italy also assumes an extraordinarily strong presence on the ground and shares with Libya several interests, from economy to migration.

Italy and Libya share historic ties that date back to 1911, when Italy colonized Tripolitania and Cyrenaica, two regions which then became known as Libya. The colonization ended in 1943, when Italy decided to take part in the Second World War.

Their relationship resumed in the 2000s, as consequence of migration flow.
Between 2000 and 2005, both Libya and Italy became a transit country and the crossing through the Central Mediterranean route deeply increased. Migrants, especially from Sub-Sahara, firstly transit through Niger and Libya, crossed the Mediterranean Sea to reach the EU and Italy. The growth of migration has been perceived by both countries as a threat, therefore, this framework has led to the emergence of a policy approach aimed at reducing crossings at any cost. This policy approach has been included in the cooperation between the two countries and it has led to the rise of bilateral dialogues. Thus, in the 2000s, cooperation on migration and border control was the necessary policy choice and the viable road for both. Indeed, several agreements focused on tackling terrorism, organized crime, drug-trafficking and illegal migration were concluded.

The first bilateral agreement was signed in December 2000 with the aim of reciprocal support in combatting irregular migration and exchanging information. There was also another agreement in 2003 to operationalise the one signed in 2000. Neither of them was published.

A Memorandum for the cooperation against illegal migration was signed in 2006 by the two States and it was issued in the 2007 Protocol and Additional Protocol. The countries reaffirmed their engagement made in 2000 and set up a joint mission where Libya would patrol the coastline and international waters, while Italy would guarantee vessels on a temporary basis.

One year later, they signed a Treaty on Friendship, Partnership and Cooperation (TFPC) in Tripoli and in 2009 they concluded an executive agreement to implement the 2007 Protocol. It was after the last executive agreement that Italy started to provide Libya with six Italian vessels, making Libya more engaged in the control of illegal migration

and paving the way for push-back procedures. Furthermore, within the 2008 TFPC Italy and Libya agreed on moved past old hostilities, especially the Italian colonization, and undertook regional cooperation with countries of origin of the migratory flows in order to curb illegal immigration (Article 19), while Italy promised to make investments and financing Libya. Then, the countries emphasised the importance of principles such as the sovereign equality, non-interference in internal affairs, respect for human rights and fundamental freedoms and prohibition of the threat or use of force.

Nevertheless, in 2012 the relationship between Italy and Libya was temporarily frozen because of the civil war in Libya and because of the European Court of Human Rights judgement *Hirsi et al. vs Italy*[66].

Things started to change in 2011 when the Arab Spring, which ended with the death of Muammar al-Qaddafi, broke out. Following al-Qaddafi's ousting, civil war spread and Libya remained a country without a government with authority over all its territory and with an obscure economy based on human and arms trafficking, criminal smuggling and illicit activities. In the following years, the escalation of the hostilities and chaos facilitated international crimes and human rights abuses especially against migrants and refugees. The situation started worsening and between 2013 and 2014 the number of people who crossed the Mediterranean Sea increased by 376 percent. In 2013, after the harsh growth of migrants and refugee flows and a shipwreck near Lampedusa, the Italian government launched a Search and Rescue program "Mare Nostrum", which was a military and humanitarian operation. A year later, the European Union's external border agency Frontex took it over with a similar operation called "Triton" aimed at monitoring and controlling irregular crossings over the Mediterranean.

In addition to the "Triton" operation, since 2011 the EU has taken up a specific policy in Libya together with the United Nations Support Mission in Libya (UNSMIL). This policy has aimed at supporting political transition, stability and democracy, finding the solution to the political crisis and reaching multilateral consensus for elections. The EU migration policy towards Libya has consisted in outsourcing border management, providing humanitarian assistance and political deal making. In November 2015 the EU created the EU Trust Fund for Africa (EUTF), which full title is "Emergency Trust Fund

[66] The ECHR condemned the push-back operations as in violation of the European Convention on Human Rights on the basis that they were incompatible with the principle of non-refoulement and collective expulsion .

for stability and addressing root causes of irregular migration and displaced persons in Africa". Considering Libya, it has aimed at supporting migration issues in Libya through the implementation of different projects. From November 2015 to June 2021, the Fund has mobilised 465 million Euros in projects of protection and assistance to those in need, stabilisation of Libyan municipalities meaning improving living conditions of host communities and of internally displaced people and migrants in Libya and integrated border management. In this latter field, the EU supports the actions undertaken by Italy which include: strengthening the capacity of the Libyan authorities through training on search and rescue, including human rights; protection at disembarkation points and support to integrated border and migration management. The EU has delivered these projects with the help of the IOM.

In total, the EU has grant 700 million Euros in support of Libya considering the EU Trust Fund for Africa, the European Neighbourhood Instrument, the humanitarian assistance and the Instru-ment contributing to Stability and Peace.

Lastly, through the Asylum, Migration and Integration Fund has been given funds to Libya while the Internal Security Fund has grant to Italy 1.022 billion Euros for the creation of several projects in Italy and in Africa.

The 2015 is remembered as the year in which the peak of migrants and refugees was recorded and as the moment from which it began to refer to the "refugees crisis" and it was also the year during which the EU set up its naval operation, Operation Sophia[67].

It is in this atmosphere that the Memorandum of Understanding (MoU) between Italy and Libya was signed on 2nd February 2017.

[67] Its aim is "*disrupting the business model of human smuggling and trafficking networks*" and "*preventing further loss of life*". In 2016 thanks to the Council of the EU the operation was extended with the mandate of building the capacity of the Libyan Coast Guard (LCG) .

3.3 The Memorandum of Understanding between Italy and Libya

As aftermath of 2015 refugee crisis and of the *Hirsi et al. vs Italy* judgment have taken place a change in the Italian strategy about migration management. This changing has led the Italian Government to act to confine migrants within Libyan borders and preventing them to leave Libyan territory and sailing towards Italy.

This has been the ultimate goal of the "Memorandum of Understanding on Development Cooperation, Illegal Migration, Human Trafficking and Reinforcement of Border Security" signed in 2017 between the Italian Prime Minister Paolo Gentiloni and the Head of the Libyan Government of National Accord, Fayez Mustafa Sarraj.

The MoU is a new era of cooperation between the two countries on irregular migration and border control and its two main objectives are the control of migratory flows and the support to the development of Libya. Moreover, another main goal which should achieve towards immediate actions is the reduction of entries in Italy at any cost.

The Memorandum is composed of a preamble and of eight Articles. Article 1 and 2 consider the obligations of the parties, Article 3 refers to the establishment of a Mixed Committee to implement the MoU, Article 4 concerns the Italian financing of the measures in the MoU, Article 5 is about the legal framework under which the parties should be committed as the international obligations and the human rights agreement of which the two actors are part of and Articles 6 to 8 present the technical aspects such the 3 year-duration of the Memorandum, the amendment procedure and the settlement of disputes.

The main Articles are Article 1 and Article 2.

Article 1 considers the main commitments of the actors, that is to proceed with the cooperation on security and irregular migration according to past bilateral agreements and the Italy engagement to provide "*support and financing to development programs in the regions affected by the illegal immigration phenomenon within different sectors, such as renewable energy, infrastructure, health, transports, human resource development, teaching, personnel training and scientific research*" and to provide "*provide technical and technologic support to the Libyan institutions in charge of the fight against illegal immigration, and that are represented by Defence Ministry border guard and cost guard and Interior Ministry competent organs and departments*.".

Article 2 points out some aspects already mentioned in Article 1 as: "*completion of the land borders' control system of south Libya*"; "*compliance and financing of the above mentioned hosting centres already active in respect of the pertinent laws*, […]. *The Italian party contributes through medicines and medical equipment supply for the health hosting centres* […]."; training of the Libyan personnel; "*the Parties collaborate to propose within three months from the signature of this memorandum, a wider and more complete Euro-African cooperation view*, *to eliminate the causes of irregular immigration, in order to support the countries of origin of immigration in the implementation of development strategic projects, raise the level of tertiary sectors so that to improve the life standard and the health conditions, and contribute to the poverty and unemployment reduction*"; support the international organizations which work in Libya and implement development programs for job creation.

The Memorandum assumes a generic and sometimes a legally imprecise language and it does not say much about the origin of the funds and about the projects. Furthermore, there is a lack of quotation of the international protection and human rights frame, this could be seen as the word "*rights*" appears only once.

Since February 2017, the Memorandum has always been renewal. On 2nd November 2022, in the absence of any modification, the Italian Government led by Giorgia Meloni, has been tacit renewal the MoU for other 3 years.

3.4 The implementation of the MoU

The first key goal the Italian Government wanted to achieve through the signing of the MoU was the confinement of migrants within the Libyan territory and thus, the decrease of arrivals in Italy. According to the data of the Italian Ministry of Interior, in 2017 there were 109,684 arrivals in Italy while in 2018, it was stated a sharp drop in migrant crossings of the Mediterranean. In 2019 there were nearly 11.000 arrivals; a reduction of 90% compared to 2017 and of 50% compared to 2018.

From January 2024 to 6th May 2024, 17.399 migrants arrived in Italy; an increased from 2019 but a decline compared to the same period of 2023, when 44.343 migrants reached the Italian border. From the early months of 2024 to the ones of 2023, it has been observed a decline of 60,76%.

Whatever the drop is connected to the Memorandum or not is difficult to establish. Italy asserted that the drop was linked to the "stabilization" of Libya thanks to the help of Italy and the EU while some experts are not sure of this reality, but rather, they believe that less migrants have wanted to cross the Mediterranean, even if the reasons are unclear. It could depend on the secret agreements, whose details are therefore unknown, that the Libyan government, with the probable involvement of Italy, would have fund with individual Libyan factions committed to the trafficking of migrants. Thus, in exchange for money and for political recognition, these factions would have blocked migrants departures. Another possibility it could be that the decrease of arrivals is a direct consequence of anti-smuggling deals established between Niger and neighbouring countries and the EU or the training of the Libyan coastguard by Italy, which turning back boats trying to reach Italy. The reason of this sharp decline is doubtful but what is certain and clear is the achievement of this goal by the Italian counterpart.

If on one hand, the crossings have decreased; on the other hand, the number of deaths in the Central Mediterranean Sea have increased (Figure 3). The Central Mediterranean is the deadliest migration route and since 2014, some 25,959 people have lost their lives while trying to cross the Mediterranean Sea.

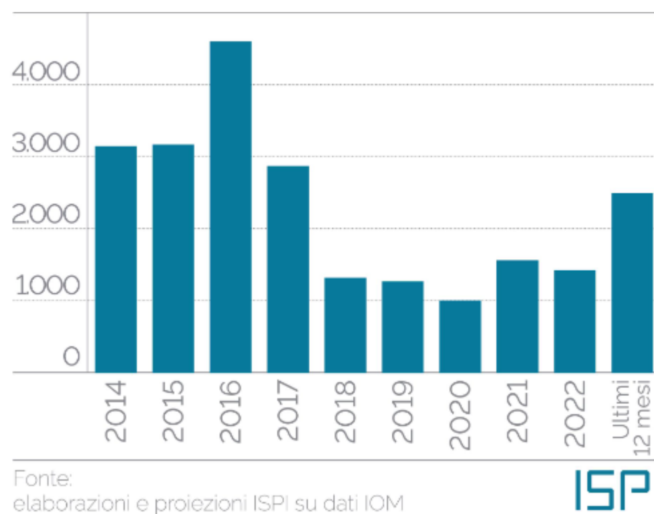

Figure 3: La rotta più pericolosa del mondo. Migranti morti e dispersi lungo la rotta del Mediterraneo centrale

Source: Istituto per gli Studi di Politica Internazionale (ISPI), 3rd October 2023

Since 2009, Italy, backed by the EU, has supported and financed Libya towards different types of patrol boats and ferry boats, assistance service and training aimed at built the new Cost Guard authorities and a Search and Rescue area in Libya. Funds have not only been directed to the new Coast Guard, but economic and material resources have been given to a Corp of the Libyan Navy belonging to the Libyan Ministry of Defence and to the General Administration for Coastal Security (GACS), a Law enforcement unity within the MoI. In particular, the border surveillance at sea and rescuing irregular migrants are tasks of the Libyan Coast Guard and Port Security (LCGPS) and of the GACS. This latter is responsible for sea competences up to twelve nautical miles while the LCGPS for competencies beyond this limit.

Between 2009 and 2010, the Italian government donated four Coastal Patrol Vessels as set out in the 2008 Friendship Treaty, which were then damaged and repaired with Italian funds, and returned to the Libyan authorities in 2017. One of these four Patrol vessels was used by Libyan coast guard in an attack against a boat of 63 migrants fleeing Libya. That violent episode, happened on 1st July 2021 in the Maltese SAR waters, was recorded by the German NGO Sea Watch which made a video showing the attack during which the Libyan authorities threatened the life of migrants on the boat with rounds of bullets being shot and other objects were thrown.

The vessels donated became part of the surveillance system which embrace the Italian patrol boat in the international water and the European vessels engaged within the Frontex operations. As a result of that donation, in 2009 push-backs operations started to be used as a policy of systematic collective refoulement to Libya by sea by the gifted Italian vessels. Moreover, it was within his framework, that in 2012 Italy was condemned by the European Court of Human Rights for push-backs activities.

Furthermore, Italy delivered military operations to give support to the Libyan Coast Guard. The Italian Decree Law 8/2008 allocated over 6.2 million Euros for the assistance of the Guardia di Finanza authorities to the mission in Libya in order to enforce the 2007 cooperation agreement. Since then, other decrees were aimed at increasing the participation and support of Guardia di Finanza in Libya. From 2017 to 2020, Italy earmarked 22 million Euros to the 2017 military mission to support Libyan Coast Guard and also to deliver technical support and training to Libyan authorities. That support was

extended since 2021, ending with the institution of Nautical school and a shipyard in Libya. In 2022, the funds increased of 500 million Euros, to a total of 10.5 million Euros.

In addition to these bilateral agreements, Italy has taken part to the 2011 EU Border Assistance Mission (EUBAM) and to EU Naval Operation in the Mediterranean (EUNAVFOR MED IRINI). These two civilian/military mission have been structured under the Common Security and Defence Policy (CSDP) which is the EU's comprehensive approach towards crisis management.

The EUBAM has aimed at developing border management and security at the country's land, sea and air borders. Moreover, this civilian mission with a capacity-building mandate has advised, trained and mentored Libyan counterparts in strengthening border services. The mission's mandate will last until 30th June 2025.

While, since 2020, the EUNAVFOR MED IRINI has intended to monitor and collect information on illicit exports from Libya as petroleum products, to give assistance to the interruption of human smuggling and trafficking networks and to support capacity building and training of Libyan Coast Guard and Navy. However, due to Libyan political fragmentation, this activity has not started yet. The mandate of the mission will last until 31st March 2025. For this latter mission, Italy also has extended its fundings from 24.9 million Euros in 2020 to 39.7 million Euros in 2021-2022.

In 2018, with the Decree 84/2018 known as the Patrol Boats Decree, the Italian government donated twelve vessels to the Libyan government with the objective of "*drastically reducing migration inflows originating from and transiting through Libya, providing additional tools to contain the migratory pressure, also with a view to protecting the external borders*". The twelve vessels were handed over to the Libyan Coast Guard, Navy and Police between October 2018 and November 2019.

The Italian funding for trainings, for patrol boats and its maintenance have come from by Italian fund dedicated to international cooperation, from European projects and from the Africa Fund. The Africa Fund has been activated by the Italian authorities with a Budget Law 232/2016 and its ultimate goal has been to provide development aid and to "*promote dialogue and cooperation with key African partners on migration*" such as Libya, Niger and Tunisia. Instead, 2,5 million Euros has been delivered for monitoring activities, migration flow reduction, border strengthening, for the provision of the Libyan

Police Patrol Boats, for insurance and certificates and for training 33 members of the LCGPS crew.

The other important actor in this field is the European Union. The EU has delivered several programmes, naval missions, civil and military operations and agencies to boost Libyan border and to support Libyan authorities in different field of actions. The most noteworthy European programme is the Support to Integrated Border Management and Migration Management (IBM) within the EU Trust Fund for Africa, which in 2020 has amounted to 57.2 million Euros.

As Italian support and funding to Libyan authorities has begun several years before of the adoption of the 2017 MoU, also the EU support has started years before the signing, precisely in 2004. Indeed, from 2004 to 2011, the EU funded fourteen projects to manage migration in Libya. In the same period, human rights organizations made some criticism about the lack of protection of migrants in Libya and about the presence of Libyan authorities within detention centres. Therefore, in 2009 the EU Council understood that their presence on the ground should have become more structured, with a cooperation agenda on mobility, asylum and border management within an organized time plan.

Thanks to the influence of the already functioned Italy-Libya bilateral deals, in 2010 it was adopted an EU project called the Sahara-Med. This programme aimed at preventing and managing irregular migration flows from Sahara Desert to the Mediterranean Sea and it lasted from 1st February 2010 to 1st March 2013. The implementing partner was the Italian Ministry of Internal Affairs which assign 10 million Euros by the EU for personnel training and maintenance of patrol boats.

Another project was launched in 2013 by the Spanish Guardia Civil for a total of 7.1 million Euros named the Seahorse Mediterranean Network. The Italian Guardia di Finanza and the Spanish Guardia Civil signed an ad hoc deal in order to provide training courses to the Libyan authorities of the Ministry of Defence and Internal Affairs, which took place in Gaeta in 2018.

Other training courses were held by FRONTEX. The EU committed itself to introduce human rights as part of the materials of the courses, however, it has been acknowledged that human rights provisions were only a very marginal part of the Frontex-led training course, representing only 0.5% of all materials.

As already mentioned, the most remarkable EU programme developed in 2017 has been the IBM within the EU Trust Fund for Africa. It has contributed to the training and assistance services to curb irregular migration and to increase the Libyan SAR capacity. Since 2020, it has delivered 57.2 million Euros and the Italian Ministry of Internal Affairs has been the primary implementing actor. The programme has been developed in order to help what Italy already had started such as sealing maritime and terrestrial borders of Libya, set up the Libyan Coast Guard and the SAR zone, enhance the capacity of LCGPS and GACS, grant vessels and collaborate with the IOM and UNHCR in pilot projects.

This programme has been established within the context of the EUTF. The Fund is the main EU tool aims at supporting Libya in migration field. It has mobilised 465 million Euros. On July 2020, it was announced the delivery of thirty vehicles by the Italian Ministry of Interior for the Libyan border management and also the future deliveries of another SUVs, buses, ambulances and boats for GACS and LCGPS. The EUTF also has grant basic infrastructure as satellite telephones to the LCGPS and ten office contains and uniforms.

Since February 2022, the results reached by the EUTF have been:

- protection: the Fund has helped 56.500 migrants to voluntary return to their countries of origin and with the evacuation of more than 7.500 refugees and asylum-seekers out of Libya; the Fund has delivered more than 400.000 non-food items and hygiene kits to migrants as emergency assistance;
- community stabilisation: the Fund has improved the access to basic services to more than 4 million migrants, access to education to nearly 70.000 children and the Fund has given the possibility to job training courses to more than 3.000 young entrepreneurs;
- border management: the Fund has provided to 142 GACS members technical training such as human rights and navigation courses and to the Libyan authorities were offered 30 SUVs, 10 buses and 3 vessels;
- Covid-19 support: it has gave 100.000 antigen-based rapid diagnostic tests, 50.000 primary healthcare services and almost 1.500 healthcare

facility staff and community health workers trained in Infection Prevention and Control.

The development of the projects under the Fund will continue until December 2025.

A recent novelty regards new efforts by the EU to increase Libyan border controls. An Action file on Libya[68] has been draft on 11th January 2023 with the following objectives: support border and migration management, prevent irregular departures, foster search and rescue capacities and boost respect for fundamental migrants rights and international obligations of Libyan actors. The draft Action file also has included the development of an updated mapping about the main public actors in Libya in the migration field. This will be useful for the EU to know the which Libyan actors to work with. Within the Action file it has been decided to allocate nearly 61 million Euros for different law enforcement projects and programmes.

The Action file is composed of 12 Actions that should be achieved in order to fulfil the key objects of the document. Particularly significant are: Action 5 which has stated the importance to "[…]*streamline maritime and border management support from the EU and support southern border controls, particularly in relation to Niger and Chad* […]"; Action 6 which has aimed at developing "[…] *a common approach with UN actors and international NGOs regarding access to unofficial detention centres in Libya and engage Libyan authorities on putting an end to the overall detention system and establish open alternatives*" and lastly, Action 12 about "*Strengthen integration of migrants in Libya by support of ongoing projects to address current challenges related to labour migration in Libya*. […]".

Article 2 of the MoU considers in detail, other obligations of the parties. The completion of land border's control of the south Libya is the first type of action highlight in Article 2 of the agreement. The difficulty of its implementation should be recall on the political situation in the country. The fragmentation and the presence of several centres of power have led to the inability of the internationally recognized GNU to control the whole country and especially, the southern border. Therefore, the presence of multiple militias and non-state armed groups, chief among them by the Libyan Arab Armed Forces

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[68] Draft Action file on Libya, Council of the European Union, 11th January 2023, WK 117/2023 INIT, https://www.statewatch.org/media/3723/eu-council-libya-draft-action-file-wk-117-2023.pdf .

in the southern border has made complicated for the Government to honour the MoU obligation. The armed groups control without any judicial guarantees and the continuing attacks by Haftar in order to gain more power and overthrow the prime minister have made changes ever harder to develop. This situation is presently, in a standstill. On the other counterpart, the EU within the Action file on Libya of 2023 is trying to, at least, echo the problem by recalling for the need to support southern borders.

Secondly, Article 2 establishes the obligation to conform and finance hosting centres in respect of international laws and human rights laws and the duty to train personnel. In Libya there are officials and unofficial hosting centres. Italy and the EU reported that they do not directly fund Libya's Directorate for Illegal Migration, but rather they fund UN agencies and NGOs to improve the conditions in the centres. Italy has channelled 2 million Euros to seven NGOs which assistance migrants in three detention centres in Tripoli. Furthermore, Italy has developed a program of 4.2 million Euros for other five detention centres. The funds in these centres include food, hygiene kits, medical care, material, mattresses and blanket and assistance to raise sanitary conditions. Although funds are delivered, staff members of international humanitarian organization working in Libya, during interviews to Human Rights Watch[69] reported concerns that assistance to detainees in centres could serve in support of a system of abusive and arbitrary detention. Therefore, the main problem refers to the implementation and respect of international and human rights laws in detention centres. These are not respect within detention centres as the conditions are barbaric and abuses and exploitation are delivered. This represents one of the key criticisms of the whole Memorandum which, since 2017 has been call up by many actors. Therefore, there are many doubts that this situation of systematic violations could ever change even if, the EU during training courses includes something human rights as materials for Libyan authorities.

Thirdly commitment concerns the proposal of a Euro-African cooperation within three months after the MoU in order to eradicate the causes of irregular immigration. There are examples of cooperation between the EU and third African countries which have been already considered. For instance, the anti-smuggling deal with Niger or the Sahara-Med project or also, the EUFT with African countries and the Italian African

[69] No Escape from Hell- EU Policies Contribute to Abuse of Migrants in Libya, Human Rights Watch, 21st January 2019, https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya .

Fund. The cooperation with African countries and with countries of origin are taking place. Although currently it does not seems that these deals are having real consequences on blocking immigration flow or in allowing the development of origin countries through strategic projects aim at reducing poverty, unemployment while enhancing health conditions and life standards. Thus, while the implementation of a Euro-African cooperation view is happening, the implementation of its objectives is doubtful in African countries.

Fourthly and fifthly duty under the MoU is the support to NGOs in Libyan territory and the development of programs aim at job creation. Both commitments are considered in the Action file on Libya 2023 and the EU is striving to make these two commitments effective but both implementations can not be considered accomplished. Considering job creation, one of the results reached by the EUTF was guarantee job training courses to more than 3.000 young entrepreneurs but the economic situation in Libya do not allow an increased of legal employment especially within migrants population and to date, it is tough to argue that this commitment has been totally achieved. Whereas, considering the support to NGOs it is hard that this happens because Libyan authorities do not willingly accept NGOs and their work in detention centres are extremely limited. In fact, between 2020 and 2021, the Libyan government asked to the UNHCR to leave the country or to stop their activities in Libya. Another example of this weak relationship between Libyan authorities and NGOs is that the UNHCR does not have a Memorandum of Understanding with the GNU that clarifies its mandate. Having a Memorandum is the standard procedure in countries where the UNHCR have an office.

Article 3 of the MoU considers the common willingness to develop a Mixed Committee with both Italian and Libyan members who should identity the action priority and identify financing, monitoring and implementation instruments of the commitments of the MoU. The Mixed Committee met in Rome on 14th March 2017. It is composed of Italian and Libyan members from different national services and bodies in the field of border security and migration management. At that time, they determined the action priority of Italy which were: "*refine the structure and content of the training program for GACS coastal patrol vessel crew members*"; "*define a schedule to train about 132 GACS crew members within the end of 2017*"; "*identify priorities with a view to putting in place a sustainable technical programme for GACS*".

Another meeting took place in Rome on 2nd July 2020. During the meeting, Italy made note its willingness to make a change to the cooperation, through the compliance with human rights standards. Moreover, Italy declared the leading role of skilled UN agencies and the gradually overcoming of the system of centres hosting migrants. In the end, the parties agreed to meet again. However, on the website of the Italian Ministry of Foreign Affairs and International Cooperation there was not updated news about new meetings of the Committee.

Article 4 deals with the Italian financing of the initiatives set out in the MoU and of the initiatives agree during the Mixed Committee. Funding from Italy, together with the EU funding, began even before the adoption of the agreement and has continued until today in various fields.

Article 5 refers to the implementation of the MoU respecting the international obligations and the human rights agreements. Understanding and determining the implementation of this Article is tricky as several criticisms of the MoU have been formulated about the fact that the MoU does not fully comply with international laws. The next subchapter of this thesis is going to analyse the different criticisms made in this regard.

Articles 6, 7 and 8 considers technical aspects of the MoU.

3.5 The Criticisms of the MoU

The MoU is part of a wide defensive strategy being followed by European governments, based on security approach which rather than providing migrants protection, it aims to keep them out.

Since after its adoption, the Deal has been challenged by both Italian and Libyan lawyers, legal experts and political groups. In Libya, the lawyer Azza Maghur, together with other five fellow-citizens, appealed to the Tripoli Court of Appeal. She questioned the constitutionality of the Treaty, which was not unanimously approved by the House of Representatives and the State Council and for concerns over the risks for migrants staying in Libya and being detained. The Tripoli Court of Appeal temporarily suspended the Agreement but after not so long, the Libyan Supreme Court reserved the suspension.

During an interview with an Italian weekly news magazine "Internazionale", Maghur accused Italy saying: "*Italy and Libya are both transit countries, but Italy is stable and is able to protect migrants. The same can not be said of Libya. So why are responsibilities entrusted to whom is unable to do so*?" (Camilli, A., Internazionale, 2017).

In Italy, the Italian Radical Party filed a lawsuit to the Republic's Procura challenging the constitutionality of the Treaty, as in Article 80 of the Italian Constitution the Parliament should ratify the international agreement. Moreover, the Italian Association for Juridical Studies (Asgi), immediately raised questions of legitimacy and asked to the Latium Administrative Tribunal to block the Deal. Asgi also stated that the government was misplacing funds by offering Libyan authorities with training and materials and allowing the violation of fundamental human rights.

The MoU has not been blocked either in Libya or in Italy, although critical points have been raised regarding its constitutionality and violation of migrants' human rights since its immediate adoption.

Another critical point of the Memorandum considers that Libya lacks an efficient legal system able of ensuring the prosecution of human traffickers and the protection of migrants' human rights. Especially, if it is considering that Libya is not a party of the 1951 UN Geneva Convention and that in the MoU there is no reference to the right to asylum. Nor there are any consideration of humanitarian corridors and legal and safe channels to entry into Europe. Therefore, as already stated, the MoU aims to block entries into Europe and outsources the management of migrants and border control which is not illegitimate *per se* but it is questionable in the Libyan context where systematic human rights violations took place. NGOs have reported abuses, torture and killings in the detention centres and also, they have documented the dual role of militias as member of the LCGPS and human traffickers, along with the accountability of public officials and armed groups and smugglers.

Another criticism of the MoU is the LCG role. After the *Hirsi case et al. vs Italy,* there was a shift from "pushbacks" to "pullbacks" activities for the control of migratory flow. These practices are conducted by the LCG who intercepts migrants and takes them back to Libya. Essentially, the practices of "pullbacks", in line with a wider EU securitarian strategy, is the new characteristic of the Memorandum between Italy and Libya under which "*a system of delegation of border controls based on contact-less*

control exercised by Italy and 'a de facto' containment of migrants implemented by Libya, which has, once again, the effect of preventing access to European territory" (Di Nunzio. P., p.8). The reason there was a shift from "pushbacks" to "pullbacks" practices referred to the effects of the *Hirsi case*. Italy realized that implementing such practices by itself might be contrary to the ECHR, therefore, Italy has delegated the activities to the LCG by providing technical, financial, technological aids to reach the same results and thus, the system of delegation was implementing. Hereinafter, it will be considered if this system of delegation leads to an Italian international responsibility for human rights violation against migrants in Libya. Moreover, according to Paolo Biondi, expert in international law, the Italian Navy and the maritime rescue coordination centre in Rome are in breach of the International Convention on Maritime Search and Rescue which stipulate that ships closest to vessels in distress shall intervene. Instead, he reported that on several occasions the Italian Coast Guard Operation Centre asked to NGOs ships to wait in *stand by* and wait for the intervention of the Libyan Coast Guard. But this request, do not follow the rules, nor does it favour the safety of migrants.

In addition to the fact that these "pullbacks" practices by the LCG could not occur if there were not this system of delegation through which Italy finances and donates patrol boats, materials and other services such as training courses to the Libyans, as the Libyans do not have the capacity and neither the instruments in order to develop such actions, the major criticism concerns the method used by LCG to develop these activities. The modalities and the method they use are often documented and denounced by NGOs. In November 2017, the German NGOs Sea Watch reported the violent behaviour of the LCG towards migrants rescued. The Libyan LCG did not drop their boats for rescue, they let a man drown at sea and hindered the intervention of the German NGO ship. However, this episode is not the only one documented. The NGOs which operated in the Mediterranean Sea have long recorded the aggressive behaviour of the Libyan LCG towards others rescue vehicles. Another example took place on 18th May 2017, when the German NGOs Sea Watch reported to the International Criminal Court in the Hague that it rammed by the LCG, while it was about to conduct a rescue. The Libyan coastguards opened fire on a fishing boat loaded with migrants and then brough them back to Libya. These are only two episodes took place in the Mediterranean Sea but there are several examples taking place nowadays.

Several criticisms have already been stated, but the real consequences of the MoU, which outrage civil society, NGOs and human rights organizations, are the unimaginable sufferings to which migrants are subjects. The human rights of these people are violated since the first moment they enter in Libya, after perilous journeys through the desert and/or their interception at sea by the LCG, ending with arbitrary imprisonment in detention centres for an unlimited period. While they are in these centres, they suffer from atrocities without any reason, but only for seeking safety.

In 2018, the UN Support Mission in Libya produced a report on the human rights situation in Libya[70] which it has been described as an "*unimaginable horrors*" where the list of abuses, atrocities and human rights violation has been infinite. Men are separated from women and children, families are split, unaccompanied children are detained, and the special needs of vulnerable migrants and refugees are not addressed. Physical abuses, slavery, forced labour and extortion at the hands of smugglers, armed groups, state officials and traffickers take place in the centres. Women are beaten and sexually abused, especially younger women. Furthermore, the UN report has denounced tortures through beatings with objects, boiling water or chemical on victims' bodies, electric shocks, shootings the legs etc. Doctors Without Borders in one of its projects in 2022 has collected together testimonies by migrants and refugees in detention centres. Bashir, 17 years old (invented name) who was one year imprisoned said "*They took burnt plastic and put it on my body. Alone in the room, with nothing, I stayed for one year*."

Another report was published in June 2022 by the UN Independent Fact-Finding Mission on Libya[71] which has documented heinous treatment to migrants and refugees and which has stated that they have experienced "*murder, enforced disappearance, torture, enslavement, sexual violence, rape, and other inhuman acts ... in connection with their arbitrary detention*". It has been published another report, the recent one, by the Independent Fact-Finding Mission on Libya on 27th March 2023[72] which has reported the same type of treatments meted out to migrants and refugees but it has also stated that there

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[70] Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, United Nation Support Mission in Libya, Office of the High Commissioner for Human Rights, 18th December 2018, https://unsmil.unmissions.org/sites/default/files/libya-migration-report-18dec2018.pdf .

[71] Report of the Independent Fact-Finding Mission on Libya, Human Rights Council, 27th June 2022, https://www.ohchr.org/en/hr-bodies/hrc/libya/index .

[72] Report of the Independent Fact-Finding Mission on Libya, Human Rights Council, 3rd March 2023, https://www.ohchr.org/en/hr-bodies/hrc/libya/index .

are "*reasonable grounds to believe that migrants across Libya are victims of crimes against humanity*" and there are "*reasonable grounds to believe that the underlying acts of crimes against humanity were committed in detention centres of the Directorate for Combatting Illegal Migration*". It goes on to say that the personnel and officials of the DCIM at all levels are implicated and that there is evidence of collusion between the LCG and officials of the detention centres. It has been reported one example stating "*The Mission also collected evidence of collusion between the Libyan Coast Guard and those in charge of al-Nasr detention centre in Zawiyah. Abd al-Rahman al-Milad, also known as "Bija," the head of the regional unit of the Libyan Coast Guard in Zawiyah, is on the Security Council sanctions list for involvement in trafficking and smuggling*".

Stating that migrants are victims of crime against humanity has also been declared by the prosecutor of the International Criminal Court (ICC) in September 2022. He has highlighted that these acts "*may constitute crimes against humanity and war crimes*".

In addition, the Council of Europe has asked Italy to stop cooperating with Libya in the light of the pullback operations and in the light of the interception of migrants who are sent back into the smugglers' network and in detention.

The inhuman treatments and the endless abuses under which migrants and refugees are subjected violate international human rights law instruments and without any doubt, Libya is not a safe harbour for migrants. Within this system, the actors which detain the whole responsibility for such misconducts are the Libyan authorities, the EU and Italy. Libya is unable to persecute perpetrators and it is unwilling to adopt changes and the EU and Italy, even if they are aware of these abuses and of the situation on the ground, they continue to fund and support Libyan authorities in order to follow their strategy of outsourcing border control and migration management and to empower Libyan Coast Guard to intercept migrants and take them back to Libya. The EU migration commissioner, Dimitri Avramopoulos, in November 2017 declared "*We are all conscious of the appalling and degrading conditions in which some migrants are held in Libya*" and that the EU wanted to improve the conditions in Libyan detention centres. Although this positive attitude, in the mid 2018, Human Rights Watch conducted interviews to detainees, detention staff, Libyan officials and humanitarian actors and what resulted was

that the EU fund and the EU efforts have had an insignificant impact. Indeed, the EU migration cooperation with Libya has given support to a cycle of serious abuses.

Although Italy and the EU acknowledge these violations and this scenario, they have never stopped funding and providing materials and aid to Libya and Italy, the main actor and spokesperson in all cooperation with Libya, has never amended the Memorandum of Understanding, but rather, it has always been renewed.

Helping Libya and enhancing its capacity to intercept migrants mean to implement the already known system of delegation and as notified by Human Rights Watch on February 2023, "*assisting Libya's coast guard, knowing that it will facilitate the return of thousands of people to serious human rights violations, makes Italy and the European Union complicit in such crimes*".

Although Italy has a "*contactless control*" of migration flows, which means that Italy is not directly involved in any human rights violation and thus, Libya and Italy are not internationally responsible for the same violations, Italy could be held internationally responsible for these atrocities by assisting and aiding the Libyan authorities to commit such acts and, in addition, by providing assistance, continues to maintain this situation where gross human rights violations occur. Therefore, since Italy is not exempt from international obligations, it can be held responsible as it transfers the burden to Libya.

3.6 Is Italy internationally responsible for human rights violations?

The active involvement of Italian officials to the LCG could be led to serious violations of international human rights law instruments. In particular, it will be consider the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the ECHR and the International Law Commission (ILC) Draft Articles on State Responsibility. Thanks to the remote support (equipment, boats, training etc.) and the immediate support (Italian staff, consultation activities etc.) provided by Italy under the MoU, the capacity of the LCG to intercept migrants in the Mediterranean Sea and return them back to Libya has been strengthened. Supposedly, Italy does not exercise control over Libyan territories where violations occurred. Nevertheless, Italy's responsibilities can be established if two conditions are fulfilled: 1) the support to the LCG activates the

jurisdictional link of CAT, ECHR and State Responsibility; 2) CAT, ECHR, State Responsibility cover the concept of complicity/assistance in human rights violations.

CAT

Italy ratified the CAT in 1989. Article 1.1 of the CAT :

"For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Additionally, it states that State parties might not "*expel, return, or extradite to a State where there are grounds to believe the individual returned will be subjected to torture*". The prohibition of torture is interpreted as *jus cogens* and at the very least customary international law. Obviously, the MoU is in contrast with these principles as Libyan officials continue to engage in human rights violations in detention centres and during the rescue operations. Therefore, Italy's responsibility may lie in funding the Libyan detention centres and the Libyan Sea operations. Italy may argue that it has no authority and power over the actions of Libyan border patrol officials, however, this statement does not convince as soon as Italy provides funds for such operations and give support to the Libyan authorities.

Moreover, when the Committee Against Torture examined Italy's fifth and sixth reports on its compliance with the CAT, it stated that, despite of the adoption of the Memorandum with Libya, Italy could not ignore its international human rights obligations and further stated that "*Italy must review its migration and cooperation policies and its legal responsibilities*" (Vari, 2020:125).

The extraterritorial application is a crucial element to take into account in order to better understand Italian responsibility and to acknowledge if the jurisdictional link with CAT can be activated. Although CAT does not contain a jurisdictional clause, it can be

applied extraterritorially, and the assessment of Italy's responsibility is oriented by the scope of different obligations. Under CAT there is a difference between positive and negative obligations. The responsibility for positive obligations considers acts taking place in the territory under the State's control while negative obligations have no geographical limitation. Under this perspective, State's activities that collide the right of an individual not to be tortured, would fall within the boundaries of the CAT, wherever the person is located. Thus, the CAT might apply for Italy's support to the LCG.

The second element to consider is the complicity. It means that the support and aid provided to acts of torture attracts State responsibility even though, those acts are committed outside the State's territory. Therefore, even if migrants and refugees are not subjected to torture by Italian authorities, Italy can be in breach of Articles 1 and 2 of CAT as the assistance to the LCG has facilitated these violations.

Article 2 :

"1.*Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*"

"2.*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*"

"3.*An order from a superior officer or a public authority may not be invoked as a justification of torture.*"

ECHR

The ECHR extraterritorial application about Italy's patronage to the LCG shall be examined considering the origin and the form of the support provided (remote or immediate). The ECHR extraterritorial application appears to be confirmed by the European Court of Human Rights' (ECtHR) jurisprudence which states "*where, in accordance with custom, treaty or other agreement, authorities of the Contracting State carry out executive or judicial functions on the territory of another State, the Contracting State may be responsible for breaches of the Convention thereby incurred, as long as the acts in question are attribute to it rather than to the territorial State*" (Moran, Pizzuti, 2021:4). This type of extraterritorial model reflects functional features that match in the current case. Indeed, the Italian support to the LCG is implemented with the approval of

Libya and furthermore, in the absence of indications that the Italian staff have been placed at the disposal of the Libyan Government, their conduct shall be allocated to Italy. Moreover, the remote support offered to the LCG could also trigger the ECHR extraterritorial application vis-à-vis the abuses to migrants and refugees. In this case, the Italian support is a form of border outsourcing (externalisation) which undermines several Italian obligations such as Article 3. Article 3 of the ECHR states that "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*". In the present case, even if the support is remote, the extraterritorial application of the ECHR can be applied and the principle of non returning people where such violations can take place is undermined. Therefore, the border outsourcing does not dissolve the jurisdictional link.

The second element to take into consideration is the complicity of Italy. The jurisprudence of Article 3 asks States to avoid complying with violations of human rights by allowing, or extraditing individuals to countries in which they could suffer. Extremely important in this situation is the principle of *non-refoulement*, as one of the most significant protection guarantees to migrants and refugees. It is expressed in Article 3 of the CAT, in Article 33 of the 1951 Refugee Convention and in Article 19 of the EU Charter on Fundamental Rights. The principle of *non-refoulement* has been accepted by the international community as customary law and even as *jus cogens*, therefore, it can be applied to States that are not party of the relevant treaties as Libya. It can be inferred that Italy does not respect the *non-refoulement* obligation under Article 3 ECHR.

To conclude, Italy's behaviour is in contrast with Article 3 and the element of complicity is fully accomplished.

ILC DRAFT ARTICLES ON STATE RESPONSIBILITY

The most forceful argument which can challenge Italy's responsibility for human rights abuses is based on State Responsibility principles. The International Law Commission issued the Draft Articles on State Responsibility that are widely recognized as customary law, even not having force of treaty law.

Article 2 delineates how a State is directly liable for its unlawful acts and that is "*when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligations of the State*."

Chapter IV of the ILC Draft articles states that each State is accountable for its own wrongful actions but there are also situations in which "*internationally wrongful conduct […] results from the collaborations of several States rather than of one State acting alone*." Thus, Italy might not be directly accountable for those acts happening in the Mediterranean sea and in the Libyan detention centres but it is still liable when it "*aids or assists*" (art. 16) in the commission of internationally illegal acts or exercises "*direction and control*" (art. 17) over the commission of those if, as states Article 16 and 17, "*(a) that State does so with knowledge of the circumstances of the internationally wrongful acts; and (b) the act would be internationally wrongful if committed by that State*." Indeed, Italy's behaviour seems to fall within the language of Article 16 and Article 17 when it provides Libyan officials with patrol instruments and vessels to intercept migrants and return them back to Libya and when it provides Libya with financial and logistical assistance.

These articles are infringed as Italy is aware that Libya complies Article 16(a), while Article 16(b) would be satisfied if Italy committed such acts itself because it would violate the principle of *non-refoulement* embodied in CAT, 1951 Refugee Convention and its 1967 Protocol as well as human rights laws expressed in European Human Rights covenants.

In addition, Italy's support to Libya seems to be in violation of Article 41(2) of Draft Articles on States Responsibility by providing assistance in perpetuating a situation in breach of a peremptory norm as established in Article 40. The perpetuating situation refers to a situation in which migrants are subject to treatments conflicting with the *jus cogens* prohibition against torture and the support offered to the LCG. More precisely, Article 41(2) established that "*no State shall recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation*." The obligations of non-recognition and non-assistance "*goes beyond the provisions dealing with aid or assistance in the commission of an internationally wrongful act*" (stated in Article 16) as it "*extends beyond the commission of the serious breach itself to the maintenance of the situation created by that breach*." In this respect, Italy's assistance to Libyan officials since 2017 is likely to engage its responsibility under Article 41.

Considering the CAT, the ECHR and the Draft Articles on State Responsibility, Italy by agreeing to support the LCG risks breaching its obligations and even though, it is not directly violating these Conventions and Articles, it may still be held responsible for its assistance to Libyan's unlawful operations. However, there are grey areas.

Firstly, there are some challenges that make the assessment of Italy's responsibility difficult to reach in practice. For instance, the act of complicity is an exceptional evaluation in international jurisprudence and it is hard to find a Court that has jurisdiction over both States. Secondly, the current political situation in Libya and the lack of a state authority and the multitude of actors involved, leave the question open as to who could be identified as representative of the state committing the breach. Lastly, it can be argued that heavier evidence and proof might be needed in order to prove Italy's direct responsibility for Libya wrongful acts within its state's borders.

3.7 Conclusion

Cooperation with Libya on border control and migration is not a new policy for Italy. Since 2000s, the two countries, merged by an historical path, have started to sign bilateral agreements in order to better management migration and curb it. The growth of crossings in the Central Mediterranean has led the development of a political approach aimed at stopping the migration flow between Libya and Italy and therefore, in 2017 the Memorandum of Understanding was signed. Indeed, the main objective to reach has been the decrease of migrants and refugees who reach Italy and the EU.

The MoU imposes a number of obligations for both actors which implementation, after seven years, is not linear and not full completed. There are still obligations in a standstill while others which since the adoption have been put at the top of the agenda of both countries.

Since 2017, crossings reduced, the LCG has been intercepted lots of migrants trying to come in Italy while Italy has financed and supported Libyan authorities both with technical and technological aids and with training courses. Another valuable actor which has granted a wider support and assistance to Libya is the EU. As consequence, this assistance has fuelled the cycle of already violation of human rights of migrants and refugees. The gross abuses to which migrants are subject in Libya represent the most

problematic element of this MoU. Yet, both Italy and the EU seems unbothered to compliance with international obligations such as the principle of *non-refoulement* and International Conventions to which Italy is bound by as the 1951 Refugee Convention. In particular, Italy could be held responsible for human rights violations under the CAT, ECHR and the Draft Articles on State Responsibility for assisting and aiding Libyan authorities. However, Italy is trying to shield itself from international obligations and to avoid its responsibility by letting Libyan officials intercept and bring back migrants without considering their status and investigating their identity.

Outsourcing border control and migration management are the primarily objectives in the current European and Italian political context. Nevertheless, it cannot be implemented at the expense of fundamental rights of migrants and refugees.

CHAPTER IV - ITALY-ALBANIA AGREEMENT

4.1 Country frame: Albania

Albania is a unitary multiparty Republic in southern Europe. It is located in the western part of the Balkan Peninsula on the Strait of Otranto and on the southern entrance to the Adriatic Sea. It is bounded by Montenegro to the northwest, Kosovo to the northeast, North Macedonia to the east, Greece to the southeast and south and the Adriatic and Ionian seas to the west and southwest. Italy is its western neighbour at some fifty miles (80 km) across the Adriatic Sea.

As located in the western part of the Balkan Peninsula, it is also part of the Balkan Route, especially of the Western Balkan route. The Balkan Route is made up of the Western Balkan route and of the Eastern route. This latter is that part of route that from Turkey connects by sea the Greece while the Western Balkan route refers to the path through the regions of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia. The Balkan Route is the main route by which migrants reach the EU by land.

The capital city is Tirana and in 2024, its population is 2,715,000. The Head of State is Bajram Begaj while the Head of Government is the Prime Minister, Edi Rama.

From 2017 Albania has registered an increased number of refugees and asylum seekers arriving in its territory in mixed movements[73]. As September 2021, in Albania there were 115 refugees while on 30th April 2024, the total number of refugees, asylum seekers and people travelling as/or part of mixed movements were 169. They come from Syria, Morocco, Algeria, Iraq, Afghanistan and Bangladesh.

Concerning asylum seekers, in 2023 the European Migration Agency communicated a total of 4,779 asylum seekers from Albania who submitted the request of international protection within EU countries.

Albania is a party of the Council of Europe (COE) and of the UN and thus, has different regional and international obligations. The regional human rights Treaties to which is party are the European Convention on Human Rights and its Protocols, the COE Convention on Action against Trafficking in Human Beings, the European Convention

[73] Mixed movements refers to people on the move, travelling in an irregular way, over the same route and using the same means of transports but for different reasons .

for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of National Minorities etc. Albania has also ratified a number of UN human rights Treaties such as the CAT and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Moreover, Albania is party of the 1951 UN Refugee Convention since 1992.

4.1.1 Migration and asylum policies in Albania

Albania has a long history of emigration. Starting from the 15th century and then in the second half of the 19th and until the early 20th century, Albanians emigrated firstly, towards neighbouring countries such as Greece, Italy, Dalmatia Coast, Istanbul and then also to more distant countries as United States, Australia and Argentina.

Albania diaspora stopped during the communist regime (1945-1990) as moving abroad was outlawed and punishable. However, when the communist regime collapsed, Albania diaspora began again. The diaspora was characterized by push and pull factors. The collapse of the communist regime, poverty, unemployment, poor living conditions, economic and education push factors and the image of Europe as attraction of the Western European ideal were the major reasons of the Albanian emigration. Albania has the highest migration flow in Europe and the first took place in mid-1990 when 5,000 Albanians went to Western European countries as refugees. The second migration flow was in March 1991 when 26,000 Albanian reached southern Italy by crossing the Adriatic Sea, while the third happened in 1997. Nearly 70,000 Albanians left the country as the result of poverty, unemployment and economic hardship. Another episode was the Kosovo refugee crisis in 1999 when 400,000 Albanian Kosovars emigrated into Albania as consequence of the nationalistic forces of Serbia’s Slobodan Milošević.

Albanian emigration never stopped during the years and in the first half of 2015, there has been a growing of asylum seekers to Germany and other EU countries.

Starting from the 2010, Albania has also started to be a country of immigration. Legally entrance increased from 5,663 in 2010 to 8,330 in 2013 and immigrants came from Turkey, Italy, Kosovo, Greece and China. Immigrants came in Albania as student, family member, employees in humanitarian and religious activities, refugees and also as

labour immigrants. Labour immigrants from EU countries increased from 1,572 in 2010 to 3,293 in 2013.

In the same years, Albania became a transit country for migrants from Middle East and North Africa countries. In 2013, the number of people who used Albania as transit country expanded twenty times over 2010. In particular, Albania is one of the transit countries within the Western Balkan route. Indeed, the illegal migrants who entered Albania from Greece, then, tried to move north towards Montenegro, Kosovo and other Western Balkans countries in order to arrive at EU.

Although push and pull factors are less intense compared to the 1990s, emigration flows continue in Albania and it still is an immigration and transit country.

Following the collapse of the communist regime in 1990, in Albania began a new era of democratization. In 1998 the new Constitution was adopted which stipulated the right of asylum and the first law on asylum was enact. The development of the Albanian asylum system has been based on 1951 Refugee Convention criteria on refugee definition, refugee status determination and refugee protection. Furthermore, the Office for Refugees has obtained asylum applications, has conducted interviews and has acted as a collegial decision-making body at the first level. Rejected asylum seekers have the right to appeal to the National Commission for Refugees which is composed of eight members from government agencies and representatives of two NGOs.

In October 2001, the Albanian Task Force on Asylum was set up aiming at drafting by-laws to fill legal gaps in refugee integration. In 2002, three by-laws on education, health and employment were incorporated in a law established by the Parliament in August 2003. In 2003 it was also renamed the Office for Refugees as the Directory for Refugees and it has been relocated in the Ministry of Public Order. Moreover, the UNHCR, the Directory for Refugees and a local NGO, Peace through Justice, have started to give legal assistance for refugees and asylum seekers.

The UNHCR not only gives legal assistance with the help of other actors but also cooperates with the Government of Albania in order to grant refugees and asylum seekers with effective rights and it guarantees a fair and efficient procedure. In collaboration with the IOM and the Ministry of Public Order, the UNHCR also checks borders and pre-screening procedures in order to differentiate the economic migrants and the asylum seekers and also provides humanitarian assistance to those in need. Furthermore, they are

trying to create differentiated, higher-quality pathways and procedures to tackle mixed movements and guarantee a structured management and resources allocation.

Starting from 2009, when Albania requested to be an EU candidate country and then in 2014, when it received the status of EU candidate country, the Albanian migration framework, in line and in the spirit of EU legislation, has began to be amended with the aim of creating a more coherent and stronger migratory policy. The normative acts have been about the documents, visas, employment, residence, family reunification and the promotion of the right of migrants. The Ministry of Interior is the institution responsible for migration and asylum and it implements the national legislation in this field.

In 2013, it was ratified the Law no. 108/2013[74] "On Foreigners" which rules the entry, stay, employment and exit of aliens in the territory of the Republic of Albania. This Law was amended in 2016 and in 2020. It also regulates the state authorities responsible for the treatment of foreigners and their personal data and then, the obligations and restrictions on the aliens. Moreover, it provides the conditions on removal/expulsion for foreigners and it defines the procedures to follow by the border police and migration service at the Border Crossing Points when a foreign national enters in Albania in a illegal way.

In 2014, it was promulgated the Law No. 121/2014[75] "On Asylum in the Republic of Albania" which grants the right to asylum to foreigners or stateless person and which "*intends to provide conditions and procedures for granting and withdrawing asylum, complementary protection and temporary protection in the Republic of Albania, rights and obligations of asylum seekers, refugees and persons under temporary and complementary protection, the content of the refugee status and the complementary protection, the right to family reunion, as well as the determination of conditions for the integration of refugees and persons under complementary protection in the Republic of Albania*". It recognized the basic principles and conditions on the recognition of the right to asylum, the responsible authorities and their competencies, the modalities of registration and the documents needed, the refugee status and the complementary protection and the rights deriving from the status.

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[74] Law No. 108/2013 on Aliens, Republic of Albania- the Parliament, https://www.refworld.org/legal/legislation/natlegbod/2013/en/120641 .

[75] Law No. 121/2014 "On Asylum in the Republic of Albania", Republic of Albania- the Assembly, https://www.refworld.org/legal/legislation/natlegbod/2014/en/123557 .

In 2015, by the instruction of the Ministry of Interior No. 293/2015[76] it was adopted the Guidelines "On the procedures for the treatment nationals illegally staying in the territory of the Republic of Albania" about the procedures for screening of foreign national who does not meet, or no longer meets the conditions for entry and stay in the Republic of Albania.

Within the Albanian government there has been a continual increase in institutional capacity to tackle migration challenges and a significant effort to meet EU requirements. As in 2021, Albania established two new Laws. The Law No. 79/2021[77] "On Foreigners" which sets up new definitions, concepts, obligations for both foreigners and employers hiring foreign nationals and new types of permits such as the single permit which includes both the residence and work permit for foreigners. The second new Law is the Law No. 10/2021[78] "On Asylum in the Republic of Albania" which aligns asylum system with international and EU standards and fosters the integration of refugees. The Law establishes a more comprehensive asylum framework compared to the 2014 Law and it introduces concepts such as the subsidiary protection, the persecution and the assessment of grounds of persecution, the first country of asylum etc. According to the EC "Albania 2023 Report[79]", the Law No. 10/2021 is almost aligned with the EU *acquis*[80] and it grants to asylum seekers the right to access public services as nationals but the report states that the lack of alignment with other legal acts and the lack of implementation precludes them from accessing services. Therefore, the report asks and remarks that ambitious standards need to be achieve.

In June 2019, the Albanian authorities adopted the National Strategy on Migration and its Action Plan (2019-2022) as the migratory dynamics required a comprehensive approach towards migration governance. The National Strategy on Migration was based

[76] Guidelines No. 293/2015 "On the procedures for the treatment nationals illegally staying in the territory of the Republic of Albania", https://www.refworld.org/legal/decreees/natlegbod/2015/en/95614 .

[77] Law No. 79/2021 "on Aliens", the Assembly of the Republic of Albania, https://mb.gov.al/wp-content/uploads/2022/03/Ligj-p%C3%ABr-t%C3%AB-Huajt-%E2%80%93-nr.-79.2021_English.pdf .

[78] Law No. 10/2021 "On Asylum in the Republic of Albania", 1st February 2021, https://www.refworld.org/legal/legislation/natlegbod/2021/en/123556 .

[79] Albania 2023 Report, European Commission, 8th November 2023, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_690%20Albania%20report.pdf .

[80] The EU acquis is the collection of common rights and obligations that constitute the body of EU law and it incorporated into the legal systems of EU MS .

on four priorities[81] as: "*ensure strategic governance of migration in Albania*"; "*ensure safe and orderly migration from, through and to Albania*"; "*develop an effective labour migration policy while enhancing the positive impact of migration in the nation/local socio-economic development of the country*" and "*promote and protect migrants*". The implementation concluded in December 2022 and in March 2023, an inter-institutional working group has started to draft the new Migration Strategy for 2024-2030 which aims at managing migration, linking migration with employment and the positive socio-economic impact, promoting regular migration, ensuring rights of asylum seekers and refugees and the integration of foreigners in Albania.

In addition to improving its internal normative framework, since 2011, Albania has started to sign several readmission agreements with EU and non-EU countries such as the Czech Republic in 2012, Montenegro and Malta in 2011, Austria in 2013 etc. Furthermore, in October 2018 Albania signed an agreement with the EU on border management cooperation with FRONTEX. Indeed, starting from May 2019 FRONTEX authorities and Albanian border guards have been deployed at the Greek- Albanian border to boost security at the EU external border and reinforce border management.

4.2 The EU-Albania relationship

It is relevant in this chapter to consider and to look at the EU-Albania relationship as Albania since 2014 has been an EU candidate country and it has aligned its migration and asylum policies to EU guidelines and legislations.

The first tie between Albania and the EU began in the Thessaloniki European Council when Albania, together with the other Western Balkans countries, was recognised as potential EU candidate country. The Thessaloniki European Council took place in June 2003, and it was an important summit which unequivocally established the perspective of the European integration for all Western Balkan countries. This meeting supported the future integration and membership of all countries and it came when all countries had already committed themselves to the Stabilization and Association Process, which proclaimed the first legal and political bond between the EU and each Western Balkan

[81] Information regarding to the implementation of Resolution A/Res/ 74/148 on Migrant Protection in Albania, OHCHR .

countries. Afterwards, in 2009 Albania applied for the EU membership and in June 2014, Albania granted the EU candidate status. The accession negotiations opened in June 2019 and the first intergovernmental conference between the EU and Albania took place on 19th July 2022, the same date when the EC installed the meeting of the screening process of the *acquis*. The Accession conference meetings are going to consider the thirty-five policy fields which are the 35 chapters to which Albania should align with. The first screening meeting began in September 2022 about Cluster 1 on Fundamentals, and in September 2023 the screening meeting examined the Cluster 6 about External relations.

The EU-Albania cooperation on legislation framework on migration and asylum and of the management of external borders are not yet fully aligned, however Albania counties to be committed in its efforts.

Albania has been engaged in modernising its border infrastructure and enhanced its border control. The agreement with FRONTEX continues to be implement successfully under the EU-Albania Status Agreement. This latter, since September 2023, has gave the permission to the European Border and Coast Guard to stand corps with executive powers and to be also distributed at the non-EU borders. Moreover, in June 2023 FRONTEX and the Albanian Ministry of Interior adopted a memorandum of understanding on a complaints mechanisms on the protection of fundamental rights.

Furthermore, in December 2022 it was adopted the EU Action Plan on the Western Balkans[82], under which Albania, along with the EU, EU Member States and its neighbours has been committed to the management of the mixed migration flow towards the EU. The Action Plan has spotted twenty operational measures structured on 5 pillars:

1. "*Strengthening border management along the routes*": consolidating border management along the route with the aim at reducing irregular migration flows. There is the need to reinforce the FRONTEX joint operations at the EU external borders and in order to make this happen, there is the need to sign new status agreements with other countries;
2. "*Swift asylum procedures and support reception capacity*": strengthening the asylum capacity of Western countries through the Pre-accession Assistance

[82] Migration routes: Commission proposes Action Plan for cooperation with Western Balkans to address common challenges, European Commission press release, 5th December 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7447 .

(IPA) programme and helps Western countries in asylum registration procedures and guarantees suitable reception conditions;

3. "*Fighting migrant smuggling*": the EU on 3rd November 2022 launched an Anti-smuggling Operation Partnership. It is also fundamental to organize a Europol operational task force with the support of all Western Balkans countries and to implement the IPA programme on anti-smuggling;
4. "*Enhancing readmission cooperation and returns*": there is the need to ensure readmission agreements and returns;
5. "*Achieving visa policy alignment*": all Western Balkan countries need to align their visa policy with the EU.

The Action Plan has been set up to guarantee an EU full support to Western Balkans countries which have to face increased migratory pressure.

4.3 The Italian-Albanian relationship

Italy represents the key partner of Albania as the two countries' relation are not only ancient but have also been marked by close cultural, economic, historical and geopolitical ties.

They have been connected since the Roman times when the Illyrians and Italiotes populated Albania. Afterwards, in 1912 the Kingdom of Italy supported for the Albanian Independence until the 1920, when the Italian Protectorate over Albania ended. It was in that period of the history that their relationship started to be interlocked.

Between 1939 to 1943, within their relationship there was a parenthesis during which the Italian fascist occupied Albania. During the World War II, Albania was made part of the Italian Empire as a protectorate in personal union with the Italian Crown. In September 1943, the Italian dictator Benito Mussolini left the Axis and Germany occupied Albania. Although Italy occupied Albania between those years, Italy still has a huge impact in Albania and it has shaped the modern Albania under different fields.

After Albania years of isolation, on 6th March 1991, 25 thousand Albanians left Albania and migrated towards Italy. It was not the first time that Albanians left their country in order to reach Italy, indeed it also happened between the 14th and 18th centuries.

Albanians started to migrate towards Italy as since the early 1990s, Italy has represented the aspiration country to reach as it embodied the Western values. Presently, in Italy live nearly 800,000 Albanians which represent the 30% of the total population of Albania.

In the early 1990s, Italy became the influential foreign power in Albania and the 2000s inaugurated a new phase of relations between the two countries, which share common interests. Italy is the first economic partner of Albania and lots of Italian businesses have chosen Albania as investment destination. Italy is the key export partner with 48.2% of the total Albanian export and it is also the main import partner with 27.3% of imports coming from Albania. Therefore, Italy has a predominant role within the Albanian reality.

Furthermore, Italy and Albania are linked by cultural ties. Italy and Italian influence could be seen on Albania pop-culture as TV, films, literature, on Albanian fashion, on Albanian architecture and urbanistic areas and the Italian language is taught in schools. This exchange between the two countries has been made possible for the Italian presence in Albania and for the Albanian presence in Italy as consequence of migration flows. Moreover, the Albania diaspora in Italy led to the exchange of Albanian food and style in Italy. To date, Albania and Italy have a strong cultural affinity and a bond that unites them.

Beyond economic and cultural factors, Italy and Albania share common political views. Political dialogue has been intensified with high-level visits by both sides and cooperation on defence, justice and home affairs has been fortified. In addition, the two countries are strategic relevant each other. Italy is a supporter of Albania integration in the EU as an EU-integrated Albania is link to national security for Italy about the Turkish influence in Albania and about the criminal networks and activities within the Balkans. Moreover, Italy is the largest donors of Albania granting projects in several areas such as tourism, political, energy, judicial etc. Therefore, the Italian presence in Albania is still solid in several sectors.

Another area under which they have began to cooperate is migration. Migration flows pose challenges to both countries; thus, they have started to increase their collaboration on the field of trafficking in human beings, irregular migration and asylum. Their relationship and cooperation on migration management have intensified since the

Italian Government and the Albanian Government signed the Italy-Albania Agreement on 6th November 2023.

4.4 The Italy-Albania Agreement

On 6th November 2023, the Italian Prime Minister Giorgia Meloni and the Albanian Prime Minister Edi Rama announced at a Joint Press Conference the bilateral Protocol on migration management.

It was then submitted to the Italian Parliament for discussion and ratification, which it was approved by the Chamber of Deputies and by the Senate respectively on 24th January 2024 and on 15th February 2024. On the Albanian counterpart, it suffered immediately of a seatback from the Albanian Constitutional Court which temporarily suspended the ratification of the Agreement in order to verify its compatibility with the Albanian Constitution and with International Conventions. On 29th January 2024, the Albanian Constitutional Court gave the approval to the Protocol and on 22nd February, the Albanian Parliament also approved the Agreement.

From Libya MoU since Albania Agreement, Italy has been a pioneer for the outsourcing/externalization of border control and migration management. Unlike the Libya MoU which aims at border control and cooperation with Libyan authorities to contain refugees and migrants in Libya, the Agreement with Albania does not outsource the accountability of asylum applications to Albania. Instead, Italian jurisdiction, laws and provisions will enact under the Protocol for the implementation of screening, asylum and returns. Nevertheless, the Italy-Albania Agreement falls within the externalization approach as it leads to imbalances of power between the two countries, as Albania is a former Italian colony, and risks perpetuating them. The power imbalances refer to the Italian power to introduce deterrence measures in order to reduce migration flows in Italy, while supporting Albania's membership to the EU.

Therefore, Italy-Albania Agreement is an example of the extraterritorialisation of migration and asylum management, involving detention and asylum processing in Albania and it is a bilateral Protocol which it is in line with the outsourcing/externalization of migration management and it falls within European law.

The Meloni statement of the Protocol makes it clear. She stated that the Treaty is a "*truly European Agreement*[83]" and that "*this is the first Agreement of its kind*[84]" and a "*historic Agreement for the EU*[85]." She also presented it as a model for EU cooperation with third countries for migration management. Moreover, she added that "*Mass illegal immigration is a phenomenon no EU member state can handle alone*[86]" and the Albanian Prime Minister indeed argued "*Albania is standing together with Italy by choosing to act like an EU member state and agreeing to share a burden that Europe should face united as a whole family [...]*[87]".

According to the Protocol, two areas are going to be grant by Albania to Italian government in order to built two reception centres. One centre is going to be near the port of Shëngjin for disembarkation and identification procedures while the second centre is going to be in Gjadër which will be used to accommodate asylum seekers considered ineligible for asylum. The two facilities will be managed under Italian jurisdiction and by Italian authorities in accordance with relevant Italian and European legislation. Outside of the Shëngjin centre, FRONTEX will have an office that it will be used for photo-tagging and identification of migrants while Italian personnel will have the task of transfer to and from centres and of the maintenance of security and order within the two centres. On the other hand, Albanians will be responsible for the security and public order of the external areas of the two centres and of the transfers to and from the centres. Under the Agreement, it is not clear if this latter task is shared or not.

These two centres will allow the rescue of third country nationals by Italian vessels outside the territorial waters of Italy or other EU States and they will remain within these facilities pending the examination of their asylum applications with accelerated procedure and/or while their repatriation will be organised. Furthermore, based on Article 1 of the Agreement which is going to apply to "*third country nationals and stateless persons for whom the existence or non-existence of requirements for entry,*

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[83] Italy announces deal to build migrant centres in Albania, Politico, 7th November 2023, https://www.politico.eu/article/italy-and-albania-strike-rwanda-style-migrant-deal/ .
[84] Italy to create asylum seeker centres in Albania, Giorgia Meloni says, The Guardian, 6th November 2023, https://www.theguardian.com/world/2023/nov/06/italy-to-create-asylum-seeker-centres-in-albania-giorgia-meloni-says .
[85] Idb
[86] Italy announces deal to build migrant centres in Albania, Politico, 7th November 2023, https://www.politico.eu/article/italy-and-albania-strike-rwanda-style-migrant-deal/ .
[87] Albania MPs approve deal with Italy to house migrants, Politico, 22th February 2024, https://www.politico.eu/article/albania-approves-migration-deal-with-italy/ .

stay, or residence in the territory of the Italian Republic must be ascertained or has already been ascertained[88]", it seems that also the already third country nationals present in Italy who are going to be repatriated, could be sent to Albanian facilities. Instead, people who should not send to Albania are the vulnerable people. The Italian authorities stated that the Protocol "*does not concern minors, does not concern pregnant women and does not concern other vulnerable people*," even if the Agreement is silent under this point. However, the Italian government has reinforced this point, adding that only people who can subjected to administrative detention under Italian legislation could be transferred to Albania and especially, the "non-vulnerable" asylum seekers subjected to accelerated border procedures.

Considering the repatriation and the removal of third country nationals in case asylum applications are rejected, the Protocol is unclear about the procedures that should be followed and how these transfers should be implemented. Thus, it is not clear if these transfers should always be towards Italy or if third country nationals could also be transferred by Italian authorities towards other third countries of transit and/or origin. It is also unclear what will happened to asylum seekers when they are not granted refugee status.

According to the Protocol, the Albanian facilities would hold up to 3,000 migrants and refugees a month and up to 36,000 people per year and the maximum period of detention for migrants and refugees within the centres should not exceed those established under Italian law. The Italian legislation states that the maximum period of detention is first, 28 days for asylum seekers subject to border procedures; second, 12 months for certain categories of asylum seekers that can be placed in detention; and third, 18 months for all other third country nations (irregular staying to be returned).

Furthermore, the Agreement guarantees the right to legal defence for migrants and refugees in the centres, even if they could communicate mainly remotely with their lawyers. Visits inside the centres can be managed as state by the Article 9.2 of the Protocol which establishes that lawyers, auxiliaries and international organizations and agencies of the EU could access the centres in order to give assistance and advice to applicants.

[88] Protocollo tra il Governo della Repubblica Italiana e il Consiglio dei Ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria, https://atrio.esteri.it/Search/Allegati/54284.

In addition, in December 2023 the Italian government presented the draft law used for the ratification and execution of the Protocol. Within this draft law, it has been added legal provisions which consider the Italian legal jurisdictional and administrative system. In particular, it establishes that the Rome administrative authorities are responsible for administrative measures towards people in Albania and that their asylum claims should be examine by the Roma Asylum Commission and lastly, that Rome judicial would be competent for appeals. Moreover, this draft law also indicates that the two facilities are going to function as hotspot and that these are like border and transit zones. Then, it has been stated that the centre of Gjadër would function as a detention and expulsion centre (Centro di Permanenza e Rimpatrio- CPR) for migrants who will be remove.

The budgetary costs for setting up and running these centres will be covered by Italian authorities. According to a technical report[89], the expenses to estimate assuming a cost of about 650 million Euros in 5 years, of which only a small part concerns the management of the facilities. Indeed, the planned expenditure for the management of the structures amounts to 30 million Euros. Other 252 million Euros will be needed for the travel of ministerial officials in Albania while the remaining serve to finance other aspects of the operation such as the boats rental, health insurance of Italian authorities, the processes and the legal assistance etc. Beyond the total costs, the management of these centres in a foreign state complicated the logistics of the reception.

The Italian Prime Minister, Giorgia Meloni has stated that the expected opening of the two centres and the initial implementation of the Protocol should have been by 20th May 2024.

The Agreement is going to remain in force for five years and after which, it will be automatically renewed.

[89] Relazione tecnica, Senato Italiano, https://www.senato.it/application/xmanager/projects/leg19/attachments/documento_evento_procedura_commissione/files/000/429/065/A.S._995_-_R.t._di_passaggio.pdf .

4.5 The Criticisms of the Agreement

Although the realization of the Italy-Albania Agreement has not yet been activated and as consequence, there are not visible results of the implementation, this sub-chapter is going to analyse the already numerous criticisms of the Protocol.

According to the Italian Prime Minister, the two facilities in Albania should have become operational by 20th May 2024 but rather, the delay of the construction work has led to the delay of their functionality and of the implementation of the whole Protocol. Therefore, the end of the construction work of the centres has been slip to November 2024.

A delay in the operativity of the Protocol can affect the total costs of the project. A first criticism of the Protocol refers to the high and excessive costs needed for its implementation. As already mentioned, the estimated expenses are around 650 million Euros and according to Openpolis[90], this is a considerable expenditure which, however, does not seem useful either for facilitating repatriation or for improving the logistics of reception or for integrating those who will see their request for international protection recognised. Moreover, the total amount does not even seem useful to achieve the objectives of the Agreement. In the 6th of November press conference[91], Giorgia Meloni has declared that the Protocol "*has three main objectives: to combat trafficking in human beings, to prevent illegal migration flows and to welcome only those who really have the right to international protection*". However, it is unclear from the terms of the Protocol how the creation of two centres in Albania should be useful for combatting the trafficking of human beings and preventing the illegal migration flows. As for welcoming those who really have the right to international protection, the issue would be raised in the same terms even if the centres were built in Italy.

Another tricky point of the Agreement refers to the company who has the task to managing the two facilities. The management of two reception and detention facilities was awarded to the Medihospes "Cooperativa Sociale" which has been involved in different investigations of anti-mafia and Italian justice for mafia infiltrations, abuse and

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[90] Openpolis is an independent, non-profit foundation that promotes projects for access to public information, transparency and democratic participation .

[91] Dichiarazioni alla stampa con il Primo Ministro d'Albania, l'intervento del Presidente Meloni, 6th November 2023, Governo Italiano- Presidenza del Consiglio dei Ministri, https://www.governo.it/it/articolo/dichiarazioni-alla-stampa-con-il-primo-ministro-dalbania-lintervento-del-presidente-meloni .

misuse of public funds, mismanagement of immigration centres and inhuman housing conditions. Moreover, the Medihospes Cooperative was found in partnership with “La Cascina” group, which was under investigation of the anti-mafia in 2015. This type of relationship between the two centres in Albania and the Cooperative under investigation, makes it apparent that, there is little transparency and seriousness by the two governments involved. Especially, when the Protocol is about people and their rights.

Not only is there little transparency on the company that manages the two facilities, but there has also been criticism of the public transparency of the Protocol. It was hidden from public opinion and according to an Albanian activist, it was only known through the press. The lack of transparency on outsourcing policies is a cause for concern as it is a practice that could lead to the violation of international laws and the protection of refugees.

Moreover, concerning the security of the two reception and detention centres, the Protocol establishes that the external control is a task of the Albanian authorities while the internal control is an Italian task but nothing it has been establishes if offences happen. Nothing has been said about the jurisdiction related to the crimes. Who will investigate if a crime is committed against an asylum seeker or against an Albanian staff or against an Italian policeman? And furthermore, who will monitor these reception and detention facilities to verify that everything takes place in the effective respect of the minimum standards for the protection of the rights of the people?.

Since after the two Governments have presented the Protocol, it has raised significant concerns about its negative human rights impacts and rights groups such as the International Rescue Committee and Amnesty International have denounced and described it as dehumanising and as illegal and unworkable. It is going to analyse the main human rights concerns.

The Agreement could lead to the risk of violations of the rights to life and physical integrity of people in distress at sea. Italy has a legal obligation to protect the rights to life and physical integrity of people in its territory or under its jurisdiction. This obligation also applies to people in distress at sea who should be saved without delay and disembarked in a safety place. Moreover, under international law such as under the International Convention on Maritime Search and Rescue, Italy should coordinate and cooperate with other states in order to disembark people in a safe place that can be reached

"*as soon as reasonably practicable*[92]", to "*make every effort to minimise the time survivors remain aboard the assisting ship*[93]" and to "*make every effort to expedite arrangements to disembark survivors from the ship*[94]". In the central Mediterranean, nearly all of rescues take place between Libya, Tunisia, Sicily and Malta and the safe places close to the rescue operations are usually Lampedusa in Sicily and Malta. Under the Protocol, the centre of disembarkation of Shëngjin is sited over five hundred nautical miles and it would take two additional days at sea to land people there. Therefore, the Protocol undermines the search and rescue system and inflicts more suffering on people rescued at sea. Within this system, unnecessary days onboard and unnecessary suffering represent a violation of international obligations on search and rescue operations. In addition, this system makes possible by the Treaty, curtail and weaken the presence of rescue ships in the central Mediterranean.

Secondly, the Protocol could lead the risk of violations of the rights of children, pregnant women, survivors of trafficking and torture, and other individuals in need of specific care. As already stated, Italy government has remarked that vulnerable people will not take to Albania, even if the Protocol does not mention anything about this point. Amnesty International has raised concerns about this issue as for identification procedures for determining vulnerable people, there is the need of specialised medical and psychosocial personnel and of the necessary equipment and time for conducting examinations and interviews. Thus, Amnesty fears that if the personnel, equipment and time needed in order to conduct interviews and examinations are not available, the identification procedures will be conducted onboard, delaying disembarkation for the whole people rescued. If this would be the case, this would be in contrast of international law requiring people land in a safe place as quickly as possible. On the contrary, if such procedures would be applied after disembarkation in Albania, the vulnerable people would be subject to automatic detention as the other people transferred in Albania. Therefore, in any case, the Agreement risks affecting the system of identification and protection of these vulnerable people.

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[92] The Italy-Albania Agreement on Migration: Pushing Boundaries, Threatening Rights, Amnesty International public statement, 19th January 2024, EUR 30/7587/2024 .
[93] Ibid.
[94] Ibid.

Thirdly, the Protocol might lead the risk of violations of the right to liberty. Under the Protocol, migrants and asylum seekers will be taken to Albania and will be subject to automatic detention within the two centres. Automatic detention is in breach of international law as restriction of liberty should always be exceptional and based on a case-by-case and on an individual assessment, considering the personal situation of each migrant and asylum seeker. Moreover, the maximum length of detention is not indicated in the Protocol, which only states that it should apply the Italian jurisdiction. International human rights law and standards indicate that detention should always be for the shortest time possible and must not be indefinite as prolonged detention is arbitrary and unlawful. The right to liberty, the prohibition of automatic detention and prolonged one are enshrined in several human rights treaties and international law states that "*freedom must be the default position and detention the exception*[95]".

Another human rights concern under the Agreement is the risk of violations of the right to asylum. The right to asylum is enshrined in Article 18 of the EU Charter of Fundamental Rights (EUCFR) and covers rights such as the right to be allowed entry in EU MS's territory and the right to have access to status determination procedures. The Agreement states that the Italian authorities will rescue and take people in Albania's centres and they will manage the two facilities under Italian jurisdiction and for the other necessary procedures, they will apply Italian and EU law. This means that people rescued at sea will have the access to the whole procedural guarantees under Italian and EU law such as the right to seek asylum. Although the Protocol enshrines these principles, in practice, the right to seek asylum and its related guarantees are undermined as the location of the two facilities in a non-EU country and in view of the physical distance between asylum seekers and the authorities tasked of the status determination procedures. Therefore, concerns emerged about the access to fair and effective asylum procedures as the legal assistance and remedy and the access of these rights in a non-EU country. Indeed, as the Italy Country Director of the International Rescue Committee, Susanna Zanfrini stated another "[…] *Big questions loom over the application of Italian jurisdiction in Albania, as it remains unclear how people on the move could access asylum and exercise their basic rights in a non-EU territory. The notion of 'processing migrants' used in the*

[95] Ibid.

debate is also deeply dehumanising[96]". Moreover, the International Rescue Committee Senior Director, Imogen Sudbery emphases that "*Everyone has the fundamental right to apply for asylum – regardless of where they are from, or how they arrive. This latest decision by Italy is part of a concerning trend that undermines this right- focusing on preventing people from reaching Europe, rather than welcoming them with dignity and respect.*[97]"

Worrying considerations about the right to asylum were also made by the Council of Europe's Commissioner for Human Rights, Dunja Mijatović who pointed out that "*the possibility of lodging an asylum application and having it examined on the territory of the Member States remains an indispensable component of a reliable system that respect human rights*[98]" and that the Agreement "*creates an ad hoc exteraterritorial asylum system, characterized by numerous legal ambiguities. In practice, the lack of legal certainty will likely undermine crucial human rights safeguards and accountability for violations, resulting in differential treatment between those whose asylum applications will be examined in Albania and those for whom this will happen in Italy.* ". She also stated that the Protocol "*raises several human rights concerns and adds to a worrying European trend towards the externalisation of asylum responsibilities*." The Protocol "*raises a range of important questions on the impact that its implementation would have for the human rights of refugees, asylum seekers and migrants. These relate, among others, to timely disembarkation, impact on search and rescue operations, fairness of asylum procedures, identification of vulnerable persons, the possibility of automatic detention without an adequate judicial review, detention conditions, access to legal aid, and effective remedies*.". Moreover, she declared that a cornerstone of a well-functioning and human rights system which ensure protection to those in need is the possibility to claim and process the right to asylum on MS's territories.

The International Rescue Committee added also that the Agreement has affected that principle of solidarity, which lies at the heart of the European asylum system as each

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[96] IRC raises concerns over new Italy-Albania migration deal, 7th November 2023, https://www.rescue.org/eu/press-release/irc-raises-concerns-over-new-italy-albania-migration-deal .

[97] Ibid.

[98] Italy-Albania agreement adds to worrying European trend towards externalising asylum procedures, Commissioner for Human Rights, 13th November 2023, https://www.coe.int/it/web/commissioner/-/italy-albania-agreement-adds-to-worrying-european-trend-towards-externalising-asylum-procedures .

MS seems to follow their own path instead of putting into place a coherent and similar approach for all EU MS.

Given all these concerns, Amnesty International in its public statement of January 2024 declared that it is worrying that the Protocol might be used to circumvent the EU and international law and if this would be the case, the consequences will be devastating for migrants and asylum seekers who will detained and processed in Albania.

In addition to the uncertainty of the application of the Italian jurisdiction in Albania, since Italy is an EU MS, the extraterritorial exercise of the jurisdiction has led to the uncertainty also of the compatibility or not with the EU law. After a preliminary assessment, the European Commission approved the Protocol stating that since Italy would apply Italian jurisdiction in Albania and since the Agreement functions outside EU law, it is not in breach of EU law. However, this statement appears to disagree with the Agreement and with the Italian draft law which state that the Italian personnel will apply Italian and EU law in Albania "*insofar as compatible*". Therefore, this could lead to a selective application of EU law as Italy might disapply EU law incompatible with the Protocol, creating legal uncertainty.

4.6 Conclusion

The history of the relationship between Italy and Albania is similar to that between Italy and Libya. Italy in both countries, was primarily a colonizing country, until being and becoming a friendly country.

Since the end of 1990s, the relationship between Italy and Albania has been strengthened and their relations have become increasingly close and strong. Presently, they have ties concerning economy, geopolitical, culture and Italy has a robust influence in Albania.

As Italy is the first county of arrival of refugees and migrants in Europe and Albania is a country within the Western Balkan route and taking into account their geographical location, they have began to cooperate in the fight against illegality and in order to tackle migration challenges. The partnership was then solidified in August 2023 and in November 2023, they agreed to collaborate on migration management signing the first Agreement between an EU country and a non-EU country.

The Protocol was adopted on 6th November 2023, and it should have been operational by 20th May 2024. This deadline has not been respected and to date, there are not even the two reception and detention facilities, needed for the implementation of the Agreement.

Although, it has been designated as a "*historic*" deal not only for Italy and Albania, but also for the whole EU, and it has represented that support from a friendly country in order to share the burden altogether as Europe should face united and with solidarity, the Agreement has already raised numerous negative human rights concerns and criticisms. Rights groups such as Amnesty International and the International Rescue Committee and the Council of Europe's Commissioner for Human Rights, Dunja Mijatović have criticized it and have reported several moral, legal and practical gaps of the Deal.

Furthermore, looking at the three key objectives of the Protocol established by the Italian Prime Minister, it is unclear how these could ever be achieved through the establishment of two reception and detention centres in a non-EU country by outsourcing migration management.

CONCLUSION

Europe's outsourced/externalised border control and migration control can be traced back to the early 2000s, but it gained a real momentum in 2015, when the refugee crisis emerged. Since then, several third countries Agreements were endorsed.

The first EU's approach example was the EU-Turkey Statement, singed in 2016. Afterwards, the 2017 Italy-Libya MoU and the 2023 Italy-Albania Agreement were subsequently adopted. These three Treaties implement a strategy of outsourcing of migration management which occurs through the development of an EU governance "from distance" and through the adoption of non-entrée policies. These are extraterritorial State policies which aim at preventing migrants from moving into a developed State territory or under its legal jurisdiction and which shift the responsibilities of migration management towards third countries.

The outsourcing approach incorporates problematic aspects and it has several flaws on moral, practical and legal grounds. As Camille Le Coz, Associate Director for Europe at the Migration Policy Institute, declared "*Deals that externalise asylum processing raise questions in terms of human rights standards but also on political and financial costs*[99]", adding that such approach and Agreements are not the long-term solution and do not provide for solutions, but rather they bear in many costs. Furthermore, as the three examples analysing in this thesis have demonstrated, the border outsourcing/externalization policies and actions directly affect human rights of migrants and international human rights obligations of State. Thus, such practices place unequal burdens on third countries while affecting and undermining key fundamental rights and principles such as the right to asylum, the right to legal defence, the right to liberty, the *non-refoulement* principle etc.

On the other hand, these outsourcing policies contravene and jeopardise the EU values of freedom, democracy, rule of law, peace, equality, stability, justice, dignity and solidarity.

Since 2015 until nowadays, the EU migration management has continued to be built and developed through Third-countries Agreements and currently, new Treaties are

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[99] In 2024, Europe to hunt for new partners to offload asylum seekers, Aljazeera, 3rd January 2024, https://www.aljazeera.com/features/2024/1/3/in-2024-europe-to-hunt-for-new-partners-to-offload-asylum-seekers .

signed as the Italy-Albania Protocol and the already matured and already established Deals such as the EU-Turkey Statement and the Italy-Libya MoU are still being renewed. Even if it is a long-term EU strategy and a blueprint for similar initiatives that other EU Member States want to follow, on the other hand, it is clear that it cannot be an effective blueprint because there have been and continue to be many moral, legal and practical criticisms.

BIBLIOGRAPHY

ACADEMIC NETWORK FOR LEGAL STUDIES ON IMMIGRATION AND ASYLUM IN EUROPE, "Memorandum of understanding on cooperation in the field of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic", signed 2nd February 2017, available at https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf , last visited April 2024.

AFTANDILIAN, G., "Despite Libya's Progress on Election Laws, Deep Divisions Remain", *Arab Center Washington DC*, 13th June 2023, available at https://arabcenterdc.org/resource/despite-libyas-progress-on-election-laws-deep-divisions-remain/ , last visited 5th May 2024.

ALBANESE, D., "The Renewal of the EU-Turkey Migration Deal", *Istituto per gli Studi di Politica Internazionale*, 18th May 2023, available at https://www.ispionline.it/en/publication/renewal-eu-turkey-migration-deal-30509 , last visited 23th April 2023.

ALHARATHY, S., "Libyan Coast Guard teams conclude training course in Italy", *The Libya Observer*, 22nd October 2023, available at https://libyaobserver.ly/news/libyan-coast-guard-teams-conclude-training-course-italy , last visited May 2024.

ALJAZEERA, "Albania approves contested deal to hold asylum seekers for Italy", 22nd February 2024, available at https://www.aljazeera.com/news/2024/2/22/albania-approves-contested-deal-to-hold-asylum-seekers-for-italy , last visited June 2024.

AMNESTY INTERNATIONAL, "Turkey 'safe country' sham revealed as dozens of Afghans forcibly returned hours after EU refugee deal", 23rd March 2016, available at https://www.amnesty.org/en/latest/press-release/2016/03/turkey-safe-country-sham-revealed-dozens-of-afghans-returned/ , last visited 22nd April 2024.

AMNESTY INTERNATIONAL, "The Italy-Albania Agreement on Migration: Pushing Boundaries, Threatening Rights", EUR 30/7587/2024, 19th January 2024.

AMNESTY INTERNATIONAL, "Italy: Deal to detain refugees and migrants offshore in Albania 'illegal and unworkable'", 7th November 2023, available at https://www.amnesty.org/en/latest/news/2023/11/italy-plan-to-offshore-refugees-and-migrants-in-albania-illegal-and-unworkable/ , last visited June 2024.

ANSA, "Senate gives final OK to Italy-Albania migrant agreement", *Ansa English*, 15th February 2024, available at https://www.ansa.it/english/news/politics/2024/02/15/senate-gives-final-ok-to-italy-albania-migrant-agreement_bc96d080-f889-43f7-809b-151e62f60e52.html , last visited June 2024.

ASSOCIAZIONE RICREATIVA E CULTURALE ITALIANA, "How Italy and Europe funded the Libyan Coast Guards: 10 years of Human Rights violations", July 2021.

BBC NEWS, "Libya country profile", 13th September 2023, available at https://www.bbc.com/news/world-africa-13754897 , last visited 5th May 2024.

BAGNOLI, L., PAPETTI, F., "How Italy built Libya's maritime forces", *Irpi media*, 22nd December 2022, available at https://irpimedia.irpi.eu/en-how-italy-built-libyas-maritime-forces/ , last visited May 2024.

BARJABA, K., BARJABA, J., "Embracing Emigration: The Migration-Development Nexus in Albania", *Migration Policy Institute*, 10th September 2015, available at https://www.migrationpolicy.org/article/embracing-emigration-migration-development-nexus-albania , last visited 30th May 2024.

BORLIZZI. F., "Accordo Italia- Albania: l'inarrestabile spirale dei 'legal black holes' ", *Open migration*, 19th December 2023, available at https://openmigration.org/analisi/accordo-italia-albania-linarrestabile-spirale-dei-legal-black-holes/ , last visited May 2024.

BRITTANICA, "Libya facts and figures", available at https://www.britannica.com/event/Libya-Revolt-of-2011/Libya-facts-and-figures , last visited May 2024.

BRITTANICA, "Albania", available at https://www.britannica.com/place/Albania , last visited 31st May 2024.

BRITTANICA, "Turkey", available at https://www.britannica.com/place/Turkey , last visited 3rd April 2024.

CAMILLI, A., "Perchè l'accordo tra l'Italia e la Libia sui migranti è sotto accusa", *Internazionale*, 29th November 2017, available at https://www.internazionale.it/notizie/annalisa-camilli/2017/11/29/italia-libia-migranti-accordo , last visited May 2024.

CARRERA, S., CAMPESI, G., COLOMBI, D., "The 2023 Italy-Albania Protocol on Extraterritorial Migration Management. A worst practice in migration and asylum policies", Papers on Liberty and Security in Europe, *Global Asylum Governance and the European Union's Role*, 2023.

CASSARINO. J.P., EU Mobility Partnerships: Expression of a New Compromise, *Migration Policy Institute*, September 2009,available at https://www.migrationpolicy.org/article/eu-mobility-partnerships-expression-new-compromise , last visited 30th March 2024.

CERETTI, V., "Italy-Libya Memorandum of Understanding: An affront to the fundamental human rights of migrants, refugees, and asylum seekers", *Euro-Med Human Rights Monitor*, 13th March 2023, available at https://euromedmonitor.org/en/article/5561/Italy-Libya-Memorandum-of-Understanding:-An-affront-to-the-fundamental-human-rights-of-migrants,-refugees,-and-asylum-seekers , last visited May 2024.

COUNCIL OF EUROPE, "Italy-Albania agreement adds to worrying European trend towards externalising asylum procedures", 13th November 2023, available at https://www.coe.int/it/web/commissioner/-/italy-albania-agreement-adds-to-worrying-european-trend-towards-externalising-asylum-procedures , last visited June 2024.

COUNCIL OF THE EUROPEAN UNION, "EU-Turkey Statement, 18 March 2016", signed 18th March 2016, 144/16.

COUNCIL OF THE EUROPEAN UNION, “Voluntary Humanitarian Admission Scheme with Turkey”, 5th December 2017.

COUNCIL OF EUROPEAN UNION, “Draft Action file on Libya”, 11th January 2023, WK 117/2023 INIT.

COUNCIL OF THE EUROPEAN UNION, “Albania”, available at https://www.consilium.europa.eu/en/policies/enlargement/albania/ , last visited June 2024.

DAILY SABAH, “Turkey wants progress in visa liberalization with EU”, 21th August 2023, available at https://www.dailysabah.com/politics/eu-affairs/turkiye-wants-progress-in-visa-liberalization-with-eu , last visited 20th April 2023.

DEMIRBAŞ, E., MILIOU, C., “Looking at the EU-Turkey Deal: The Implications for Migrants in Greece and Turkey”, chapter 2, 2024.

DI NUNZIO, P., “The Italy-Libya Memorandum: stripping away the right of asylum in the Italian legal system”, EU Law Journal, Vol. 9, No. 2, pp. 4-12, October 2023.

DIMITRIADI, A., “No Turning Back: Greece and the EU-Turkey Statement Seven Years On”, *Global Public Policy Institute*, September 2023.

DISPLACEMENT TRACKING MATRIX, “Key findings January-February 2024”, *International Organization for Migration*, 2024.

EL ZAIDY, Z., “EU migration policy towards Libya. A policy of conflicting interests”, *Friedrich Ebert Stiftung*, July 2019.

ENSARI, P., ÜSTÜBICI, A., KAVUR, N., EKHTIARI, M., “Migration-relevant policies in Turkey”, *MIGNEX*, version 2, February 2023.

EURASYLUM Ltd., “Assessment of priorities for the development of Libya’s Migration Policy: a strategic vision”, *International Organization for Migration*, November 2014.

ELIASSEN. I., “The EU asylum policy of deterrence is inhumane- and does not work”, *Investigate Europe*, available at: https://www.investigate-europe.eu/posts/eu-asylum-policy-deterrence , last visited 30th March 2024.

EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions- A European Agenda on Migration, signed 13th Mat 2015, COM82015) 240 final, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240 , last visited 15 March 2024.

EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions- The Global Approach to Migration and Mobility, signed 18th November 2011, COM(2011) 743 final, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0743 , last visited 15 March 2024.

EUROPEAN COMMISSION, “Türkiye 2023 Report”, 8th November 2023, SWD(2023) 696 final.

EUROPEAN COMMISSION, “A step-change in migration management and border security”.

EUROPEAN COMMISSION, “First Report on the progress made in the implementation of the EU-Turkey Statement”, 20th April 2016, COM(2016) 231 final.

EUROPEAN COMMISSION, “Seventh Report on the Progress made in the implementation of the EU-Tukey Statement”, 6th September 2017, COM(2017) 470 final.

EUROPEAN COMMISSION, “Key findings of the 2023 Report on Turkey”, 8th November 2023, available at https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_5630, last visited 20th April 2023.

EUROPEAN COMMISSION, “Implementing the EU-Turkey Agreement- Questions and Answers”, 20th April 2016, available at https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_1494 , last visited 26th April 2023.

EUROPEAN COMMISSION, “Migration routes: Commission proposes Action Plan for cooperation with Western Balkans to address common challenges”, 5th December 2022, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7447 , last visited June 2024.

EUROPEAN COMMISSION, “European Neighbourhood Policy and Enlargement Negotiations. Libya”, available at https://neighbourhood-enlargement.ec.europa.eu/european-neighbourhood-policy/countries-region/libya_en , last visited May 2024.

EUROPEAN COMMISSION, “Albania 2023 Report”, SWD(2023)690 final, 8th November 2023.

EUROPEAN COMMISSION, “Albania”, available at https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/albania_en , last visited June 2024.

EUROPEAN COUNCIL ON REFUGEE AND EXILES, “Greece: While the Designation of Turkey as Safe Country and Pushbacks Undermine Protection in Greece, the Country is Criticised for not Preventing Secondary Movement”, 11th June 2021, available at https://ecre.org/greece-while-the-designation-of-turkey-as-safe-country-and-pushbacks-undermine-protection-in-greece-the-country-is-criticised-for-not-preventing-secondary-movement/ , last visited April 2023.

EUROPEAN COUNCIL ON REFUGEE AND EXILES, “Balkan Route: Increasing Numbers of Syrian Migrants Along the Balkan Route”, 1st March 2024, available at https://ecre.org/balkan-route-increasing-numbers-of-syrian-migrants-along-the-balkan-route-%E2%80%95-worrying-conditions-in-bosnia-and-herzegovinas-reception-and-detention-centres-%E2%80%95-frontex-and-europ/#:~:text=Reports%20indicate%20an%20increase%20in,state%20of%20its%20reception%20centres. , last visited 29th April 2023.

EUROPEAN UNION website- EUR-Lex, “Justice, freedom and security”, available at https://eurlex.europa.eu/summary/chapter/justice_freedom_security.html?root_default=

SUM_1_CODED%3D23#:~:text=The%20creation%20of%20the%20area,level%20of%20protection%20to%20citizens , last visited 20 March 2024.

EUROPEAN UNION, "EU support on migration in Libya. EU Emergency Trust Fund for Africa North of Africa window"., February 2022.

EUROPEAN UNION website, "EU delivers support to border management in Libya", 16th July 2020, available at https://neighbourhood-enlargement.ec.europa.eu/news/eu-delivers-support-border-management-libya-2020-07-16_en , last visited May 2024.

EUROPEAN UNION, "Action fiche of the EU Trust Fund to be used for the decisions of the Operational Committee", Ref. Ares(2020)3662236, 10th July 2020.

EUROPEAN UNION NEIGHBOURS SOUTH, "EU delivers support to border management in Libya", 21st July 2020, available at https://south.euneighbours.eu/news/eu-delivers-support-border-management-libya/ , last visited May 2024.

EUROPEAN PARLIAMENT, Tampere European Council 15 and 16 October 1999- Presidency conclusions, available at https://www.europarl.europa.eu/summits/tam_en.htm , last visited 20th March 2024.

EUROPEAN PARLIAMENT, "Migration and Asylum: a challenge for Europe", 18th June 2018, PE 600.414 .

EUROPEAN WESTERN BALKANS, "Twenty years since the Thessaloniki promise of the European perspective of the Western Balkans", 21st June 2023, available at https://europeanwesternbalkans.com/2023/06/21/twenty-years-since-the-thessaloniki-summit-where-the-european-perspective-of-the-western-balkans-countries-was-confirmed/ , last visited June 2024.

EYES ON EUROPE, "When Migrants do not arrive in Europe: The Memorandum of Understanding", 19th March 2020, available at https://www.eyes-on-europe.eu/when-migrants-do-not-arrive-in-europe/ , last visited May 2024.

FAVILLI, C., "La cooperazione UE-Turchia per contenere il flusso dei migranti e richiedenti asilo: obiettivo riuscito?", *Diritti Umani e Diritti Internazionale*, vol. 10, 2016, n.2, pp. 405-426.

FERNÁNDEZ ARRIBAS, G., "Again in the Hands of States: A New EU Unfeasible Plan to Face Refugee Crisis? Commission Recommendation for a Voluntary Humanitarian Admission Scheme with Turkey", *European Papers*, 22nd April 2016, available at https://www.europeanpapers.eu/en/europeanforum/again-hands-states-new-eu-unfeasible-plan-face-refugee-crisis , last visited April 2023.

FRELICK, B., KYSEL, I., M., PODKUL, J., "The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants", *Human Rights Watch*, 6th December 2016, available at https://www.hrw.org/news/2016/12/06/impact-externalization-migration-controls-rights-asylum-seekers-and-other-migrants , last visited June 2024.

GAZZINI, C., "Forming a Unity Government May be Libya's Best Bet for Healing Rift", *International Crisis Group*, 7th August 2023, available at

https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/forming-unity-government-may-be-libyas-best-bet-healing , last visited May 2024.

GLOBAL PROTECTION CLUSTER, "Protection Analysis Update. Libya", April 2022.

GLOBAL DETENTION PROJECT, "Italy and the EU 'Complicit' in Crimes Against Non-Nationals in Libya", 14th February 2023, available at https://www.globaldetentionproject.org/14-february-2023-libya , last visited May 2024.

HATHAWAY, C. J., GAMMELTOFT- HANSEN, T., "Non-Refoulement in a World of Cooperative Deterrence", *Columbia Journal of Transnational Law*, 53, no. 2 (2015): 235-84.

HUMAN RIGHTS WATCH, "Turkey. Human Rights and the European Union Accession Partnership", September 2000, Vol. 12, No. 10(D), available at https://www.hrw.org/reports/2000/turkey2/Turk009-10.htm#TopOfPage , last visited 3rd April 2024.

HUMAN RIGHTS WATCH, "No escape from hell. EU Policies contribute to abuse of migrants in Libya", 2019.

IANNI, A., AÇIKGÖZ, M., GIANNOTTA, V., "The Refugee issue in Turkey's relations with the EU", *Centro Studi di Politica Internazionale*, May 2021.

İÇDUYGU, A., B. AKSEL, D., "Turkish Migration Policies: A Critical Historical Retrospective", *PERCEPTIONS*, Autumn 2013, Volume XVIII, Number 3, pp. 167-190.

INFOMIGRANTS, "Italy-Albania migrant agreement worries the Council of Europe", 15th November 2023, available at https://www.infomigrants.net/fr/post/53232/italyalbania-migrant-agreement-worries-the-council-of-europe , last visited June 2024.

INTERNATIONAL JUSTICE RESOURCE CENTER, "Albania Factsheet", available at https://ijrcenter.org/albania-human-rights-factsheet/ , last visited June 2024.

IOM, available at https://www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-iom , last visited 28 March 2024.

ITAL COOP ALBANIA, "Multidimensional Relations Between Italy and Albania", available at https://www.italcoopalbania.org/multidimensional-relations/ , last visited June 2024.

JACOBS, A., L., "Libya Backslides as Two Governments Vie for Power, Again", The Arab Gulf Institute in Washington, 28th February 2022, available at https://agsiw.org/libya-backslides-as-two-governments-vie-for-power-again/ , last visited May 2024.

KADKOY, O., "Why the voluntary humanitarian admission scheme?", Daily Sabah, 7th September 2017, available at https://www.dailysabah.com/op-ed/2017/09/07/why-the-voluntary-humanitarian-admission-scheme , last visited April 2023.

KAYA, A., "The World's Leading Refugee Host, Turkey Has a Complex Migration History", 1st November 2023, available at

https://www.migrationpolicy.org/article/turkey-migration-history , last visited 10th April 2023.

KUSCHMINDER, K., “Once a Destination for Migrants, Post-Gaddafi Libya Has Gone From Transit Route to Containment”, *Migration Policy Institute*, 6th August 2020, available at https://www.migrationpolicy.org/article/once-destination-migrants-post-gaddafi-libya-has-gone-transit-route-containment , last visited May 2024.

LA STAMPA, “Fleeing through the Black Sea. Refugees now disembark in Romania”, 31st August 2017, available at https://www.lastampa.it/esteri/la-stampa-in-english/2017/08/31/news/fleeing-through-the-black-sea-refugees-now-disembark-in-romania-1.34444283/ , last visited 28th April 2023.

LIBYAN ANTI-TORTURE NETWORK, “How to achieve positive change for migrants, refugees, and asylums seekers in Libya?”, *SOS-Torture Network*, March 2023.

LIBYA UP DATE, “Libyan Coastal Security Training Course Successfully Concludes in Italy”, 21st October 2023, available at https://libyaupdate.com/libyan-coastal-security-training-course-successfully-concludes-in-italy/ , last visited May 2024.

MARSI, F., “Italy ‘complicit’ in crimes for renewing pact with Libya: NGOs”, *Aljazeera*, 2nd February 2023, available at https://www.aljazeera.com/news/2023/2/2/italy-complicit-in-crimes-for-renewing-pact-with-libya-ngos , last visited May 2024.

MARSI, F., “In 2024, Europe to hunt for new partners to offload asylum seekers”, *Aljazeera*, 3rd January 2024, available at https://www.aljazeera.com/features/2024/1/3/in-2024-europe-to-hunt-for-new-partners-to-offload-asylum-seekers , last visited June 2024.

MEDECINS SANS FRONTIERES, “Italy-Libya agreement: Five years of EU-sponsored abuse in Libya and the central Mediterranean”, signed 2nd February 2022, available at https://www.msf.org/italy-libya-agreement-five-years-eu-sponsored-abuse-libya-and-central-mediterranean , last visited May 2024.

MIGREUROP, “Italy-Albania memorandum of understanding on migration: cross-border cooperation that contravenes international law”, 13th February 2024, available at https://migreurop.org/article3232.html , last visited June 2024.

MIKAÏL, B., “The EU’s outsourced migration control is violent, expensive and ineffective”, *The Conversation*, 3rd June 2024, available at https://theconversation.com/the-eus-outsourced-migration-control-is-violent-expensive-and-ineffective-218070 , last visited June 2024.

MILLONA, K., “The Italy-Albania agreement and the new frontiers of border externalization”, *Melting Pot Europa*, 16th May 2024, available at https://www.meltingpot.org/en/2024/05/the-italy-albania-agreement-and-the-new-frontiers-of-border-externalization/ , last visited June 2024.

MINISTERO DEGLI AFFARI ESTERI E DELLA COOPERAZIONE INTERNAZIONALE, “Memorandum d’intesa sulla cooperazione nel campo dello sviluppo, del contrasto all’immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e

la Repubblica Italiana", signed 2nd February 2017, available at https://atrio.esteri.it/Search/Allegati/50975 .

MINISTERO DEGLI AFFARI ESTERI E DELLA COOPERAZIONE INTERNAZIONALE, "Protocollo tra il Governo della Repubblica Italiana e il Consiglio dei Ministri della Repubblica di Albania per il rafforzamento della cooperazione in materia migratoria", signed 6th November 2023, available at https://atrio.esteri.it/Search/Allegati/54284 .

MUSABELLIU, M., "Albania external relations briefing: Albania-Italy relations: some Mediterranean waves of good partnership", *China-CEE Institute*, ISSN: 2560-1601, Vol. 38, No. 4(AI), March 2021.

NGENDAKUMANA, P., E., "Albania MPs approve deal with Italy to house migrants", *Politico*, 22nd February 2024, available at https://www.politico.eu/article/albania-approves-migration-deal-with-italy/ , last visited June 2024.

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, "Information regarding to the implementation of Resolution A /Res/74/148 on Migrant Protection in Albania".

OPEN POLIS, "Tutti I costi e i dubbi dell'accoglienza dei migranti in Albania", 19th April 2024, available at https://www.openpolis.it/tutti-i-costi-e-i-dubbi-dellaccoglienza-dei-migranti-in-albania/ , last visited June 2024.

PAÇACI ELITOK, S., "Turkey's Migration Policy Revisited: (Dis)Continuities and Peculiarities", *Istituto Affari Internazionali*, 16th October 2018.

PALM, A., "The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?", *EU Immigration and Asylum Law and Policy*, 2nd October 2017, available at https://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/ , last visited May 2024.

PASCALE, G., "Is Italy internationally responsible for the gross human rights violations against migrants in Libya", pp. 35-58, 2019.

PATRONE. I. J., "Italia- Albania: un accordo vago e pericoloso", *Open migration*, 16th November 2023, available at https://openmigration.org/analisi/italia-albania-un-accordo-vago-e-pericoloso/ , last visited May 2024.

PESHKOPIA, R., "Albania- Europe's reluctant gatekeeper", *Forced Migration Review*, available at https://www.fmreview.org/peshkopia/ , last visited June 2024.

PIZZUTI, A., MORAN, C., F., "The Memorandum of Understanding between Italy and Libya: Does it create Human Rights obligations on the part of Italy?", *Opinio Juris*, 5th August 2021, available at https://opiniojuris.org/2021/08/05/the-memorandum-of-understanding-between-italy-and-libya-does-it-create-human-rights-obligations-on-the-part-of-italy/ , last visited 20th May 2024.

POLITIKO, "The refugee camps would be managed by the company under investigation for links for the mafia", 8th May 2024, available at https://politiko.al/english/e-

tjera/kampet-e-refugjateve-do-ti-menaxhoje-kompania-nen-hetim-per-lidhje-me-ma-i506471 , last visited June 2024.

RELIEFWEB, "Open letter: Five years after the EU-Turkey Statement, European Civil Society demands an end to containment and deterrence at the EU's External Borders", 18th May 2021, available at https://reliefweb.int/report/greece/open-letter-five-years-after-eu-turkey-statement-european-civil-society-demands-end , last visited April 2023.

REVIGLIO, M., "Externalizing Migration Management through Soft Law: The Case of the Memorandum of Understanding between Libya and Italy", *Global Jurist* (2019), 20190018.

REFUGEE SUPPORT AEGEAN, "EU-Turkey deal: 5 Years of Shame. Rule of law capture by a Statement", March 2021.

ROTA, A., "Cosa ha funzionato del memorandum con la Libia sui migranti. E cosa no", *Agenzia Giornalistica Italia*, 2nd November 2019, available at https://www.agi.it/fact-checking/news/2019-11-02/rinnovo_memorandum_libia_migranti-6466932/ , last visited May 2024.

ROWAN, M., "Libya Timeline: Since Qaddafi's Ouster", *United States Institute of Peace*, 1st July 2019, available at https://www.usip.org/libya-timeline-qaddafis-ouster , last visited 5th May 2024.

SIRNA, D., "Italy as a EU-bridge for Albania", *Istituto Analisi Relazioni Internazionali*, 6th November 2023, available at https://iari.site/2023/11/06/italy-as-a-eu-bridge-for-albania/#google_vignette , last visited June 2024.

STATEWATCH, "EU preparing new efforts to increase Libyan border controls", 7th February 2023, available at https://www.statewatch.org/news/2023/february/eu-preparing-new-efforts-to-increase-libyan-border-controls/ , last visited May 2024.

STANTON, N., "IRC raises concerns over new Italy-Albania migration deal", *Rescue.org/EU*, 7th November 2023, available at https://www.rescue.org/eu/press-release/irc-raises-concerns-over-new-italy-albania-migration-deal , last visited June 2024.

STARCEVIC, S., "Italy announces deal to build migrants centres in Albania", *Politico*, 7th November 2023, available at https://www.politico.eu/article/italy-and-albania-strike-rwanda-style-migrant-deal/ , last visited June 2024.

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

TAHIROĞLU, M., "Immigration Politics: Refugees in Turkey and the 2023 Elections", 17th August 2022, available at https://us.boell.org/en/2022/08/17/immigration-politics-refugees-turkey-and-2023-elections , last visited 27th April 2023.

TALBOT, V., "EU-Turkey: A Positive Agenda to Reset Relations?", *Istituto per gli Studi di Politica Internazionale,* 24th May 2021, available at https://www.ispionline.it/en/publication/eu-turkey-positive-agenda-reset-relations-30559 , last visited 23th April 2023.

TEMIZER, S., "Turkey seeks progress in visa-free regime with EU", 21st August 2023, available at https://www.aa.com.tr/en/europe/turkiye-seeks-progress-in-visa-free-regime-with-eu/2972739# , last visited 20th April 2023.

TERRY, K., "The EU-Turkey Deal, Five Years On: A Frayed and Controversial but Enduring Blueprint", *Migration Policy Institute*, 8th April 2021, available at https://www.migrationpolicy.org/article/eu-turkey-deal-five-years-on , last visited 26th April 2023.

TONDO, L., "Italy to create asylum seeker centres in Albania, Giorgia Meloni says", *The Guardian*, 6th November 2023, available at https://www.theguardian.com/world/2023/nov/06/italy-to-create-asylum-seeker-centres-in-albania-giorgia-meloni-says , last visited June 2024.

TRANCHINA, G., "Italy Reups Funding to Force Migrants Back to Libya", *Human Rights Watch,* 1st February 2023, available at https://www.hrw.org/news/2023/02/01/italy-reups-funding-force-migrants-back-libya, last visited My 2024.

Treaty of Amsterdam, signed 2nd October 1997, *Official Journal of the European Communities*, C 340/1, available at https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:11997D/TXT , last visited 20 March 2024.

Treaty of European Union, signed 7th February 1992, *Official Journal of the European Union*, C 202/15, available at https://eurlex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_2&format=PDF , last visited 20 March 2024.

Treaty on the Functioning of the European Union, signed 13th December 2007, *Official Journal of the European Union*, C202/47, available at https://eurlex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF , last visited 20th March 2024.

TRTWORLD, "Black Sea- The new route for refugees passing through Turkey", 2017, available at https://www.trtworld.com/turkey/black-sea-the-new-route-for-refugees-passing-through-turkey-10904 , last visited 28th April 2023.

TUICAKADEMI, "The Syrian Exodus: Analysing Migration Dynamics and Refugee Integration in Turkey", 28th April 2023, available at https://www.tuicakademi.org/migration-policies-and-their-impact-in-turkey/#google_vignette , 10th April 2023.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, "The sea rote to Europe: The Mediterranean passage in the age of refugees", 1st July 2015, available at https://www.unhcr.org/media/sea-route-europe-mediterranean-passage-age-refugees , last visited 20th April 2023.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, "Annual Results Report 2022. Libya", 2nd May 2023.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Universal Period Review: 3rd Cycle, 36th Session- Libya, October 2019.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, “Albania”, available at https://www.unhcr.org/countries/albania , last visited 30th May 2024.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, “Libya- Refugees and asylum seekers in urban areas”, available at https://reporting.unhcr.org/libya-refugees-and-asylum-seekers-urban-areas-5 , last visited May 2024.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, “Libya”, Operational Data Portal, available at https://data.unhcr.org/en/country/lby , last visited May 2024.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, “South Eastern Europe”, Operational Data Portal, available at https://data.unhcr.org/en/situations/southeasterneurope , last visited June 2024.

UNITED NATIONS GENERAL ASSEMBLY, “Report on means to address the human rights impact of pushbacks of migrants on land and at sea. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales.”, A/HRC/47/30, 12th May 2021.

ÜSTÜBICI, A., KARADAĞ, S., “Refugee Protection in Turkey during the First Phase of the COVID-19 Pandemic”, TURKEY Interim Report, *Advancing Alternative Migration Governance*, 2020.

VAN BRUNNERSUM, S., “Bulgaria migrant pushbacks: What’s behind the rise in violence at the Bulgarian-Turkish border?”, *InfoMigrants*, 30th August 2021, available at https://www.infomigrants.net/en/post/51197/bulgaria-migrant-pushbacks-whats-behind-the-rise-in-violence-at-the-bulgarianturkish-border-14 , last visited 28th April 2023.

VAN BRUNNERSUM, S., “Exclusive: Why are migrant pushbacks from Bulgaria to Turkey soaring?”, *InfoMigrants*, 25th August 2023, available at https://www.infomigrants.net/en/post/51259/exclusive-why-are-migrant-pushbacks-from-bulgaria-to-turkey-soaring , last visited 28th April 2023.

VARI, E., “Italy-Libya Memorandum of Understanding: Italy’s International Obligations”, *Hastings International and Comparative Law Review*, Vol. 43, No. 1, Article 5, 2020.

VERHOFSTADT, G., “This Turkish deal is illegal and betrays Europe’s values”, The Guardian, 10th March 2016, available at https://www.theguardian.com/commentisfree/2016/mar/10/refugee-crisis-turkey-deal-europe-values , 20th April 2023.

JUNCKER, J., “A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission”, Strasburg, 15th July 2014.

OVACIK, G., INELI-CIGER, M., ULUSOY, O., SPIJKERBOER, T., “Country Report TURKEY”, *ASILE*, May 2022.