

## Eastmed Policy Brief

### ***The refugee crisis in the Mediterranean and the EU: Balancing human rights and security concerns***

#### **1. Introduction**

During 2015, the European Union (EU) registered 1.35 million asylum applications, a double increase compared with the 627 thousand applications in 2014, while most of the immigrants were originated from Syria and Afghanistan<sup>1</sup>. In 2018, 67,122, mostly African, migrants and refugees reached Europe through Mediterranean, almost the half of the 123,205 persons in 2017, and less than a quarter of the 272,612 at the same period in 2016<sup>2</sup>.

The Eastmed region is composed of EU countries, as well as neighbouring countries of the EU which can be either countries of origin of migrants, such as Syria, Lebanon and Libya, or potential countries of destination, such as Greece, Italy and Turkey. This is why the understanding of EU policies in the field of migration and its interrelationship with human rights and security issues is fundamental in order to grasp the complexity of the phenomenon in the entire region.

EU Member States, and the EU as organization, bear legal obligations in terms of protection of human rights, enshrined in international conventions and in the Charter of Fundamental rights of the EU.

As a consequence of the perceived 'dangers' stemming from irregular migration, many states, in Europe but not limited to, have 'securitized' their borders, and have tried to reinforce their return policies in order to prevent irregular migration. This trend has been spurred by populist and conservationist parties in the EU. It was argued that securitization has 'further driven many migrants to use generally dangerous methods of migration, have compelled them to resort to many non-state sanctioned actors, which in turn, has increased their vulnerability to risk and violence.'<sup>3</sup>.

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<sup>1</sup> Frontex (2016) Annual Risk Analysis, Risk Analysis Unit, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Warsaw-Poland, Available at [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annula\\_Risk\\_Analysis\\_2016.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf)

<sup>2</sup> IOM, Mediterranean Migrant Arrivals Reach 67,122 in 2018, <https://www.iom.int/news/mediterranean-migrant-arrivals-reach-67122-2018-deaths-reach-1549>

<sup>3</sup> J. Hennebry, W. Grass, J. Mclaughlin, *Women Migrant Workers' Journey Through the Margins: Labour, Migration and Trafficking* (Geneva: UN Women, 2016), p. 49.

Is it possible to balance securitization and human rights in migration policies? The aim of this policy brief is to explore the relationship between migration issues and human rights, with a focus on EU policies, and to assess the securitization of migration in EU. Based on these analyses, we conclude with specific recommendations for policy officials and stakeholders.

## 2. Migration issues and human rights

This paragraph is aimed at assessing the interrelation between migration issues and human rights, with a specific focus on EU migration policy, which, due to its approach based on 'externalization', cannot be considered adequate to grant the protection of migrants' fundamental human rights. The debate on migration issues and human rights has gained momentum at the international level, thanks to the finalisation of the text of the Global Compact for Safe, Orderly and Regular Migration, which will be hopefully adopted in December 2018.<sup>4</sup> It is based on international human rights law and upholds the principles of non-regression and non-discrimination, to ensure effective respect, protection and fulfilment of the human rights of all migrants.

Migrants suffer violations of several human rights in their country of origin, during their journey, in the country of destination, including the right to life, the prohibition of torture, inhuman or degrading treatment, the right to security, the right to respect for private and family life, the right to health. Asylum seekers might escape from violence, conflicts, exploitation of their lands. Violence, exploitation, and human trafficking are also widespread along migration routes. It has been shown that 'migrants travelling along the Central Mediterranean route are more vulnerable to exploitation and human trafficking than migrants travelling on the Eastern Mediterranean route.'<sup>5</sup> When they enter one country, they suffer from social exclusion, labour exploitation, and violation of their basic human needs.

States can be held responsible for violation of migrants' human rights under international law. It should be recalled at the forefront the well-known principle of *non-refoulement*, which is enshrined in Article 33 of the 1951 UN Refugee Convention, and has gained the status of *jus cogens* norm.<sup>6</sup> In a case involving migrants pushed back to Libya by Italian authorities, the European Court of Human Rights, despite the European Convention on Human Rights not

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<sup>4</sup> Final draft of 11 July 2018, [https://refugeesmigrants.un.org/sites/default/files/180711\\_final\\_draft\\_0.pdf](https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf)

<sup>5</sup> IOM, *Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes* (2017), available at [http://migration.iom.int/docs/Migrant\\_Vulnerability\\_to\\_Human\\_Trafficking\\_and\\_Exploitation\\_ExecSummary\\_November\\_2017.pdf](http://migration.iom.int/docs/Migrant_Vulnerability_to_Human_Trafficking_and_Exploitation_ExecSummary_November_2017.pdf) all websites last accessed on 16. August 2018

<sup>6</sup> See, in that respect, for example, J. Allain, 'The jus cogens nature of non-refoulement', *International Journal of Refugee Law* 13 (2001) 533.

including the principle in its articles, argued that ‘none of the provisions of international law cited by the Government justified the applicants being pushed back to Libya, in so far as the rules for the rescue of persons at sea and those governing the fight against people trafficking impose on States the obligation to fulfil the obligations arising out of international refugee law, including the *non-refoulement* principle.’<sup>7</sup> The *non-refoulement* principle is clearly enshrined in Article 19 of the Charter of Fundamental Rights of the European Union.

With regard to migrants at sea, the obligation to assess the lack of risks of violations of fundamental human rights in the place of disembarkation does not only derive from the obligation included in human rights conventions, but also from the law of the sea.<sup>8</sup>

Let us now more specifically dwell on the European Union. In the European Union, migration policy is based on Articles 79 and 80 of the Treaty on the Functioning of the European Union (TFEU).<sup>9</sup> The ongoing debate within the European Union, which is exacerbated by the rise of populist parties in many of its countries, is focused: on the process of reform of Dublin regulation,<sup>10</sup> on readmission ‘agreements’ (statements, deals) with third countries, and on the ‘hotspot approach’. Let us provide few notes only. As for the former, the Dublin regulation determines which EU member State should be responsible for examining an application for international protection.<sup>11</sup> Consent among the States on its reform has not been achieved yet. The most recent European Parliament’s position is that the reform should provide that asylum seekers with a ‘genuine link’, such as family ties, to a particular EU country should be transferred there, and that those without genuine link should be shared among all member States. The European Parliament envisaged that a State refusing the transfer could lose EU funds.<sup>12</sup>

As for agreements, on 18 March 2016, the European Council and Turkey concluded a statement – on the nature of agreement there are several concerns in legal scholarship<sup>13</sup> –

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<sup>7</sup> European Court of Human Rights, *Hirsi Jamaa and others v. Italy*, Appl. No. 27765/09, judgment of 23 February 2012, para. 134.

<sup>8</sup> See, with regard to the recent *Open Arms* case in Italy, F. De Vittor, ‘Soccorso in mare e favoreggiamento dell’immigrazione irregolare: sequestro e dissequestro della nave *Open Arms*’, *Diritti umani e diritto internazionale* 12 (2018) 443.

<sup>9</sup> Immigration policy is summarised here. <http://www.europarl.europa.eu/factsheets/en/sheet/152/immigration-policy>

<sup>10</sup> Dublin III Regulation Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180/31.

<sup>11</sup> <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-reform-of-the-common-european-asylum-system>

<sup>12</sup> 20 June 2018, <http://www.europarl.europa.eu/news/en/headlines/world/20180615STO05927/eu-asylum-reform-parliament-s-stance-on-dublin-regulation>

<sup>13</sup> See, *inter alia*, S. Peers, ‘The Final EU/Turkey Refugee Deal: A Legal Assessment’. Blogpost (2016), <http://eulawanalysis.blogspot.nl/2016/03/the-final-euturkey-refugee-deal-legal.html> (accessed 14 August 2018); J. Poon,

with the purpose of stopping the flow of irregular migrants via Turkey to Europe. All irregular migrants and asylum seekers arriving from Turkey to the Greek islands, whose application is inadmissible, should be returned to Turkey.<sup>14</sup> According to a study, asylum seekers present on the Greek islands had felt forced to accept returns 'because conditions in the hotspots put the safety and health of their families at risk.'<sup>15</sup> The geographical restrictions of the EU-Turkey Statement imply that asylum seekers who are present on the Greek islands are not allowed to go to the Greek mainland while their asylum application is decided. They might stay in a limbo for a long time. As argued, 'human rights violations under the EU-Turkey Statement result from its design, not only bad and partial implementation. Defining returns as a political priority creates barriers to asylum, undermines human rights principles and forces asylum seekers to accept returns for a lack of viable alternatives'.<sup>16</sup> Furthermore, further bilateral readmission agreements have been negotiated by the European Union, including with Morocco, Tunisia, Egypt, and Sudan. The Memorandum of Understanding signed on 2 February 2017 between Italy and Libya is another example.<sup>17</sup> Related to the readmission agreements is also the 'hotspot approach.' According to the Agenda on migration,<sup>18</sup> hotspots are 'part of the immediate action to assist frontline Member States which are facing disproportionate migratory pressures at the EU's external borders,' and supports border countries such as Italy and Greece for the identification, registration and fingerprinting of incoming migrants.<sup>19</sup> Nonetheless, there is no piece of legislation to regulate hotspots,<sup>20</sup> and there are several human rights concerns related to the management of these places.

Hotspots respond to a process of 'externalization' of migration, which seems to reflect what was called a 'bifurcation of law'.<sup>21</sup> It can be argued that there is also a 'bifurcation' of human

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'EU-Turkey Deal: Violation of, or Consistency with, International Law?', European Papers 1 (2016) 1195, E. Cannizzaro, 'Disintegration Through Law?', European Papers 1 (2016) 3. The General Court of the EU, in its judgments of 28 February 2017 (cases T-192/16, T-193/16, T-257/16) said that it was not competent to hear the case related to the legality of the agreement, because it does not involve the EU as such; rather it is an agreement involving merely the Member States of the EU.

<sup>14</sup> <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>

<sup>15</sup> Human Rights Violations by Design: EU-Turkey Statement Prioritises Returns from Greece Over Access to Asylum, Maybritt Jill Alpes, Sevda Tunaboylu, Ilse van Liempt, [https://www.borderline-europe.de/sites/default/files/background/RSCAS\\_PB\\_2017\\_29\\_MPC.pdf](https://www.borderline-europe.de/sites/default/files/background/RSCAS_PB_2017_29_MPC.pdf)

<sup>16</sup> [https://www.borderline-europe.de/sites/default/files/background/RSCAS\\_PB\\_2017\\_29\\_MPC.pdf](https://www.borderline-europe.de/sites/default/files/background/RSCAS_PB_2017_29_MPC.pdf)

<sup>17</sup> On human rights concern related to this agreement, see the numerous interventions in [www.asgi.it](http://www.asgi.it) (<https://www.asgi.it/asilo-e-protezione-internazionale/italia-libia-accordo-ue/>).

<sup>18</sup> European Commission, COM(2015) 240 final, 13 May 2015.

<sup>19</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2\\_hotspots\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf)

<sup>20</sup> Policy Department for Citizen's Rights and Constitutional Affairs, *On the frontline: the hotspot approach to managing migration*, 2016, p. 29.

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556942/IPOL\\_STU%282016%29556942\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556942/IPOL_STU%282016%29556942_EN.pdf)

<sup>21</sup> T. Spijkerboer, 'Bifurcation of people, bifurcation of law: externalization of migration policy before the EU Court of Justice', *Journal of Refugee Studies* 31 (2017), pp. 216-239.

rights standards, which seems unacceptable from an international human rights point of view. The human rights protection is indeed granted within EU borders and not outside, as emerged from two cases examined by the European Court of Justice: in *X. and X. v. Belgium*, decided on 7 March 2017 (C-638/16PPU), the Court, departing from the progressive position of Advocate General Paolo Mengozzi, considered Belgian law and *not* EU law applicable to a case of a Christian Orthodox Syrian family composed of two parents and three children who applied for a visa with limited territorial validity according to Article 25 of the EU Visa Code at the embassy of Belgium in Lebanon. The second case, *Al Chodor and others*, decided few days later, on 15 March 2017 (C-528/15), concerned the application of the Dublin Regulation *within* EU. Al Chodors, Iraqi nationals, were detained in the Czech Republic, pending their transfer to Hungary, from which they first came, given the fact that there was a serious risk of absconding. Dublin III regulation allows detention where there is a significant risk of absconding, but ‘only a provision of general application could meet the requirements of clarity, predictability, accessibility and, in particular, protection against arbitrariness.’

### 3. The Securitization of migration in EU

Scholars agree that the European Union has tried to build a “European fortress” aimed at averting the access of irregular immigrants which have associated with security threats.<sup>22</sup> The recent refugee crisis increased the securitisation of migration in Europe and multiplied the preventive measures against illegal crossings of European external borders. What contributed greatly to the accentuation of securitization of irregular migration was the terrorist attacks in France, Belgium, UK and Germany as well as the expansion of the “Islamic State” (ISIS) broadened the feelings of insecurity in Europe but also facilitated the alleged connection of terrorism with irregular immigrants. As pointed out by Fabrice Leggeri, the Executive Director of Frontex, the association of migration with terrorism was “...a *dreadful reminder that border management also has an important security component.*”<sup>23</sup> Thus, in addition to a strict asylum system, the externalisation of the management of migration through close cooperation with third countries, the EU proceeded to the militarization of external border controls in the Mediterranean in order to interrupt smugglers

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<sup>22</sup> Abiri, E. (2000), Security and Migration: a Cacophony of Voices. in E. Abiri, (Ed.) The securitisation of migration. Göteborg: Dept. of Peace and Development Research Göteborg University, pp. I: 1-29; Huysmans J. (2000), The European Union and the Securitization of Migration, *Journal of Common Market Studies*, 38(5), pp. 751-77; Geddes A. (2000), Immigration and European Integration. Towards fortress Europe?, Manchester: Manchester University Press; Van Houtum, H. and Pijpers, R. (2007), The European Union as a Gated Community: The Two-faced Border and Immigration Regime of the EU, *Antipode*, 39(2), pp. 291-309; Bermejo R. (2009), Migration and Security in the EU: Back to Europe?, *Journal of Contemporary European Research*, 5 (2), pp. 207-224.; Bigo D. (2009), Immigration controls and free movement in Europe, *International Review of the Red Cross*, 91(875), pp. 579-591.

<sup>23</sup> Frontex (2016) Annual Risk Analysis, Risk Analysis Unit, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Warsaw-Poland, pp.5

with illegal migrants from Syria, Afghanistan, Pakistan and North African countries. To deal with the new challenges, the EU reinforced the European Border and Guard Agency and implemented specialised military naval missions for the protection of external borders in the Mediterranean.

Since the foundation of Schengen Area, irregular migration has been interrelated with cross-border crimes such as terrorism, drugs, arms and human trafficking<sup>24</sup>. The securitization of migration in EU has expanded as both the dominant discourse from the European decision makers<sup>25</sup> and regular practices applied by European agencies such as Frontex<sup>26</sup>. In this scheme, the European Common Immigration Policy as interpreted by European Commission aimed at *“Managing immigration effectively means addressing also different issues linked to the security of our societies... This requires fighting illegal immigration and criminal activities related to it...”*<sup>27</sup> After the unprecedented migration flows of 2015, the EU emphasized the security dangers emanating from irregular migration, stressing that *“a robust fight against irregular migration, traffickers and smugglers, and securing Europe's external borders must be paired with a strong common asylum policy as well as a new European policy on legal migration”*<sup>28</sup> Significantly, the recent refugee crisis provoked the support of the securitisation by European society. It was demonstrated that around *“...nine Europeans in ten say that additional measures should be taken to fight the illegal immigration of people from outside the EU (89%, +4 percentage points since spring 2015)”*<sup>29</sup>. Therefore, the European policy makers reinforced security measures to fight against irregular migration.

The result of the securitization has been the implementation of more offensive and stricter policies. Specifically, the EU enforced a specialized naval mission of EUNAVFOR MED, reinforced Frontex capabilities and independency and cooperated with NATO fleet in the

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<sup>24</sup> Huysmans J. (2000), The European Union and the Securitization of Migration, *Journal of Common Market Studies*, 38(5), pp. 751-77

<sup>25</sup> Wæver O. (2000), The EU as a security actor: reflections from a pessimistic constructivist on post-sovereignty security orders. In M. Kelstrup & M. C. Williams, (Eds.) *International relations theory and the politics of European integration: power, security, and community*. London; New York: Routledge

<sup>26</sup> Bigo D. (2002), Security and Immigration: Toward a Critique of the Governmentality of Unease, *Alternatives* 27, Special Issue, 63-92

<sup>27</sup> European Commission, (2008). COM(2008) 359 final: Communication from the Commission to the Council to the European Parliament., the Council, the European Economic and Social Committee and the Committee of the Regions. A Common Immigration Policy for Europe: Principles, actions and tools. Brussels, 17.6.2008, p.3

<sup>28</sup> European Commission (2015), 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, COM(2015) 240 final, Brussels, 13.5.2015., p.6

<sup>29</sup> Eurobarometer 84, p.28

protection of European external borders in the Southeastern Mediterranean<sup>30</sup>. Until 2016, the role of Frontex was only supportive and auxiliary, intended to increase the efficiency of border controls and to implement an Integrated Management System of supervision and protection of the EU's external borders.<sup>31</sup> Besides, Frontex teams, during the performance of their duties, have the right to use forceful means according to the Agency's Regulation<sup>32</sup>. Because of the refugee crisis, EU revised the Regulation of Frontex, re-named it as the official European Border and Coast Guard, and granted to the Agency more autonomy, authorizing it to intervene in emergency circumstances which endanger the security of the Schengen Area.<sup>33</sup> Likewise, in the framework of the 10 points launched by the Commission in 2015, the EU initiated a Common Security and Defence Policy (CSDP) operation of the European marine body EUNAVFOR, similar to the Operation Atalanta, aiming at locating and destroying the boats used by smugglers.<sup>34</sup> The EUNAVFOR MED mission "Sophia" is based on a military strategy, aiming at the disruption of smugglers and trafficking network operation in Mediterranean.<sup>35</sup> Finally, EU-NATO cooperation in the Greek-Turkish borders implemented under the great pressure of extensive irregular migration flows from Turkey to Greece<sup>36</sup> Besides, the control of migration flows has been included as a key issue of the (CSDP) and the European Security Agenda<sup>37</sup>. Therefore, and as a result of the refugee crisis, the control of European external borders in the Mediterranean has been undergoing the process of extensive securitization and militarization through rigid management and offensive tactics, with the underlying goal of protecting Europe from irregular migration, that is considered as a security threat.

## Policy recommendations

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<sup>30</sup> Asderaki F and Markozani E. ( 2016), Migration crisis, from securitization to militarization: Challenges for EU and the member states, ICIB Working Papers, Thessaloniki 2016

<sup>31</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, *OJ L* 349, 25.11.2004

<sup>32</sup> Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, Official Journal of the European Union, *L 199/30*, 31.7.2007

<sup>33</sup> Article 19, *ibid*.

<sup>34</sup> European Commission, Press release- Joint Foreign and Home Affairs Council: Ten point action plan on migration, Luxembourg, 20 April 2015, Available at [http://europa.eu/rapid/press-release\\_IP-15-4813\\_el.htm](http://europa.eu/rapid/press-release_IP-15-4813_el.htm)

<sup>35</sup> Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) *OJ L* 122/31, 19.5.2015.

<sup>36</sup> NATO(2016), Warsaw Summit Communique, 8-9.7.2016 Available at [http://www.nato.int/cps/en/natohq/official\\_texts\\_133169.htm](http://www.nato.int/cps/en/natohq/official_texts_133169.htm)

<sup>37</sup> European Commission (2015), 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, COM(2015) 240 final, Brussels, 13.5.2015., p.6

1. A human rights-based approach to migration. As reported by the OHCHR, ‘a lack of human rights-based migration governance at the global, regional and national levels is leading to the routine violation of migrants’ rights in transit, at international borders, and in the countries they migrate to.’<sup>38</sup> A human rights-based approach is fundamental in all the phases of migration. The approach that has been followed so far in the European Union, which can be summarized in a blunt affirmation: it is beyond our border, it is not our responsibility, is an attempt to human dignity and a violation of international legal obligations.

a) An example of human rights-based approach could be, for example, the presence of the EU Fundamental Rights Agency in the hotspots, and a common European regulation of hotspots.<sup>39</sup>

b) The adoption of EU legislation concerning places of safety where to accept migrants.

c) Readmission agreements should contain a human rights clause to reaffirm international legal obligations that EU Member States, and the EU itself has. When there is a risk that a refusal of the entry into the EU subject the person to inhuman or degrading treatment, Article 33 of the Geneva Convention (Non-refoulement) and the prohibition of torture and inhuman or degrading treatment must be taken into account and respected. Leaving all in the hands of EU Member States has been causing a race to the bottom in the protection of human rights, preventing third-country nationals to enter the EU, where the entry is the only way to enjoy human rights protection. The protection of human rights does not mean that migration should not be regulated, but that the core of the governance should be international human rights law.

c) Once adopted, the EU should formally endorse the Global Compact on Migration as guideline of its migration policy.

2. Linked to point 1, the reform of Dublin regulation should proceed quickly, and should be based on the principle of shared responsibility within the EU, in order to redistribute migrants among States. Relocation and resettlement should be compulsory. Shared responsibility could also gradually develop within all the countries of the Eastern Mediterranean region, and should be based upon agreements whose cornerstone must be the protection of fundamental human rights.

3. Securitization increases the vulnerability of transit migrants, with specific regard to women and children, who are more vulnerable to human trafficking, and fosters a negative social

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<sup>38</sup> <https://www.ohchr.org/en/issues/migration/pages/migrationandhumanrightsindex.aspx>

<sup>39</sup> *On the frontline*, p. 31.



attitude against migrants, raising xenophobia. It also has offered an opportunity to the right-wing parties to step up on the political surface. Political parties in Finland ( Finns Party) , in Italy ( Five Star Movement, Northern League and Forza Italia), in UK ( UKIP) , in the Netherlands ( Party for Freedom ), in Poland (PiS), in Austria (FPÖ), in Denmark (DF), in Greece ( Chrysi Avgi) and all over Europe have obtained a consensus based on terror, anti-immigrant feelings and relative rhetoric.<sup>40</sup> Thus, the securitization of migration poses a threat to democracy in Europe, increasing protectionism and xenophobia. Changing the discourse on migration could assist the European policy makers European leaders should underscore, in their speeches and policies, the need for protecting migrants, fostering tolerance and highlighting the beneficial economic results of migration in European societies. Disconnecting the refugee crisis from cross border crimes and terrorism will have advantageous results on the democracy and tolerance in European societies but also on the promotion and effectiveness of the European fundamental values and the main goals of the European migration policy.

4. Finally, balancing the security concerns and the protection of migrant's human rights is a feasible task and should be a priority for EU member States. The fight against terrorism and other transnational organized crimes does not exclude the protection of migrants' human rights. *It must* include human rights law as an imperative. Even though the external borders of EU in the Mediterranean need, indeed, solid controls and coordinated efforts on managing the incoming flows of migrants, the illegal crossings are almost inevitable, as admitted by the executive director of Frontex: *"There is no EU system capable of tracing people's movements following an illegal border-crossing. Therefore it is not possible to establish the precise number of persons who have illegally crossed two sections of the external borders of the EU."*<sup>41</sup> .. It should also be acknowledged that Frontex and CSDP missions have saved thousands of lives of irregular migrants in the Mediterranean sea<sup>42</sup>. Therefore, instead of conceiving the security of the EU as a separate issue from human rights concerns, all migration policies should be guided by human rights, shared responsibility and cooperation among the European states in managing and integrating migrants. Both protection of migrants' human rights and guaranteeing the security of EU demand the efficient cooperation of EU member states on all parts of migration policy, such as the asylum policy, the cooperation with third countries, the

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<sup>40</sup> Right-wing parties in Europe, 28.04.2016m <http://www.dw.com/en/right-wing-parties-in-europe/a-19223545> (accessed in 30/8/2018)

<sup>41</sup> Frontex ( 2016) Annual Risk Analysis , Risk Analysis Unit, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Warsaw-Poland, p.5

<sup>42</sup> European Commission ( 2017), Joint Communication to the European Parliament, the European Council and the Council, Migration on the Central Mediterranean route, Managing flows, saving lives, Brussels, 25.1.2017, JOIN(2017) 4 final, [https://eur-lex.europa.eu/resource.html?uri=cellar:6e6590bb-e2fa-11e6-ad7c-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:6e6590bb-e2fa-11e6-ad7c-01aa75ed71a1.0001.02/DOC_1&format=PDF)

relocation programs and other related policies. Without cooperation among EU member states, there might be a further increase in the securitization of migration with the consequence of further jeopardizing migrants' human rights.

### **Further References**

- Durieux J.F., 'The Duty to Rescue Refugees', *International Journal of Refugee Law* 28 (2016) 637.
- Favilli C., 'Facing the Difficult Management of Flows Of Migrants and Asylum Seekers to the Eu: Italy as a Case Study', in *Canadian International Lawyer* 11 (2016) 6.
- Favilli C., 'La cooperazione UE-Turchia per contenere il flusso dei migranti e richiedenti asilo: obiettivo riuscito?'. *Diritti umani e diritto internazionale* 10 (2016) 405.
- Goodwin-Gil G., 'The International Law of Refugee Protection', in E. Fiddian-Qasmiyeh, G. Loescher, K. Long, N. Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford: OUP, 2014).
- Inder C., 'The Origins of 'Burden Sharing' in the Contemporary Refugee Protection Regime', *International Journal of Refugee Law* 29 (2017) 523.
- Mungianu R., *Frontex and Non-Refoulement: The International Responsibility of the EU* (Cambridge: Cambridge University Press, 2018).
- Papanicolopulu I., *International Law and the Protection of People at Sea* (Oxford: Oxford University Press, 2018). Moreno-Lax V, E. Papastavridis (eds), *Boat refugees' and migrants at sea: a comprehensive approach: integrating maritime security with human rights* (Leiden, 2017).
- Plender R. (ed.), *Issues in International Migration Law* (Leiden: Brill, 2015).
- Randall H., 'The Comprehensive Refugee Response Framework: A Commentary', *Journal of Refugee Studies* 31 (2018) 131.
- Spijkerboer T., 'Wasted Lives: Borders and the Right to Life of People Crossing Them', *Nordic Journal of International Law* 86 (2017) 1.
- Treves T., 'Human Rights and the Law of the Sea', *Berkeley Journal of International Law* (2010) 1.
- Trevisanut S., 'The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection', in *Max Planck Yearbook of United Nations Law* (2008) 205.
- UNHCR, 'Legal Considerations on the Return of Asylum Seekers and Refugees from Greece to Turkey as Part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the Safe Third Country and First Country of Asylum Concept', *International Journal of Refugee Law* 29 (2017) 498.

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