European Union and external migration management in Turkey and Serbia: The case for Human Rights

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Abstract

Regarding the current increase of the migration flows in the 21st century, different impacts have developed various actions in the multiple stakeholders. In fact, migrants faced many challenges on their migratory routes from the origin, over the transit and until the host countries. Therefore, the present thesis will focus its analysis on the capacity of the EU to ensure the protection of the human rights of the migrants. Considering the lack of protection of the migrants in the context of the migratory flows in Europe, the present research aims to explore how to better align the EU external migration management with the protection of the human rights of the migrants in third countries, concretely considering the specificities of the Turkish and Serbian cases.

“Everyone has the right to recognition everywhere as a person before the law.”

UDHR, article 6
This thesis is dedicated to all the migrants who, irrespective of their migration status, seek protection and solidarity worldwide.

I would like to express my most sincere gratitude to my wonderful grandparents for being my inspiration and for their unconditional presence.

I am profoundly thankful to my mother and my aunt Cris for their continuous love and strong support.

And last, but definitely not least, I would like to thank my incredible best friend Ana Paula for all she gives me, for the determinant encouragement during all this process since Venice and for being a sister since we are 4.
Abbreviations

EU European Union
UN United Nations
UDHR Universal Declaration of Human Rights
EC European Commission
CFSP Common Foreign and Security Policy
CSDP Common Security and Defence Policy
# Table of contents

6 Introduction

10 1. Historical Contextualization

13 1.1. Global regulation of Migration

16 1.2. EU’s Migration Policy development

16 1.2.1. Migration flows in the 21st century: evolution and data analysis

23 1.2.2. EU’s Migration Policy

24 1.2.2.1. Evolution of EU institutional and legal framework

30 2. The promotion of human rights in third countries: EU external migration policy and human rights

31 2.1. External Dimension of the EU’s Migration Policy

35 2.2. EU’s Foreign Policy tools and its Human Rights objectives

38 2.2.1. Protecting migrants outside EU borders

41 3. EU’s Enlargement Policy and Human Rights

42 3.1. Enlargement process

45 3.2. The link between human rights and the enlargement process

47 3.3. Case Studies: Turkey and Serbia

49 4. Postmodernist analysis: Turkey and Serbia case studies

50 4.1. EU’s role in Turkey

50 4.1.1. Evolution of EU-Turkey relations

55 4.1.2. Role of Turkey in Migration ‘Crisis’

58 4.1.3. Migration and Human Rights Issues

61 4.2. EU’s role in Serbia

61 4.2.1. Evolution of EU-Serbia relation

63 4.2.2. Role of Serbia in Migration ‘Crisis’

65 4.2.3. Migration Human Rights Issues

67 Conclusion

70 Bibliography
Introduction

Migration flows are not a recent phenomena. Therefore, the present thesis will focus on the analysis of migration flows from Africa and the Middle East in direction to Europe since the year 2000. People have been running from conflicts and migrated from one place to another. Many migrants try to reach Europe through different routes. Therefore, and considering the Eastern Mediterranean and Western Balkans Route, it is important to explore how transit countries are dealing with the arriving of so many migrants and if there are structures and mechanisms to ensure their protection in compliance with human rights standards. Moreover, it is also pertinent to consider the role of the European Union (EU) in this regard. Therefore, it is crucial to analyse EU’s role as leading defender of human rights in the world with the immediate imperative duty of protecting those in need.

The EU promotes all the human rights and freedoms presented at the Universal Declaration of Human Rights (UDHR) to every human being regardless all the circumstances. Moreover, the EU human rights policies and institutions adopted an approach to human rights abuses worldwide and recognize, as an essential condition, the necessity of an effective policy and coherent strategy across all the areas. Furthermore, the EU intends to make use of all available instruments for the promotion and protection of human rights. Within the role as a human rights defender worldwide, EU presents specific strategies in the human rights field including in the context of its external action and foreign policy.

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3 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)
Considering that the migration management had become a priority on the EU’s agenda, the present thesis intends to observe the impact of the migration flow on the EU external action and understand the EU’s role in the protection of the human rights of the migrants in transit countries. Exploring the existing current tools to externally mainstreaming human rights in the context of the migration flow, will be analysed the effectiveness of the current external EU mechanisms to support to migrants, concretely in Turkey and Serbia, within their role of transit countries.

The hypothesis of the present thesis will be: How can the EU external migration management be better aligned with the protection of the Human Rights of the migrants in Turkey and Serbia?

Within an extensive process of research and analysis, the present thesis intends to understand what competencies and instruments do the EU has at its disposal in order to influence how transit countries protect the human rights of the migrants.

Moreover, in order to answer the main question it is important to consider some hypothesis. In one hand can be considered the impossibility of the EU to further intervene in the domestic affairs of third countries namely in the scope of the migration flow. On the other hand, could be analysed the possibility of developing direct humanitarian assistance instruments in the field in order to ensure the protection of the migrants in the transit countries. In addition is also possible to consider the possibility of re-thinking about the existing external agreements with Turkey and Serbia in order to boost the EU influence on ensuring the respect and protection of the human rights of the migrants living in both countries.

The research of the present thesis will be based on a postmodernist approach and within a discourse analysis perspective. The discourse analysis methodology considers the meaning of the use of certain words in determinate contexts\(^5\) and, according to the analysis of Miguel Cabrera, discourses conceptualizes reality\(^6\). In the context of the increase of migration flows and its inherent social changes, the discourses analysis methodology, according to the authors Lisa Harrison and Theresa Callan, can contribute

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\(^5\) Lisa Harrison and Theresa Callan, \textit{Key Research Concepts in Politics & International Relations} (London, SAGE Publications Ltd, 2013) 32

to understanding the influences of social and cultural factors on the development of certain discourses and communications\(^7\), which in this thesis will be based on the interpretation of the language and specific concepts within the existing agreements, statements and reports.

Moreover, the critical thinking inherent to the postmodern perspective, as developed in the book of Oliver Daddow, will be based in certain concepts. The rejection of the dichotomies, namely the domestic and international issues, will be useful to analysed, without restrictions, the existing EU external instruments of intervention in third countries within human rights objectives. In order to challenge, as analysed by Claudia Aradau, the taken-for-granted ‘truths’ about what are international and domestic issues\(^8\), the concept of deconstruction, according to the author Jacques Derridas, would help through its strategy of interpretation and criticism of certain concepts, namely the ones in the field of migration. Moreover, in accordance with the authors Hodge and Mishra, the concept of deconstruction also interrupts and intervenes over the dominant discourses\(^9\). Furthermore, the concept of power, according to David Campbell’s, would be also useful in order to analyse the pertinence of choosing the cases of Turkey and Serbia considering the different levels of powers which conduct to different relations with the EU, and its capacity of influencing within certain limitations or advantages\(^10\).

This thesis will include the analysis of primary and secondary sources, such as treaties, agreements, published books, reports and articles. In order to study the evolution of the migrations flows and the EU’s Migration Policy, for instance, the book called “Security and Migration in the 21\(^{st}\) century”\(^11\) by Elspeth Guild, and the “European Agenda on Migration”\(^12\) will contribute to a broader understanding of the

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\(^7\) Lisa Harrison and Theresa Callan, *Key Research Concepts in Politics & International Relations*, (London, SAGE, 2013) 33
\(^9\) *Ibid* 220, 221
\(^10\) *Ibid* 221, 222
situation. For researching the evolution of the EU instruments of foreign policy and the EU enlargement process, it is convenient to consider the book called “Europe’s Global Role: External Policies of the European Union”\textsuperscript{13} by Jan Orbie which would provide a meaningful knowledge about the EU external action and the EU’s Enlargement Policy. Considering the EU human rights objectives is necessary to focus for instance on the “EU’s human rights strategy”\textsuperscript{14} and the “EU Annual Report on Human Rights and Democracy in the World 2017”\textsuperscript{15}. Then, considering the EU enlargement policy and the focus on the case studies of Turkey and Serbia will be analyse the main agreements and papers such as “The role of human rights in the EU’s external action in the Western Balkans and Turkey”\textsuperscript{16} or the “Instrument for Pre-Accession Assistance (IPA II) 2014-2020: Multi-country Regional Support to protect sensitive migration management in the Western Balkans and Turkey”\textsuperscript{17}.

The structure of the thesis is as follows. The first chapter will analyse the global regulation of migration and the development of the EU’s Migration Policy. For that purpose will be explained the historical evolution of the movements of people and the creation of international mechanisms of protection after the World War I and the subsequent international instruments and legal framework since then and over the 21\textsuperscript{st} century.

The second chapter will analyse the EU’s role to externally promote human rights. Through the analysis of the EU’s Foreign Policy and the EU’s Migration Policy, both in compliance with human rights objectives, this chapter will interpret the EU capacity of protecting migrants in third countries.


The third chapter will analyse the evolution and the objectives of the EU’s Enlargement Policy. Concretely, would be useful to comprehend the capacity of this instrument to influence other countries and to link it with the human rights mainstreaming.

The fourth and last chapter will look at the cases of Turkey and Serbia in order to show how the main question, of the present thesis can be supported or negated through the use of the postmodern concepts as explanatory tools. For this purpose, it is important not only to analyse the evolution of the relations between the EU and both countries, but also to understand their role on the migration flow considering the fact of both being transit countries over the Eastern Mediterranean and Western Balkan route. In fact, the specificities inherent to both countries, for being part of the EU enlargement process and being both transit countries over the migration flow, it is useful consider those characteristics to study the EU capacity of influencing them and ensuring the protection of the human rights of the migrants living in their countries.

1. Historical Contextualization

The people’s movement constitutes a continuous reality and the displacement of people has always been present in the history of humanity. The number of people living outside of their country of origin is constantly growing. This phenomenon is caused by different factors for instance discrimination, poverty, lack of access to basic services, natural disasters, environmental degradation, conflicts, political persecution and searching for new opportunities for education or work.\(^\text{18}\)

In fact, migration has been acknowledged as an issue that requires coordinated responses and a multidimensional global approach. In order to understand the further analysis of the present thesis is convenient to previously clarify that there is no universal acceptance over the definitions in the area of migration. Thus, the various concepts which will be used over this research are in general quit controversial, vague or even often contradictory. This can be justified by the fact that migration had

remained traditionally under the administration of the states and consequently the terms variates depending on the country\textsuperscript{19}.

Having said that would be useful to define from the beginning that the international migration phenomenon is defined by the International Organization for Migration (IOM), as the “Movement of persons who leave their country of origin, or the country of habitual residence, to establish them either permanently or temporarily in another country. An international frontier is therefore crossed”\textsuperscript{20}. Thus, regarding the different stakeholders, in general every country demonstrates considerable concerns about migration: the ones that are sending; the transit; and the receiving countries.\textsuperscript{21}

International migration is not a new phenomenon. However, numbers mirrors the increase of people which choose or are forced\textsuperscript{22} to migrate, which consequently also increased the number of countries receiving international migrants.

In fact, the number of international migrants globally has grown 50\% between 1990 and 2013, which represents an increase of 77 million migrants. The biggest rose was then between 2000 and 2010 when annually 4.6 million people were added, in comparison to the period of 1990-2000 with 2 million per annum, and 3.6 million per annum between 2010 and 2013.\textsuperscript{23} Moreover, in 2015 there were around 244 million international migrants globally which represent 3.3\% of the global population. \textsuperscript{24} Having said that is also important to consider the concept of migrant. The IOM defines

\textsuperscript{22} Concept commonly denominate as ‘forced migration’, defined by IOM as: “the General term used to describe a migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects)”. Please consult IOM, ‘International Migration Law: Glossary on Migration’, (2011), 2\textsuperscript{nd} edition <https://publications.iom.int/system/files/pdf/iml25_1.pdf> p.25
a migrant as someone which moves within a state or across an international border, regardless: the length of the stay; if the movement is voluntary or involuntary; legal status of the person.\textsuperscript{25}

Reports from the United Nations High Commissioner for the Refugees (UNHCR) shows that the global population of forcibly displaced people since the beginning of the XXI century, grown substantially from 33.9 million in 1997 to 65.6 million in 2016 – an increase of 300.000 people over 2015\textsuperscript{26}.

The biggest growing was concentrated between 2012 and 2015 substantially caused by violence, HR violations and conflicts such as in Syria, Burundi, Iraq, Sudan, South Sudan, sub-Saharan Africa, Yemen and the Democratic Republic of Congo\textsuperscript{27}.

In fact, the so-called ‘migration crises’ was mainly originated by a considerable and rapid increase of conflicts and consequent growing of migration flows.\textsuperscript{28} Then, the chapter will explore the linkage between the increase of the movements of people in Africa and the Middle East and the growing of migrants aiming to reach Europe.\textsuperscript{29}

In spite of the considerable rose of migration arrivals in Europe\textsuperscript{30}, this chapter intends to demonstrate that in fact this is not an European ‘crisis’ but rather a global phenomenon with severe human consequences which require global approaches. For that reason, this chapter aims precisely to explore those various dynamics which will help to understand the main effects and respectively responses by different stakeholders.

\textsuperscript{25} For more information please consult: IOM ‘Who is a migrant <https://www.iom.int/who-is-a-migrant> accessed 30 June 2018
\textsuperscript{27} Ibid 6
\textsuperscript{29}UNHCR, ‘Global Trends Forced Displacement in 2016’ (2017) <http://www.unhcr.org/5943e8a34.pdf> p.6-54
\textsuperscript{30} For instance, considering the number of sea arrivals in Europe in 2014 (216054) and 2015 (1015078). Information available at UNHCR ‘Operational Portal: Refugees Situation’ <http://data2.unhcr.org/en/situations/mediterranean> accessed 2 July 2018
1.1. Global regulation of Migration

International migration is a growing phenomenon. The movements of people constitute a fundamental part of the history and development of the humanity, involving the evolution of societies and their dispersion throughout all the continents.

In spite of the protection of refugees happened since some centuries ago, the history of the establishment of the protection mechanism begun with the League of Nations (LoN)\(^{31}\) – from 1921 to 1946. With the World War I, between 1 and 2 million people left the Soviet territories which needed international assistance. Moreover, the mandate of the LoN was extended in order to protect the refugees from the Turkish Republic and the Ottoman Empire. Then, over the action of the LoN some institutions were created and in 1933 was established a Convention related to the ‘International Status of Refugees’ which would serve as a model to the 1951 Convention – that will be further introduced\(^{32}\).

The United Nations (UN) was established in 1945 after the World War II and replaced the LoN. During and after the Second World War, there were massive displacements of people. In order to deal with that massive refugee flow, in 1946, the Resolution 62(I) of the UN General Assembly established the International Refugee Organization (IRO). This organization provided essential assistance worldwide and was responsible for the resettlement of 1,049 million displaced persons and refugees essentially from Australia, Central Europe, Canada, United States, Latin America, Israel and Western Balkans\(^{33}\). With the same main purpose, the General Assembly established the United Nations High Commissioner for Refugees (UNHCR) in January 1951 with the two principal functions of providing “(…) international protection to refugees within its competence and to seek durable solutions for them in co-operation with


\(^{33}\) Ibid
Moreover and in the same year was established the International Organization for Migration (IOM) that is committed to the principle that orderly and humane migration have benefits for the society and for the migrants.\(^\text{35}\)

The end of the World War II brought the largest population movements in the history of Europe. Hundreds of thousands of Jews looked for new homes, millions of Germans were expelled or moved from Eastern Europe, and many other refugees run away from their countries. Although UNHCR was originally established to address the post-World War II refugee’s situation in Europe and help millions of Europeans who had run from or lost their homes, its work was quickly expanded. The Hungarian revolution in 1956 – which caused the movements of 200,000 people to Austria - , the decolonization in Africa during the 1960s and the massive refugee flow in Asia and Latin America during the next two decades, constitutes examples where UNHCR exercised assistance to refugees. However, and before the continuation of the present contextualization, would be essential to understand the concept of refugee.\(^\text{36}\)

In 1948, the Universal Declaration of Human Rights on the article 14 recognized that “Everyone has the right to seek and to enjoy in other countries asylum from persecution”\(^\text{37}\). Afterward in 1951, based in that article, was then adopted the United Nations Convention relating to the Status of Refugees. Moreover and considering the temporal and geographical limitations\(^\text{38}\) of the Convention which was established as a

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\(^{35}\) IOM, ‘Submission to the working group on arbitrary detention on the basic principles and guidelines on remedies and procedures on the right of anyone deprives of his or her liberty by arrest or detention to bring proceedings before courts’, (Geneva, 25 February 2014) <https://www.ohchr.org/Documents/Issues/Detention/DraftBasicPrinciples/IOM1.pdf> p.1

\(^{36}\) UNHCR ‘UNHCR 60th’ (10 December 2010), <http://www.unhcr.org/60th/pdf/UNHCR_60th_text_shotlist.pdf>


\(^{38}\) According to Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) p.1: “…1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe.”

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post- Second World War instrument, was then established in 1967 a new protocol which removed those limitations.\textsuperscript{39}

Besides defining the concept of refugee –Article 1-, the 1951 Convention presented a clarification of the rights of the refugees and attributed safeguards against the expulsion of refugees under the principle of non-discrimination. Then, according to what is recognized under the International Law, refugee “is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”\textsuperscript{40}

In fact, the attribution of the refugee status is not an easy process because it requires the fulfillment of the various criteria established in the Convention relating to the Status of Refugees. Then IOM defined other concepts in between the refugee status. Besides the concept of economic migrant\textsuperscript{41}, there is also the term ‘de facto refugees’ which are “Persons not recognized as refugees within the meaning of the UN Convention Relating to the Status of Refugees, 1951 and Protocol relating to the Status of Refugees, 1967, and who are unable or, for reasons recognized as valid, unwilling to return to the country of their nationality or, if they have no nationality, to the country of their habitual residence.”\textsuperscript{42} Moreover, ‘de facto refugees’ are also sometimes recognized as ‘externally displaced persons’ which is defined as “Persons who have fled their country due to persecution, generalized violence, armed conflict situations or other man-made disasters. These individuals often flee en masse”\textsuperscript{43}.

\textsuperscript{39} According to the Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) p.1: “the Protocol gave to the Convention an “(…) universal coverage(…)” and “(…) has since been supplemented by refugee and subsidiary protection regimes in several regions, as well as via the progressive development of international human rights law.”

\textsuperscript{40} Direct citation: Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) p. 3

\textsuperscript{41} Definition at IOM ‘International Migration Law: Glossary on Migration’, (2011), 2\textsuperscript{nd} edition <https://publications.iom.int/system/files/pdf/iml25_1.pdf> p.21 “A person leaving his/her habitual place of residence to settle outside his/her country of origin in order to improve his/her quality of life. This term may be used to distinguish from refugees fleeing persecution and is also used to refer to persons attempting to enter a country without legal permission and/or by using asylum procedures without bona fide cause. It also applies to persons settling outside their country of origin for the duration of an agricultural season, appropriately called seasonal workers.”

\textsuperscript{42} Ibid 17

\textsuperscript{43} Ibid 23
In what concerns to the concept of ‘migrant’, although, it is usually understood to cover all the cases where the decision of moving is freely decided, there is no universal agreement on the definition and it is commonly applied to a person which move to another country or region. For this reason, and considering the existing restrictions on the attribution of a refugee status, the present thesis will use the concept of migrant – except when analyzing references from specific primary or secondary sources - for having a more neutral nature not restricted or limited by a strict legal framework.

1.2 EU’s Migration Policy development

1.2.1 Migration flows in the 21st century: evolution and data analysis

As mentioned on the beginning of this chapter, when compared with the last century, forced displacement highly accelerated since the beginning of the XXI century. Moreover, the displacement associated with violence and conflict has nearly doubled since 2000. Then, it is necessary to understand the main factors which triggered the migration flows in the XXI century in Africa and in the Middle East.

Generally, human rights violations, political corruption and the lack of respect for rule of law are some of the reasons which cause instability. The XXI century saw some regions in Africa involved in internal and external conflicts which raised the number of migrants and Internally Displaced Persons (IDPs). A UN report from 2014 indicates that conflicts, threats caused by the terrorism, general hostilities and organized crime affected many regions in Africa such as Libya, Nigeria, South Sudan, Central

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44 Ibid 40
“Persons or groups of persons who have been forced IDPs or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”
African Republic and Somalia. Moreover, the report also links the conflicts and general instability as a root cause for the growing of refugees and IDPs.\(^{47}\)

In 2014, UN estimated that persecution and conflicts forced an average of 42,500 individuals to leave their homes and seek for protection elsewhere, inside or outside their countries. For the purpose of the present thesis it is important to verify that in 2014 for the first time, Turkey became the biggest hosting country worldwide with 1.59 million refugees.\(^{48}\)

Furthermore, in 2015 the numbers of forcibly displaced persons worldwide grown to 65.300 individuals from which 12.4 million of them were newly displaced due to persecution and conflicts. Moreover, it is important to refer that Turkey remained the largest hosting country (2.5 million people) and that 54 per cent of all the refugees in 2015, as well as in 2014, came from Syrian Arab Republic (4.9 million), Afghanistan\(^{49}\) (2.7 million) and Somalia\(^{50}\) (1.1 million). In 2015, according to UNHCR, the number of IDPs, refugees and asylum seekers\(^{52}\) exceeded, for the first time since the post-World War II, the number of 60 million people\(^{53}\). The main cause of the major acceleration was the Syrian war that since early 2011 has been causing the world’s biggest driver of displacement.\(^{54}\)

In fact, 2011 was a year without precedents. Besides Syria, other conflicts in the Middle East and Africa provoked mass displacement since 2011. This sequence of

\(^{47}\) For more information please consult: UN Secretary-General ‘Report of the Secretary-General on Causes of Conflict and the promotion of durable peace and sustainable development in Africa’ (24 July 2014) 69th Session (2014) UN Doc A/69/162


\(^{49}\) For more information about the root causes of the migration flow from Afghanistan, please consult: UN Security Council, Res 2405 (8 March 2018) UN Doc S/RES/2405

\(^{50}\) For more informations, please consult: UNSCR, Res 2408 (27 March 2018) UN Doc S/RES/2408


\(^{52}\) Concept defined by UNHCR ‘Word at war: Global Trends forced displacement 2014’,(Geneva 2015) <http://www.unhcr.org/statistics/country/556725e69/unhcr-global-trends-2014.html> p.56: “individuals who have sought international protection and whose claims for refugees status have not yet been determined.”

\(^{53}\) For more information please consult UNHCR ‘Worldwide displacement hits all-time high as war and persecution increase’ <http://www.unhcr.org/558193896.html> accessed 15 July 2018

events is known as ‘Arab Spring’ and includes a set of popular protests aiming for governmental reforms or the change of regimes. The wave of revolts started in Tunisia and quickly spread to not only Syria, which faced strong civil conflicts and consequently violent repressions by the government, but also other countries such as Yemen, Libya, Bahrain, Egypt and some other countries. Citizens went to the streets demanding political changes against repressive regimes. In Tunisia and Egypt although the high number of human losses the peaceful protests ended up triumphing. In Libya, the result was an armed conflict which demanded and international intervention causing the fall of the Gaddafi’s regime. In Yemen there was a strong protest against the government which increased the repression and violence. Moreover, the government of Bahrain, supported by Saudi Arabia, fought against the protests causing many deaths. Nevertheless, in the end, were achieved some reforms, reparation and reconciliation.

Having said that, if from 1999 to 2011 the global population of forcibly displaced people remained more or less stable, since the Syrian conflict and the events of the ‘Arab Spring’ the numbers considerably rose. However, although the expectations of the Arab Spring to bring pro-democratic transformations, it not only deteriorated in some cases the rights and the freedoms of religious minorities, but also caused waves of movements of people.

Besides that, it is also important to refer another factor which has been boosting migration flows. Worldwide, advancing desertification and land degradation force

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56 Ibid 1
individuals to migrate. The UN on the combat to desertification\textsuperscript{60}, detected different current challenges such as water insecurity, energy, conflict to food, migration, climate change and the pressure of population growth. Particularly climate change and the land degradation are identified as factors which contribute to the increase of instability. This situation contributes to the threatening of rural live hoods, the aggravation of conflicts caused by the limited resources and massive migration flows particularly in the region of Middle East, sub-Saharan Africa, North Africa and South Asia\textsuperscript{61}.

Having said that it is crucial to acknowledge that, over the necessity of migrating, most of the people try to flee to neighbouring countries. Although Europe faced an increase of migrant’s flows in 2015\textsuperscript{62}, it is visible that this is not an exclusive European issue but rather a global issue. Through the analysis of empirical data on migration about the percentage of migrates by major area of destination is possible to verify that 52\% of the migrants from Africa in 2015 moved to other regions within Africa and that only 27\% of the African migrants in 2015 moved to Europe – which represents a growth of 2\% since 2000. Moreover, 60\% of the migrants in 2015 moved to other regions within Asia in comparison with only 20\% of Asian migrants in direction to Europe – which represents a decreased of 3\% since 2000.\textsuperscript{63} Through the interpretation of the percentages is possible to conclude that the majority of the migrants do not go to Europe but rather stay in the region of origin.

In spite of that, in 2015 European migration corridor to reach Europe was the second largest regional corridor after the one in Latin America and the Caribbean to Northern America\textsuperscript{64}. Between 2015 and 2016 Europe faced a considerable and rapid

\begin{itemize}
  \item \textsuperscript{60} For more information, please consult: UNCCD, ‘Global Land Outlook’ (Bonn 2017) 1\textsuperscript{st} edition
  \texttt{<https://www.unccd.int/sites/default/files/documents/2017-09/GLO_Full_Report_low_res.pdf>}
  \item \textsuperscript{61} \textit{Ibid} 12-106
  \item \textsuperscript{62} UNHCR data collection refers that in 2015 more than 1 million individuals arrived by the sea which correspond to more than fourfold increase when compared to 2014 which registered 21600 arrivals. Please consult: UNHCR ‘Operational Portal Refugee
  \item \textsuperscript{63} All data at UN ‘International Migration Report 2015’ (New York 201) ST/ESA/SER.A/375
  \item \textsuperscript{64} IOM, ‘World Migration Report 2018’ (2017),
\end{itemize}
rose of asylum-seekers. If in 2013 the number was around 431 thousand applications, in 2015 and 2016 were registered around 1.3 million asylum seekers in the European Union (EU). In 2016 Germany received the largest number of new asylum applications not only in Europe but globally mostly by individuals from the Syrian Arab Republic, Iraq and Afghanistan. Moreover, in 2016, EU issued around 3.4 million first residence permits to non-EU citizens – which correspond to a record when compared to the data in 2008 that was around 2.5 million.

Therefore, the migration flows in direction to Europe raised debates on the future of EU due to the multiple challenges on the Migration Policy.

Member States (MS) are responsible to apply the Dublin system. The Dublin System, also known as the Dublin Regulation, was established by the Dublin Convention adopted in 1990 – entered into force in 1997 – as an agreement between EU MS to establish the ones responsible for examining the asylum application in order to avoid asylum seekers from being sent from one country to another. Then, including other principles, the Dublin system established that the asylum seekers only have one opportunity to apply for asylum in the EU. However, by the time that it was formulated, Europe faced a different scale and cooperation in what concerns to

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65 “A person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments. In case of a negative decision, the person must leave the country and may be expelled, as may any non-national in an irregular or unlawful situation, unless permission to stay is provided on humanitarian or other related grounds”, IOM, ‘International Migration Law: Glossary on Migration’, (2011), 2nd edition <https://publications.iom.int/system/files/pdf/iml25_1.pdf> p.12


71 For more information, please consult: Council and European Parliament ‘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 (recast)’ (26 June 2016) No 604/2013 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>
migration and asylum. Then, in 2014 it was visible that the system was not working as it should due to the fact that 72\%\(^{72}\) of the asylum applications were restricted to five MS which mirrored that it was not a fair distribution among MS. Besides that, the responsible state is usually the state through which the asylum seeker first entered EU and that demonstrates huge difficulties for Italy and Greece\(^{73}\) which are mostly the first destination countries inside EU. This fact created instability and since then many efforts have been taken in order to adapt and reform the system for instance on the resettlement\(^{74}\) and relocation\(^{75}\) mechanisms according to the reality and necessity and in order to achieve a fairer distribution among EU MS.\(^{76}\)

In fact, there are different migration routes in direction to the EU. The route goes from the country of origin - the one that is a source of migration flow - and includes a way over the countries of transit in order to enter into the destination or host

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\(^{73}\) In 2015 Italy received in total 150317 people (by the sea) and Greece achieved the reception of 821008 migrants (by the sea and by the land) which represents much higher numbers in comparison with Bulgaria (29,959), Spain (3,845), Malta (106) or Cyprus (269). Information available at: IOM, ‘Irregular Migrant, Refugee Arrivals in Europe Top One Million in 2015: IOM’ (22 December 2015) <https://www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-IOM> accessed 02-07-2018

\(^{74}\) Definition at EC ‘Establishing a Union Resettlement Framework and amending Regulation,’ (Brussels 13 July 2016) COM(2016) 468 final <http://http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/conv/2016/0468/COM_COM%282016%290468_EN.pdf> p.2 “Resettlement of third-country nationals or stateless persons is one of the avenues that can be offered to displaced persons in need of international protection to allow them to enter the Member States legally and safely and receive protection for as long as they need. It is also a tool of international solidarity and responsibility sharing with third countries to which or within which a large number of persons in need of international protection has been displaced as well as of migration and crisis management.”

\(^{75}\) Definition at EC, ‘European Solidarity: Refugee relocation system’, <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf> “The transfer of persons who are in need of international protection from one EU Member State to another EU Member State” according to the sharing of responsibilities which established “the number MS should take is based on a distribution key calculated upon objective, qualified and variable criteria: size of population; total GPD; average number of asylum application over the previous four years.”

country. Over the thesis and in order to answer to the main research question, is necessary to study the role of the transit countries on the protection of the rights of the migrants and evaluate the existing intervention of EU over this process.

In 2015 86% of the global refugees were hosted in developing countries. The migration flow to the EU substantially grown and the numbers of deaths and missing people namely at the sea reached 3,771 individuals in 2015 and 5,096 in 2016. Therefore, EU MS keep on debating how to best respond to those trends.

Moreover, and in other to understand the geographical dynamics should be acknowledged that in total there are eight borders and routes which have been used to reach EU: Eastern borders; Western Balkan; Eastern Mediterranean; Circular Route from Albania to Greece; Apulia and Calabria – included in the Central Mediterranean route; Western African; Western Mediterranean. However, most of the migrants entered the EU through three primary routes: the Western Mediterranean route from North Africa to Spain; Central Mediterranean route from North Africa to Italy; the Eastern Mediterranean route from Turkey to Greece, Bulgaria and Cyprus. Moreover, data shows that most of the countries of origin in 2016 were from Syria (56.1%), Afghanistan (24.3%), Iraq (10.3%), Pakistan (2.7%), Iran (2.6%) and Morocco (0.9%). The countries of transit can be classified as all the countries on the way of

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79 This has been how most migrants choose to enter into EU. Please consult recent data at: IOM, ‘Migration Flows to Europe 2017 Overview’(January 2018) <https://reliefweb.int/sites/reliefweb.int/files/resources/2017_Oversview_Arrivals_to_Europe.pdf>
82 As well as in 2015, same countries different percentages. Please consult: IOM, ‘Compilation of available data and information reporting period 2015’ <http://doe.iom.int/docs/Flows%20Compilation%202015%20Overview.pdf> accessed 2 July 2018
the migration route in between the country of origin and destination. For instance, if Syrian people which run from the war show major intention to go to Germany (68%) and Sweden (9%), the transit countries are all the ones in the middle of the way between the country of origin and destination. Then if in one hand the transit country can be a EU MS (such as Greece, Croatia and Slovenia), others are outside of EU (such as Turkey, Serbia or Libya). Moreover, in one hand one country can be considered a country of origin and transit of the migration flow, as the case of Libya, on the other hand, can be considered a country of transit or destiny, like Italy. This differentiation occurs depending on the situation and geographical position of the country of origin, and on the intentions of the migrant⁸⁵.

Then, for the purpose of the present thesis is important to acknowledge that Turkey and Serbia, as countries of transit on the migration flow, need to respect international law⁸⁶ in which regards to the protection of the rights of the migrants. Moreover, besides the study of the existing mechanism in both countries, will be further analysed the intervention or no intervention of EU in this regard.

1.2.2. EU’s Migration Policy

As previously explained, migration flow in direction to Europe has been growing since the conflicts rose in the Middle East and Africa in 2011 following the Arab Spring events. The increase of the migration flow generated political disagreements and policy challenges in matters such as displacement, border management, safe migration and integration. It is not possible for a state to manage such

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⁸⁶ Please consult Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) article 1 – “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” and the art 6 “Everyone has the right to recognition everywhere as a person before the law.”
movements on its own.\textsuperscript{87} In fact, migration policy became priority policy not only in Europe but throughout the world demanding the promotion of cooperation in order to achieve more effective solutions. \textsuperscript{88} In spite of typically asylum and migration have been an area dominated by national governments, taking into account the recent events, EU looks more than ever to achieve a common approach\textsuperscript{89}. In this regard, it is then also important to mention that since 2005, the ‘Global Approach to Migration and Mobility’ (GAMM), based on the solidarity and common political principles, was established in order to build a comprehensive migration policy. It constitutes an EU framework on the EU external migration and asylum policy to clarify how EU needs to conduct political dialogues and cooperation with non-EU countries.\textsuperscript{90}

Then, before analysing the external dimension of the EU Migration Policy, it is important to examine the development and evolution of the EU’s Migration Policy in order to further understand the evolution of the existing instruments on addressing the migration management internally and outside EU borders.

1.2.2.1. Evolution of EU institutional and legal framework

The year of 1993, with the Maastricht Treaty\textsuperscript{91}, marked the beginning of the cooperation on migration issues in the EU. The MS agreed on working together in some areas of common interest within the so-called three pillars, including policies relayed to external borders, migration and asylum\textsuperscript{92}. The three main pillars were called: the

\textsuperscript{87} UNGA Res 70/1 ‘New York Declaration for Refugees and Migrants’ (19 September 2016) 71\textsuperscript{st} Session (A/71/L.1) p.2
\textsuperscript{91} The Maastricht Treaty established the EU marking a new step in the process of achieving a closer union among EU citizens. Among other things, laid the foundation of the Euro. For more information, please consult: European Central Bank, ‘Five things you need to know about Maastricht Treaty’ (15 February 2015) <https://www.ecb.europa.eu/explainers/tell-me-more/html/25_years_maastricht.en.html> accessed 2 July 2018
European Community (EC), Common Foreign and Security Policy (CFSP), and Justice and Home Affairs (JHA). The character of the overall action has been predominantly intergovernmental. The main areas of cooperation in JHA established by the Maastricht Treaty were: asylum policy, rules of governing the crossing of external borders of the MS, immigration policy, policy cooperation on combating terrorism and other forms of international crime, etc. In what concerns to the field of migration, the section of the treaty on “Provisions on Cooperation in the field of Justice and Home Affairs” explicitly mentions that MS should follow common interests, among others, in the areas of: “1. asylum policy; 2. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon ; 3. immigration policy and policy regarding nationals of third countries: (a) conditions of entry and movement by nationals of third countries on the territory of Member States; (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment; (c) combatting unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;” Apart from that, should be acknowledged the fact that the decisions connected to the JHA pillar were made by the Ministers and always by unanimity, and then through an intergovernmental structure which mostly produced non-binding recommendations. Since its establishment, the pillars suffered amendments over the treaties which followed and which changed the institutional balance. For instance migration issues suffered through a gradual ‘communitarization’.

In 1999, with the Amsterdam Treaty, the external aspects of asylum and migration, in between the European external relations and JHA, became more consistent

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93 EU decisions follow the procedure defined by: European Union, ‘Consolidated version of the Treaty on the Functioning of the European Union’ (13 December 2007), 2008/C 115/01 art. 294
on the inclusion of migration issues in the dialogue with third countries 99 for instance on the reference within the treaty that “Member States to ensure effective controls at their external borders, in cooperation with third countries where appropriate”. 100 Moreover was agreed on the development of a common asylum system and a common management of migration flows 101, which it is present in the measure “to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” 102. Furthermore, as mentioned above, in the context of the European integration process, migration issues were gradually submitted to a process of ‘communitariaisation’ since the MS have been shifting their competencies to the EU. 103 Then, the Amsterdam Treaty transferred the migration and asylum to the EC pillar, 104 Moreover, with this treaty the Schengen 105 and Dublin system became part of the Community law and received several upgrades such as new instruments: European Asylum Support Office (EASO), Frontex (European Border and Coast Guard Agency), and Eurodac (European Asylum Dactyloscopy Database).

The Lisbon Treaty configured a coherent and a consistent base for the EU foreign policy and established the European External Action Service (EEAS) to support it. Besides that, this treaty also subjected the JHA to the ordinary decision-making procedure meaning that the decisions in the field of migration could be taken by

104 Ibid
105 Definition at EUR-Lex ’The Schengen area and cooperation,’ (3 August 2009) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:133020&from=EN> accessed 15 July 2018 “The Schengen area and cooperation are founded on the Schengen Agreement of 1985. The Schengen area represents a territory where the free movement of persons is guaranteed. The signatory states to the agreement have abolished all internal borders in lieu of a single external border.”
qualified majority vote. The Lisbon Treaty created new institutions, reformed old ones and changed decision-making procedures. Furthermore, it tried to simplify the structure of the EU and eliminated the third pillar that was integrated into the first supranational pillar.

The EU has been looking for establishing common asylum standards. Since the emerging of the migration flows in 2015, the European Migration Policy has been progressively worked on unifying approaches on the migration. Then, Dublin and Schengen decisions required consensus. Thus, the EU has been looking for generating debates on the changes required to the Dublin System in order to promote the sharing of responsibilities among MS for asylum seekers.

The EU has been trying to improve the existing legislative framework and adopt common asylum standards. Since 1999, efforts have been taken to establish a ‘Common European Asylum System’ (CEAS) based on a spirit of responsibility and solidarity through solidarity mechanisms within EU and with third countries. In the context of the emergency situation in 2015 in the context of the massive increase of the migration flows and based of the Article 78.3 of the Treaty on the Functioning of the

110 Direct citation from European Council and European Parliament ‘Common procedures for granting and withdrawing international protection (recast)’ (26 June 2013 ) Directive 2013/32/EU [2013] OJ L180/60 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en> “A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union’s objective of establishing progressively 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.”
European Union (TFUE)\textsuperscript{112}, the EU adopted provisional measures on the relocation of asylum seekers from Greece and Italy\textsuperscript{113}. Currently, EU has agreed on some rules\textsuperscript{114} to ensure a stronger co-operation in order to guarantee an equal treatment to the asylum seekers. In this field, was decided a refugee relocation system based on the principle of solidarity. Moreover, in 2016, an EU communication on the Common European Asylum System mirrored its intention on achieving reforms\textsuperscript{115}. For instance, in spite of the resettlement mechanism being a current mechanism, has been a compilation of national and multilateral programmes. Therefore, EU expressed the intention of creating a harmonised and structured framework for resettlement across EU. However, and after analysing the mechanism of relocation and resettlement which aims solidarity among EU MS and the protection of the asylum seekers is also important to acknowledge that there have been visible some controversial positions within the MS. For instance, Hungary and Slovakia with the support of Poland\textsuperscript{116} have questioned the legality of the

\textsuperscript{112} European Union, ‘Consolidated version of the Treaty on the Functioning of the European Union’ (13 December 2007), 2008/C 115/01 art 78 (3): “In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.”


\textsuperscript{114} Revised Asylum Procedures Directive (aiming fairness, quicker and better decisions); The revised Reception Conditions Directive (ensuring humane material reception conditions for asylum seekers in accordance with EU fundamental right); The revised Qualification Directive (clarifying grounds of international protection and respectively access to rights); The revised Dublin Regulation (ensuring protection of asylum seekers); The revised EURODAC Regulation (limiting access to database of fingerprints to investigate serious crimes). Please, consult: European Commission ‘Common European Asylum System’ (14 July 2018) <https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en>


\textsuperscript{116} Denmark, Hungary, Poland, UK and Iceland were not part of the EU Support to Emergency Mechanism for instance in June of 2018 and did not receive anyone from Greece and Italy. For further information, please consult: EC ‘Member States’ Support to Emergency Relocation Mechanism’ <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf>
second Council Decision on relocation. Additionally, some MS such as Cyprus, Denmark, Hungary, Malta, Ireland, Poland, Slovakia, Slovenia and the UK have neither resettled nor taken sufficient actions to resettle from Turkey which, as previously explained is considered the biggest hosting country. Moreover, considering the Schengen agreement, is important to mention that since 2015 some MS reintroduce temporary border control with the arguments of: smuggling off illegal migrants (Malta, 2015), continuous big influx of persons seeking international protection (Malta, Hungary, Slovenia, Germany, Austria, 2015/2016), unprecedented influx of persons (Sweden, 2016), irregular migrants attempting (Belgium, 2016), threats resulting from the continuous significant secondary movements (Austria, Norway, Sweden, Denmark, Germany 2018). Furthermore, UNHCR, observing that the Dublin system establishes that the country in which the individual arrives is the one that is responsible for examining the asylum request and will give protection if the person is qualified for it, verified that it does not follow the purpose of the regulation and that there are different practices in some MS concerning the categories of applicants.

Having said that is visible that EU has been working on improving and reforming the existing mechanism and instruments in the field of migration and asylum. However, EU did not yet achieve a common asylum and migration policy and MS have

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118 In 2016 EU Member States and Turkey agreed on the EU-Turkey Statement: “to end irregular migration flows from Turkey to the EU, ensure improved reception conditions for refugees in Turkey and open up organised, safe and legal channels to Europe for Syrian refugees”, EC ‘EU-Turkey Statement two years on’ (April 2018) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf>


121 UNHCR ‘Left in Limbo: Study on the implementation of the Dublin III Regulation’ (August 2017) <file:///C:/Users/Utilizador/Documents/Documentos2/Documents/Estudos/Mestrado%20Direitos%20Humanos%20Democratiza%C3%A7%C3%A3o/Tese/Chapter%202/Chapter%202_Final/59d5dcb64.pdf> pp. 26-106
not been willing to transfer their authority to the supranational level of EU. Moreover, there are also proves of some different position within EU on Migration Policy.

Furthermore, if EU aims to achieve a comprehensive approach on migration in countries of origin and destiny transit in compliance with HR\textsuperscript{122}, is then necessary to understand the EU external dimension of the EU’s Migration Policy.

2. The promotion of human rights in third countries: EU external migration policy and human rights

In the field of migration, it is important to combine internal and external policies and coordinate actions between the multiple actors in order to achieve effective and coherent answers. In this line, and to make the common European migration policy a reality, EU reiterates the importance of developing a common and joint work between Member States, EU institutions, international organizations, civil society, local authorities and third countries\textsuperscript{123}.

As analysed on the previous chapter, conflicts have a global impact which does not end at the national frontiers and have immediate effects in other countries including through the increase of displaced people and consequent waves of migration. Therefore, EU reiterates the intention of bringing together national efforts to address migration in accordance with the principles of shared responsibility and solidarity\textsuperscript{124}. Nevertheless, in the context of the previously analysed migratory flows, EU and its Member States proved to keep with divisions on the reform of the Common European Asylum System\textsuperscript{125}. However, and recognizing the importance of building partnerships with non-

\begin{itemize}
\item \textsuperscript{122} Cengiz Günay and Nina Witjes (ed), \textit{Border Politics: Defining Spaces of Governance and Forms of Transgressions}, (Vienna, Springer International Publishing, 2017) pp.133-137
\item \textsuperscript{124} Ibid.
\end{itemize}
EU countries in issues related to migration, EU converged around the intention of strengthening the EU’s external migration policy\textsuperscript{126}.\textsuperscript{127}

Having said that, for the purpose of the present thesis, this chapter intends to study the EU mechanisms to externally promote and guarantee the protection of human rights, particularly, in the context of the migration flows. In this regard, in necessary to explore not only the external dimension of the migration policy and its existing instruments but also the EU foreign policy tools which can be used to influence or assist third countries on the protection of human rights.

2.1 External Dimension of the EU’s Migration Policy

Since the beginning of the XXI century, EU has been working to build a comprehensive migration and asylum policy based on common principles. In 2005, was established the ‘Global Approach to Migration and Mobility’\textsuperscript{128} (GAMM) which constitutes a framework on the EU’s external migration policy to define EU policies and cooperation with non-EU countries. Through the definitions of priorities, GAMM was included on the EU external action with the main priorities of enhancing the external dimension of asylum, maximize the development impact of migration, preventing irregular migration, promoting international protection, combating the traffic of human beings, organizing and managing migration and mobility.\textsuperscript{129}

From 2004 to 2012 EU applied more than 1 billion euros to more than 400 project related to migration – mainly to sub-Saharan African and Southern Mediterranean countries\textsuperscript{130}. There are different instruments and projects\textsuperscript{131} in order to implement the

\textsuperscript{126} The EU external migration and asylum policy is the “framework which defines how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities and embedded in the EU’s overall external action, including development cooperation” EC, ‘Global Approach to Migration and Mobility’, (14 July 2018) <https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en> accessed 6 July 2018


\textsuperscript{128} \textit{Ibid} 3

\textsuperscript{129} \textit{Ibid} 3,4

\textsuperscript{130} EC, ’Maximising the Development Impact of Migration: The EU contribution for the UN High-level Dialogue and next steps towards broadening the development-migration nexus’ (21 May 2013) COM
GMM with third countries and other actors such as civil society or international organisations. In 2013 were identified new proposals and new approaches in the field of migration through the document called ‘Maximizing the Development Impact of Migration’ which, among other things, prioritized the strengthening of cooperation between countries of origin, transit and destination.

Therefore, besides the internal management, it is crucial to address the external dimension of the migration policy and the EU cooperation with third countries. Then, the EU framework on GMM has been developed and applied to non-EU countries over the emergence of priorities and according to the existing foreign policy tools. Considering the migratory routes and the countries of transit and origin, a particular priority has been given to eastern neighbour countries. Within the cooperation framework and under the GMM, the more elaborate ones are the Common Agendas for Migration and Mobility (CAMM) and the Mobility Partnerships (MP).

Nigeria (2015), Ethiopia (2015) and India (2017) have signed the CAMM with EU and its Member States. In this regard, and in the context of the present


For instance: bilateral and regional policy dialogues and action plans; visa facilitation and readmission agreements; operational support and capacity building; programme and project support. EC, ‘The Global Approach to Migration and Mobility’ (18 November 2018) COM (2011) 743 final <http://aei.pitt.edu/37954/1/com2011_0743en01.pdf>


Ibid 13


EC ‘Joint Declaration on a Common Agenda on Migration and Mobility between India and European Union and its Member States’ (1 September 2017)
research, it is important to verify that the three agreements referred, as the first priority area, the better management of migration and mobility while ensuring the human rights of the migrants\textsuperscript{138}.

Besides that, nine countries have signed MP: Cape Verde (2008); Republic of Moldova (2008); Georgia (2009); Armenia (2011); Morocco (2013); Azerbaijan (2013); Tunisia (2014); Jordan (2014); Belarus (2015).\textsuperscript{139}

For the purpose of the present research, it is important to analyse that seven of the agreements on MP make reference to the respect of human rights of migrants\textsuperscript{140}.


EC ‘Joint Declaration on a Common Agenda on Migration and Mobility between India and European Union and its Member States’ (1 September 2017) <https://www.mea.gov.in/Images/attach/Migration_and_Mobility_between_India_and_the_European_Union.pdf> p.2


However, the agreement with Morocco\textsuperscript{141} makes reference to the respect of ‘fundamental rights’ of the migrants and the one with Jordan\textsuperscript{142} make use of the term ‘fundamental human rights’\textsuperscript{143}. Moreover, in the agreement with Tunisia\textsuperscript{144}, there is no reference to the respect of human rights at all.

In fact, GAMM constitutes a fundamental example of an international cooperation’s instrument which, among the main priorities, defined the respect of human rights as a transversal priority for the policy framework\textsuperscript{145}. For that reason, it is visible some inconsistency when verifying that not all the agreements include explicitly a clause on the protection of universal human rights to all the migrants.

EU intends to be an international diffuser of democratic and civilian standards through the promotion of its values and principles\textsuperscript{146} and a human rights defender in the world through the efficient use of all the existing instruments to protect human rights\textsuperscript{147}.

Thus, it is important to explore the role of EU on the protection of the rights of the migrants outside EU borders through its external action\textsuperscript{148} and foreign policy instruments. In fact, EU recognizes migration as one of the primary areas of the EU

\textsuperscript{143} In spite of the two terms – human rights and fundamental rights - being often interchanged, there are differences clarified on the UDHR. In fact human rights are universal – UDHR preamble - and internationally recognized and the fundamental rights – Article 8 - are awarded by the country’s constitution. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)
\textsuperscript{144} For more information, please consult: EC, ‘EU and Tunisia establish their Mobility Partnership’ (3 March 2014) <http://europa.eu/rapid/press-release_IP-14-208_en.htm>
\textsuperscript{148} The general provisions of the EU external action can be consulted at European Union, ‘Consolidated version of the Treaty on European Union’ (13 December 2007) 2008/C 115/01 art 21
external policy. Hence, the partnership with countries of origin and transit is essential to establish and efficient cooperation framework on the migration field.

The external dimension of the migration policy involves different policy areas, for instance, humanitarian aid and the Common Foreign and Security Policy (CFSP). Then, the intention is to further analyse the existing foreign policy instruments with human rights objectives and further conclude if EU has any concrete mechanism to influence the protection of migrants in third countries.

2.2 EU’s Foreign Policy tools and its Human Rights objectives

In order to follow the main question of the present research and conclude the EU role on the protection of the rights of the migrants in third countries, would be now important to explore the human rights objectives on the EU’s foreign policy.

The European External Action Service (EEAS) is the EU’s diplomatic service which helps to carry out the Common Foreign and Security Policy (CFSP). The EEAS manage the EU delegations abroad, runs the civilian and military missions and contribute to the development of the aid programmes. Hence, the EU instruments can be used in different ways and are categorized as diplomatic, economic and military or civilian operations.

The promotion of human rights was an issue related to the development of EU foreign policy almost right from the beginning. Although agreements among the Member States on the importance of externally promoting human rights have been uncontroversial, agreements on how to do it have been more difficult. Although EU is sharing the perception that human rights are a legitimate aim of EU’s foreign policy,

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150 European Union, ‘Consolidated version of the Treaty on European Union’ (13 December 2007) 2008/C 115/01 art 24
152 Stephan Keukeleire and Tom Delreux, The Foreign Policy of the European Union (England, Palgrave Macmillan, 2014) 41
153 Ibid 17
there are deep divisions on which kind of policies should be used in order to promote human rights in third countries.\textsuperscript{154}

The EU promotes human rights in its foreign policy and the promotion of respect of human rights in third countries is present since the fifties\textsuperscript{155}. Its promotion can be considered a security strategy and the EU recognizes that human rights international promotion in EU’s interests.\textsuperscript{156}

Then, it would be useful to analyse the concrete instruments applicable to pursue human rights objectives in third countries. In fact, the EU’s promotion of human rights in third countries can be achieved by the provision of aid to promote or improve human rights, the use of diplomatic instruments, the deployment of military or civilian missions, and the use of conditionality\textsuperscript{157,158}.\textsuperscript{159}

EU is one of the largest donors in the world since 1986.\textsuperscript{159} The economic instruments englobe financial assistance to third countries and the capacity to achieve international agreements.\textsuperscript{160} Concretely, the aid for human rights aims to help on democratic reforms and to improve its countries’ human rights compliance. In this regard, should be mentioned the role of the ‘European Instrument for Democracy and Human Rights’ (EIDH) that promotes different programs to mainstreamed human rights in non-EU countries.\textsuperscript{161}

\textsuperscript{154} Ibid 95-99
\textsuperscript{155} European Political Community, ‘Draft Treaty embodying the Statute of the European Community’, (1952), \url{http://aei.pitt.edu/991/1/political_union_draft_treaty_1.pdf} art 90 “The Community may conclude treaties or agreements of association in order to establish, in certain fields, close co-operation, involving reciprocal rights and obligations, with such third States as guarantee the protection of the human rights and fundamental freedoms mentioned in Article 3.”
\textsuperscript{156} Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) 95,96
\textsuperscript{157} Full analysis at chapter 3
\textsuperscript{158} Karen E. Smith, \textit{European Union Foreign Policy in a Changing World} (3\textsuperscript{rd} edn, USA, Polity Press, 2014) 109
\textsuperscript{159} Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) 49
\textsuperscript{160} For more information about other economic agreements, please consult: Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) 44-49
\textsuperscript{161} Karen E. Smith, \textit{European Union Foreign Policy in a Changing World} (3\textsuperscript{rd} edn, USA, Polity Press, 2014) 113,114
Additionally, the diplomatic instruments structured human rights dialogues where the ‘Special Representatives for Human Rights’\textsuperscript{162} play an essential role in human rights dialogues with third countries\textsuperscript{163}.

Moreover, EU can also arrange agreements with third countries through the Common Security and Defence Policy (CSDP)\textsuperscript{164} missions in accordance with the principles of the United Nations Charter\textsuperscript{165,166}. The EU operations, within the EEAS, are composed by civilian and military instruments. As mentioned by the ‘High Representative of the Union for Foreign and Security Policy’\textsuperscript{167}, in the context of EU, soft and hard powers go hand in hand\textsuperscript{168}. However, the use of military coercive measures is generally controversial and as not been wielded on the protection of human rights as in humanitarian interventions\textsuperscript{169}. Nevertheless, the EU includes soft power tools in terms of civilian operations in order to empower EU partners by providing security, human rights and rule of law. Currently, EU develops civilian missions in

\textsuperscript{162} European Union External Action ‘EU Special Representatives’ (14 June 2016) <https://eeas.europa.eu/headquarters/headquarters> accessed 7 July 2018 “The EU Special Representatives (EUSRs) promote the EU’s policies and interests in troubled regions and countries and play an active role in efforts to consolidate peace, stability and the rule of law.”

\textsuperscript{163} Karen E. Smith, \textit{European Union Foreign Policy in a Changing World} (3$^{rd}$ edn, USA, Polity Press, 2014) 115

\textsuperscript{164}Definition at: European Union, ‘Consolidated version of the Treaty on European Union’ (13 December 2007) 2008/C 115/01 art 42: “The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.”

\textsuperscript{165} UN ‘Charter of United Nations’ (24 October 1945) 1 UNTS XVI <http://www.refworld.org/docid/3ae6b3930.html>

\textsuperscript{166} Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) 56

\textsuperscript{167} For more information, please consult: European Union, ‘Consolidated version of the Treaty on European Union’ (13 December 2007) 2008/C 115/01 art 18


\textsuperscript{169} Karen E. Smith, \textit{European Union Foreign Policy in a Changing World} (3$^{rd}$ edn, USA, Polity Press, 2014) 109
Africa, Europe, Asia and the Middle East\textsuperscript{170} and, on May of 2018, the Council decided to strengthen civilian CSDP missions.\textsuperscript{171}

Moreover, in what regards to direct assistance and protection of the ones in need, it is also important to mention a specialized body called ‘European Commission Office for Humanitarian Aid’ (ECHO). The ECHO was created in 1992 as an opportunity to assume a more prominent role in the context of the post-Cold War with civilian means. Thus, EU intervenes in third countries by humanitarian aid in case of conflict or disaster through non-military means\textsuperscript{172}. Humanitarian aid is not directly connected with EU foreign goals in terms of promotion of human rights, conflict prevention and sustainable development because it is based on a humanitarian imperative with and emergency aid in times of crisis. Therefore ECHO is present in different countries also helping refugees with the main priority of protecting crisis victims\textsuperscript{173}.

The fact that EU articulates common foreign policy regarding human rights objectives reveals a step towards a more consistent role as an international actor\textsuperscript{174}. Having said that and acknowledging the existing foreign policy tools with human rights objectives, should be now analysed the EU role and the main instruments currently used to protect the migrants in third countries in the context on migration flows.

\textit{2.2.1. Protecting migrants outside EU borders}

Over the times, EU has shown in the past, episodes, where had already addressed migrants flow in third countries. For instance, back to the Yugoslavia war on the nineties, concretely to post-war reconstruction in Bosnia, EU undertook the

\textsuperscript{173} \textit{Ibid} 99,100
\textsuperscript{174} Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) 3
responsibilities for the reconstruction and rehabilitation of refugees. Furthermore, in spite of the mainstreaming of human rights on CSDP operations has been extremely challenging and not having the protection of human rights as a priority on its mission, should be noted that was already used to protect displaced people for instance on a mission in the conflict of Darfur on the beginning of the XXI century.

As mentioned above, there was a gradual development of the external dimension of the EU’s Migration Policy which reinforced the internal one. Having in mind the tremendous challenges of the present years after the rapid increase of the migration is important to verify the existing mechanism in action in this regard aiming the protection of the people in need.

Through the study of the different EU mechanisms on promoting human rights and the protection of people, it is visible that there are different approaches and mechanism. Actually, in the context of migration, the EU approach tries in one hand to resolve the root causes of the crisis and on the other hand, increase aid to people who are need of humanitarian assistance not only inside but also outside EU borders.

The protection of the human rights of refugees and migrants and the improvement of their situation inside and outside EU is referred as being the centre of the EU migration approach.

Moreover, EU reiterates its assistance as a complementary action and in accordance with the consent of the third countries concerned, aiming to mainstream human rights and democracy objectives through all the instruments of assistance and financial external action. Moreover, EU addresses human rights issues in cooperation

177 EC ‘The EU and Refugees Crisis’ (July 2016) <file:///C:/Users/Utilizador/Downloads/NA0416628ENN.en.pdf>
with civil society seeking to achieve the enjoyment of human rights to all the migrants, asylum seekers and internally displaced persons\(^\text{179}\).

Furthermore, considering the different migratory routes, EU has been working on eradicating the trafficking of human beings and migration smuggling, and conducting operations at the sea – with the European Border and Coast Guard Agency and European Union Naval Force (EUNAVFOR) in order to save lives. In addition, is important to mention that to promote the respect of human rights principles of the people in a more vulnerable situation and in need of a stronger protection, human rights and the refugees rights are law components for instance on the training of ‘Libya Coastguards and Navy’ – which also include a monitoring mechanism on ensuring the respect of human rights\(^\text{180}\).

EU helps to mitigate the impact of the so-called ‘crisis’ at the local level and provides financial assistance to many countries. Moreover, it is considered the leading international donor for refugees with ongoing projects for development and humanitarian assistance.\(^\text{181}\) In this line, through the ‘European Instrument for Democracy and Human Rights’, EU supports civil society projects, to protect and promote the human rights of migrants outside EU borders\(^\text{182}\). Furthermore, there are different mechanisms with third countries which depend on specific the situation and necessary. For instance, the EU Facility for Refugees in Tukey\(^\text{183}\), supports basic needs and offers protection\(^\text{184}\). Furthermore, EU in compliance with other partners also develops in Libya actions to ensure the respect of human rights, seeking to improve the


\(^{184}\) Full analysis at chapter 4
living conditions of the migrants. Besides that, the EU Trust Fund for Africa\textsuperscript{185} also represents a financial program which, among other things, looks for the protection and assistance of those in need, particularly migrants and refugees\textsuperscript{186}.

In addition, considering the CSDP missions training programs is necessary to acknowledge that human rights assume a fundamental component in its development. Furthermore, considering the dialogue component with third countries should be also noted that EU keeps with bilateral discussions on the human right of the migrants and refugees\textsuperscript{187}.

Having said that it is possible to conclude that there are different available instruments to ensure the protection of migrants in third countries. Thus, it is then important to verify the efficiency and coherence in its application. Through the analysis of the study cases of Turkey and Serbia, will be then possible to interpret if the different instruments and mechanism used on each case are, in the end, efficient to indiscriminately protect migrants and preventing human rights violations in outside EU borders in the context of the migratory flow.

3. EU’s Enlargement Policy and Human Rights

EU reiterates the universality of human rights and rejects that its promotion is unwarranted interference in the domestic affairs of other states.\textsuperscript{188} Thus, have been analysed different mechanisms to pursue human rights objectives.

In fact EU aims the development of concrete human rights strategies with third countries through its external action based on international law and aiming the


\textsuperscript{187} Ibid 82

\textsuperscript{188} Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) 96
protection of the rights of displaced persons and refugees\textsuperscript{189}. In this line, is important to introduce another powerful EU’s foreign policy instrument, which has the capacity of influencing political reforms. Thus, for the purpose of the present thesis, should be explored the existing capacity and possible role of that tool in ensuring the protection of the human rights of migrants. That instrument is called EU’s Enlargement Policy\textsuperscript{190} and aims the promotion of democracy and fundamental freedoms across the aspirant countries - EU immediate neighbours which aspire for membership -, allowing the spread of EU values beyond borders. The building of this cooperation’ mechanism upholds human rights standards and influences the commitment over certain reforms within the commitments towards the enlargement process.\textsuperscript{191}

Over the EU successive enlargements, its scope has been growing in terms of external action and regional policy\textsuperscript{192}. Then, within the present research, is important to explore the role of this instrument within its external action to pursue human rights objectives, concretely in what concerns to migration flows and the protection of the migrants provisionally living in transit countries which aim for EU accession.

\subsection*{3.1. Enlargement process}

EU was created in the fifties in order to foster prosperity, peace and values based on human rights, democracy, rule of law and fundamental freedoms. Since the beginning, within the respect of diversity, the integration of new members was part of

\begin{itemize}
  \item\textsuperscript{190} EC ‘A European Agenda on Migration’ COM (2015) 240 final <https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication_on_the_european_agenda_on_migration_en.pdf> pp.5-7
  \item\textsuperscript{191} EC, ‘Understanding Enlargement: The European Union’s enlargement policy’, (June 2011) <https://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_6_raporlar/1_3_diger/enlargement/European_Commission_Understanding_Enlargement_The_European_Union_s_enlargement_policy.pdf> p.1
\end{itemize}
the plan aiming the cooperation among European people.\textsuperscript{193} Concretely, the Article 21(1) of the Treaty of European Union\textsuperscript{194}, on the general provisions on the Union’s External Action, mentions that the EU, over its creation, enlargement and development was based on its own guiding principles such as human rights and democracy\textsuperscript{195}.

In fact, EU is open to the membership of European democratic countries and the EU’s Enlargement Policy accompanies this process.\textsuperscript{196} In this line, the article 49 of the Treaty on European Union referees that any European country which respects the values referred in the Article 2\textsuperscript{197} and is committed to promote them, may apply for membership\textsuperscript{198}. Moreover, is required that the country fulfils all criteria for accession in order to become a member. Those criteria are stated in a set of rules decided in Copenhagen by the European Council in 1993\textsuperscript{199}, reinforced in 1995. The criteria for accession are called Copenhagen criteria and establish: (1) Political criteria: stable institutions, guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; (2) Economic: a functioning market economy and the capacity to cope with competition and market forces in the EU; (3) The ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union\textsuperscript{200}.

\begin{flushleft}
194 EU, ‘Consolidated version of the Treaty on European Union’ (13 December 2007) 2008/C 115/01
195 Please consult the full article at: European Union, ‘Consolidated version of the Treaty on European Union’ (13 December 2007) 2008/C 115/01
197 EU, ‘Consolidated version of the Treaty on European Union’ (13 December 2007) 2008/C 115/01 art 2
198 “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”
199 EU, ‘Consolidated version of the Treaty on European Union’ (13 December 2007) 2008/C 115/01 art 49
\end{flushleft}
Before the Accession Treaty, there are a set of negotiations between the candidate country and the Member States. Accession negotiations are related to the conditions and obligations to achieve membership under which the country could be admitted in the future to EU membership. It involves the adoption, implementation and application of EU rules according to the acquis - the body of common rights and obligations - which are divided in chapters covering specific policy areas. Then, in fact, the candidates feel the incentive to implement the reforms.

Then, the EU’s Enlargement Policy, as a mechanism which prioritised development and stability of external action, defined criteria to candidate countries which need to apply reforms to ensure that the EU rules are properly implemented. Thus, each applicant country needs to meet certain requirements before membership is permitted. The enlargement as a foreign policy tool is essentially based on the logic of conditionality. Therefore, the offer of the “carrot” of membership allows the dissemination of EU approaches and policies regarding political, societal and economic structures of the candidate members. Thus, in line with the present research, should be analysed the existing criteria, considering existing mentions to issues related to migration and human rights in order to research on how EU pursues human rights goals through the Enlargement Policy concretely on promoting the protection of the migrants.
and more vulnerable people in the context of the migration flow. The focus is then what is the EU’s role on the protection of the human rights of the migrants in the candidate countries - within the conditionality logic for a future EU accession.\textsuperscript{208}

\section*{3.2. The link between human rights and the enlargement process}

The EU exercise influence on its candidate countries and their development mainly through financial support and the use of the ‘carrot’ of membership. Then, it is important to evaluate how EU, by offering membership, makes use of its ‘civilian power’\textsuperscript{209} to expand democracy, human rights, good governance and prosperity. \textsuperscript{210} The so-called conditionality instrument is a crucial tool based on the fulfilment of criteria with the ultimate prospect for membership. Those criteria, include a duty to take on the obligations of membership – \textit{acquis} -, economic criteria and political goals. Moreover, there is a civilian aspect present on the political criteria expressed on the promotion of democracy, human rights, protection of minorities and rule of law.\textsuperscript{211}

Considering Western Balkans countries, in 1999 was set out additional conditions for membership – mainly related to neighbourly relations and regional cooperation- which are present on the ‘Stabilisation and Association Process’(SAP). The SAP rests on contractual relationships, trade relations, financial assistance\textsuperscript{212}, and regional cooperation.\textsuperscript{213}

In order to explore the existence of provisions related to human rights and migrants is possible to analyse the example of the SAP with Serbia\textsuperscript{214}. In what concerns

\begin{thebibliography}{9}
\bibitem{207} Ibid 207-209
\bibitem{209} Ibid 239
\bibitem{210} Ibid 243, 244
\bibitem{212} EC ‘Conditions for Membership’(16 December 2016) <https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en> accessed 8 July 2018
\bibitem{213} Full analysis of Turkish and Serbian enlargement process on chapter 4
\end{thebibliography}
to the guarantee of the protection of human rights the article 2 refers to the “Respect for democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights and as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms”\textsuperscript{215}. Moreover, and considering the protection of refugees, under the standards of the Convention relating to the Status of Refugees\textsuperscript{216}, is mentioned “the right of return for all refugees and internally displaced persons and to the protection of their property and other related human rights.”\textsuperscript{217} Besides that, there is another provision in the field of migration besides to refugees and IDPs that are related to legal migrates recognized by the countries\textsuperscript{218}. Plus, it is important to verify on the article 82 that is explicitly stated that both parts need to set up cooperation in the field of border management, visa, asylum and migration\textsuperscript{219}.

Besides that, and considering the negotiation process to the applicant countries for membership, there are all current EU rules –\textit{acquis}- which are divided into 35 different policy fields – within chapters - that are separately negotiated.\textsuperscript{220} In line with the present research, is then useful to reflect on the mentioned issues related to human rights and migration.

The chapter 30, about external relations, mentions that the candidate countries need to progressively align humanitarian policies with international organizations and policies and positions adopted by EU – which, as mentioned before, are in compliance with human rights goals. In addition, the chapter 24 on justice, freedom and security, mentions the aim of implement common rules and framework on issues such as external migration and asylum. Finally, is also important to make reference to the chapter 23 related to the judiciary and fundamental rights which make reference to the commitment

\begin{footnotes}
\item[216] Ibid 83
\item[217] Ibid 6
\item[218] Ibid
\item[219] Ibid 82
\end{footnotes}
of ensuring the respect for fundamental rights as guaranteed by the Charter of Fundamental Rights. — 221

Exploring the existing tools which operate in the enlargement context it is possible to understand the weight of human rights within EU conditionality policy. In fact, besides the first ‘Copenhagen criteria’ that guarantee the respect of human rights, the acquis tool, even not mentioning explicitly and directly the condition of ensuring the protection of the human rights of the migrants, even the chapters, make reference not only to a common rules on asylum and migration, but also the humanitarian policies in compliance with international law and the respect of the Charter of Fundamental Rights. In fact, in line with the present research, is visible that the enlargement process stimulates the human rights compliance and can exercise influence over the countries in this field.

3.3. Case Studies: Turkey and Serbia

Many migrants try to reach Europe through different routes. Considering the Eastern Mediterranean and Western Balkans routes, which goes through the Balkans, it is pertinent to understand the role of the transit countries and how they are managing the migration flows and guarantying the human conditions to all arriving migrants. — 222

Then, in order to address the cooperation of EU with third countries in the context of the migration flow, it is useful to understand the mutual benefits of the different parts of the negotiation process. For instance, EU states the priorities of reducing the irregular migration, fight against human smuggling and trafficking and the prevention of dangerous journeys and casualties, in particular in the Mediterranean. Moreover, the benefits for third countries in transit positions are linked with the EU intentions. Besides financial and technical incentives, the advancing in the EU accession

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process is also a powerful incentive, in spite of only being applied to certain countries such as Turkey and Serbia.\textsuperscript{223}

The enlargement processes constitute a strong area of cooperation in which EU can assert its influence, for instance with Turkey and Serbia. Over that cooperation, there has also been developed a dialogue and negotiations on human rights, migration and asylum\textsuperscript{224}. Conditionality is a very effective EU instrument which offers incentives - for instance, association and cooperation agreements in order to press countries to comply with certain conditions for instance related to human rights clauses.\textsuperscript{225}

In fact, the membership criteria may differ over time\textsuperscript{226}. Thus, considering the EU intention to intervene in regions of origin and transit, the enlargement mechanism can be considered an appropriate approach\textsuperscript{227}. Considering the increase of the number of migrants living in hard condition, EU could influence candidate countries to apply protection mechanisms to avoid for instance the violation of human rights.

Turkey and Serbia are both countries under the EU’s Enlargement Policy and transit countries in the context of the migration flow. Considering these specificities of both countries - being part of the enlargement policy and transit countries through the migration routes over the main migrant’s destination of reaching EU Member - , is important to explore the EU approach on addressing the protection of the human rights of the migrants living in those countries. In other words, this research aims to analyse how EU addresses the human rights protection of the migrants which are currently in need of help on both countries, through the use of the enlargement conditions related to human rights.

\textsuperscript{225} Karen E. Smith, European Union Foreign Policy in a Changing World (3rd edn, USA, Polity Press, 2014) 110
Thus, the next chapter aims to research the capacity of Turkey and Serbia to protect the human rights of the migrants, of whatever nationality. Then, in case of the lack of an effective protection, will be considered of whether the EU tools have the capacity to guarantee the safety of the more vulnerable people in the context of the migration flow.

4. Postmodernist analysis: Turkey and Serbia case studies

The present chapter analysis the role of the EU in Turkey and Serbia regarding regulation of migration and human rights. Through a theoretical approach of postmodernism and its concepts – deconstruction, power, the rejection of dichotomies associated with the interpretation of the various agreements and communications – the underline analysis will try to establish whether the existing EU tools on enlargement and external migration management can be or not be better allied with the protection of the rights of all migrants.

By using discourses analysis of EU statements and agreements with Turkey and Serbia, the aim is to identify and interpret specific words applied to each circumstance which mean a certain purpose and denounce the real priorities. In order to understand the evolution of the EU external human rights approach through the development of the agreements and even the EU’s communications and reports.

Through the analysis of the evolution of the EU relations with Turkey and Serbia, their role on the migration ‘crisis’ and the main human rights issues in this regards, will be possible to verify the EU role in what concerns to influence outside its borders, particularly considering the different levels of power of both countries.

The EU’s foreign policy towards Turkey and Serbia is based and has been developed in the framework of enlargement and potential membership. As mentioned in the previous chapter, this condition gives EU a set of concrete carrots and sticks.\textsuperscript{228} Considering the EU human rights foreign policy objectives worldwide, is it possible to

\textsuperscript{228}Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) p.208
boots the EU influence in Turkey and Serbia considering the explanatory theory of the postmodern concepts?

“The postmodern vantage point is one of critique. Its aim is to unsettle, to jar, to challenge, and to subject our most fundamental beliefs and principles to intense critical scrutiny.”

Thus, in what concerns to the EU’s human rights role worldwide, it is important to understand and criticize the current way of doing things, in the current overall protection of all migrants.

4.1. EU’s role in Turkey

4.1.1. Evolution of EU-Turkey relations

The Ankara Agreement was the first demonstration of the possibility of Turkey’s accession to EU in 1963. In 1987 Turkey formally applied for membership, however its accession process began only in 2004, with the opening of formal negotiations one year after.

In order to understand Turkey as an important regional power, it is necessary to acknowledge the fact that the Turkish membership could not only contribute to the economic growth of Europe but also represent a counterweight on the symbolic perception of a Christian Europe and contribute to the modification of the EU’s relations with the Muslim world. Moreover, EU would also assume a mediator role to the conflicts in the region and contribute to a positive impact on the stabilization of


the region of the Mediterranean and to the enrichment of the CFSP. In addition, as Turkey is a North Atlantic Treaty Organization member (NATO), the relationships between NATO and CSDP could also benefit with Turkey becoming a full Member State to the EU.

Since the starting of negotiations between the EU and Turkey, among other things, the EU promoted discussions about political reforms, human rights and the Cyprus problem related to the division of the island. Moreover, it is important to acknowledge that the EU’s acceptance of Cyprus as a member in 2004, generated an unfavourable setting over the accession of Turkey. Thus, if on one hand the EU standards have not been followed by Turkey, Turkey does not appreciate the approach pursued by EU. In fact, not only the Cyprus accession hardly satisfied Turkey since then, but also the accusation over the lack of Turkish’ democratic standards have been deteriorating EU-Turkey relations.

Thus, it is necessary to verify that since the opening of negotiation in 2004/2005, Turkey, as a regional power, has been redefining its geostrategic position in the Middle East to the detriment of its relations with the EU. The rhythm of the reforms’ development has been slow and the support of the EU Member States for Turkish membership has decreased. The failure of the EU’s intervention in the conflict with

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235 For more information, please consult: European Court of Human Rights ‘Case of Cyprus v. Turkey’ (Strasbourg, 2001) Application no. 25781/94 <http://www.refworld.org/pdfid/43de0e7a4.pdf>
239 Ibid
Cyprus – over the issue related to the territorial occupation of Cyprus – associated to the confrontation of territories between Turkey and Greece, mirrored the limitations of the EU to exercise influence in certain fields\textsuperscript{241}.

Thus, the main concerns of the EU regarding Turkish membership, beyond the problems with Cyprus, remain the role of the army in the political system, political situation and the respect for the role of law, human rights and minority rights\textsuperscript{242}. Thus, EU has been pointing some constraints over the Turkish membership related to the disputes with neighbouring countries, anomalies on the function of the public authorities including the army, human rights violations, and discrimination over the treatment of minorities.\textsuperscript{243}

Moreover, considering the enlargement process of Turkey, the Ankara Agreement in 1963\textsuperscript{244} did not mention issues related to human rights or migration. In the Turkey’s membership report from 2004, although it mentions a shared commitment to freedom based on human rights, the references in the field of migration are merely related to ‘immigration controls’, ‘combat illegal immigration’ and do not include any reference for the protection of the human rights of the migrants\textsuperscript{245}. Furthermore, a report from 2016 mentions ‘Chapter 23’ on Judiciary and fundamental rights, and the implementation of EU’s values including rule of law and the respect of human rights\textsuperscript{246}. Following the EU-Turkey Statement of March 2016\textsuperscript{247}, the above mentioned report expresses the aim of ending ‘irregular migration from Turkey to EU, in compliance with

\textsuperscript{241} For more information please consult Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) 248
\textsuperscript{242} \textit{Ibid}
\textsuperscript{244} European Communities, ‘Agreement establishing an Association between the European Economic Community and Turkey’(Ankara 12 September 1963)
\textsuperscript{247} Full analysis on 4.1.2
EU and international standards. Considering international commitments the ‘New York Declaration for Refugees and Migrants’ which applies to both migrants and refugees, underlines the importance of ensuring humane and dignified reception for all the people which arrive in UN countries, in particular the ones in large movements – such as Turkey. This means ensuring full respect of human rights and fundamental freedom for both refugees and migrants. In this line, the author Foucault said that people use words in place of things. Thus, he considered that the words only represent social facts and do not substitute things or actions. Taking in consideration the ‘New York Declaration for Refugees and Migrants’ is necessary to fully apply the words and the agreed intentions into practice. In fact, all the statements and agreements between one or more parts, are only truly challenged when occurs a situation which requires there full application. In this line, Turkey should fully ensure the protection of the migrants living in its countries.

Furthermore, the EU supports enlargement and neighbourhood countries on migration assistance through ‘Pre-Accession Assistance’ (IPA) and ‘European neighbourhood funds’ (ENI). Regarding the EU’s Enlargement Policy, it is also crucial to mention the ‘Instrument for Pre-accession Assistance’ (IPA) which supports the enlargement countries with financial and technical assistance in order to achieve reforms. The IPA II was established for the period 2014-2020 and includes, besides others, Turkey and Serbia. In fact, it main objectives are based on the further

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249 UNGA Res 70/1 ‘New York Declaration for Refugees and Migrants’ (19 September 2016) 71st Session (A/71/L.1)
250 Ibid 5
development of a comprehensive migration management system in the beneficiaries’ countries through the application of a human rights based approach.\textsuperscript{255}

However, IPA II refers that because of permanent movements of the migration flow through the Eastern Mediterranean-Western Balkans Route from Turkey over Western Balkans - including Serbia- to the EU, the administrations focused on processing migrants and asylum seekers in accordance with international standards, for their temporary stay, instead of “establishing a human rights based approach to comprehensive management of mixed migration flows”\textsuperscript{256}. Therefore, the IPA II declared that should be provided support in this regards to strengthen the national asylum systems\textsuperscript{257}.

Considering the ‘Indicative Strategy Paper for Turkey’\textsuperscript{258} within IPA II, there are many references to the promotion of the respect of human rights – particularly mentioning minorities and vulnerable groups - such as LGBTI\textsuperscript{259} - and groups affected by discrimination and violence. The paper reminds priorities related to the establishment of reforms in all these areas, and gives a particular focus to the necessity of promoting freedom of expression, freedom of the media, freedom of religion and anti-discrimination freedom of association and assembly, and freedom of association and assembly\textsuperscript{260}. Moreover, the paper also refers to the importance of the civil society on the promotion of pluralism and guaranteeing the respect of fundamental rights and the rule of law\textsuperscript{261}. However, in what concerns to migration management the key references are the application financial assistance to develop the border management

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{255} Ibid 1
\item \textsuperscript{256} EC ‘Overview- Instrument for Pre-accession Assistance’ (6 December 2016) <https://ec.europa.eu/neighbourhood-enlargement/instruments/overview_en> accessed 15 July 2018
\item \textsuperscript{257} Ibid
\item \textsuperscript{259} lesbian, gay, bisexual, transgender and intersex
\item \textsuperscript{261} Ibid 12
\end{itemize}
\end{footnotesize}
system, to fight against organized crime and the trafficking of human beings and the importance of taking steps towards visa liberalization.

The discourse analysis is focused on communication and, the language is also a way of representing something. In fact, discourses represent and categorize ‘reality’.262 Then, through the analysis of the Indicative Strategy Paper for Turkey’, there is no direct mention of the protection of the human rights of the migrants and asylum seekers.263 In this line, and considering that the discourse analysis methodology, attends to the meaning of the use of certain words in determinate contexts264, in fact, if there is no explicit and direct reference to the importance of protecting the human rights of all migrants, this withdraw responsibilities to Turkey in this regard.

4.1.2. Role of Turkey in Migration ‘Crisis’

In fact, the current aggravation over the last decades regarding the situation of the migration flows brought the topic to the top of agenda of the EU Member States and institutions.265

Turkey has been facing a phenomenon of a large scale of immigration over the last decades which boosted the debate within the EU. In 1999, the EU’s Helsinki decisions on Turkish candidacy brought forward concerns in the area of migration practices and policies in Turkey. The debate was related to the large scale of migration and the Turkish capacity of managing migration and asylum flows. In fact, the EU showed concerns about the migration and asylum phenomenon and the ability of the Turkish legal framework and institutions to handle it.266

262 Lisa Harrison and Theresa Callan, Key Research Concepts in Politics & International Relations (London, SAGE Publications Ltd. 2013) 32
264 Lisa Harrison and Theresa Callan, Key Research Concepts in Politics & International Relations (London, SAGE Publications Ltd. 2013).32
For the first time in 2014 in sequence of the conflicts in Africa and the Middle East, Turkey hosted the largest number of refugees worldwide, with a total of 1.59 million people\textsuperscript{267}.

In 2015, the EU signed an ‘Action Plan’ with Turkey aiming the management of the migration flow and the control of irregular migration\textsuperscript{268}. Moreover, in the end of the same year, the ‘EU Facility for Refugees in Turkey’ was established, which includes the attribution of budget and bilateral financial contributions by the Member States to provide support to refugees and host communities in Turkey, specially allocated to migration management, education, economic support and humanitarian assistance.\textsuperscript{269}

Moreover is important to mention the role of the ‘European Civil Protection and Humanitarian Aid Operations’ (ECHO) of the EU which is connected with the Turkish facility and also develop actions in the countries in cooperation with the UN and other organizations. The main action is to coordinate emergency response to conflicts, natural and technological disasters through humanitarian aid, assistance, specialist and expertise capacities and intervention teams with the use of ‘Union Civil Protection Mechanism’ (UCPM). In Turkey, ECHO provides help through different mechanisms: EU humanitarian funding to support refugees; The Emergency Social Safety Net (ESSN) that provides money to the most vulnerable refugees and the Conditional Cash Transfer for Education (CCTE) to refugee families with children that attend school; 45 humanitarian projects to help vulnerable people and refugees focused on health, migration management, education, socioeconomic support and municipal infrastructures\textsuperscript{270}.

\textsuperscript{269} For more information, please consult: EC ‘Overview- Instrument for Pre-accession Assistance’ (6 December 2016) <https://ec.europa.eu/neighbourhood-enlargement/instruments/overview_en> accessed 15 July 2018
Furthermore, due to the huge impact of the migration flow, Turkey focuses on the challenges of migration management. In addition, the EU conditionality impositions over the enlargement promoted and assisted in the creation of migration policies.  

EU perceives Turkey as an influential regional power that has been working on the development of cooperation mechanisms to avoid massive entrance of migrants on the EU region. Then the EU approach has also been based on the expectation that Turkey applies instruments in order to combat migratory flows and preventing transit migration.  

Considering the entrance in the EU from Turkey, in 2014 were registered around 25121 people. In 2015 the number increased to more than one million and 885000 of them occurred via the Greek islands from Turkish coast.  

After the activation of the EU-Turkey Statement in March 2016, the number of arrivals from Turkey to Greece sharply fell. The statement aimed to “break the business model of migrants and to offer an alternative to putting their lives at risk” In order to “end the irregular migration flows from Turkey to the EU, ensure improved reception conditions for refugees in Turkey and open up organized, safe and legal channels to Europe for Syrian refugees”. In 2018, was registered a decrease by 97% of the number of arrivals. This agreement involves Syrian migrants. Non-Syrian people are subjected to a dual and unclear asylum system.
The EU-Turkey Statement does not make any direct reference to the protection of the human rights of the migrants. However, when mentioned that all the ‘irregular’ migrants which go from Turkey to Greece, need to be returned to Turkey, it is mentioned that should be a process in accordance with international law. Additionally, for “every Syrian person returned to Turkey from Greece, another Syrian will be resettled from Turkey to the EU”\textsuperscript{279}, this should be in accordance with the UN Vulnerability Criteria, which includes “refugees, asylum-seekers, trafficked persons, stateless persons, irregular migrants and other non-nationals without legal status often experience situations of vulnerability – they are often exposed to heightened risks of harm and require special care, support and protection”\textsuperscript{280}.

According to the analysis of the authors Lisa Harrison and Theresa Callan, about discourse analysis on the book ‘Key Research Concepts in Politics & International Relations’, there are factors which influence discourses. For instance, social and cultural changes have an important impact on the discourses’ construction.\textsuperscript{281} In this context, due to the massive increase of the migration flow, the EU-Turkey Statement represents an answer to reduce the number of people entering in the EU. This social phenomenon was a factor which boosted a discourse over the agreement which, due to the need of rapid answers, did not comply an explicit point which guarantees the protection of the human rights of all migrants. The fact that the agreement mainly referred Syrian people also discriminates the nationality of the migrants and withdraws responsibilities on the protection of all migrants.

\textbf{4.1.3. Migration and Human Rights Issues}

The EU-Turkey Statement of 2016 tried to close the Balkan route. The negotiations included the acceleration of visa liberalization, the return of refugees crossing from Turkey into Greece to be back to Turkey, and the attribution financial

\textsuperscript{281} Lisa Harrison and Theresa Callan, \textit{Key Research Concepts in Politics & International Relations} (London, SAGE Publications Ltd. 2013) 33
supports from EU to Turkey\(^{282}\). In fact, the EU-Turkey Statement was quite controversial in terms of the respect of human rights in relation to migration regulation. However, it is questionable if the constant EU funding to Turkey in the context of migratory flow without ensuring the human rights of all migrants is in compliance with EU values. Moreover, the agreement also creates questions of the power of the EU discourse presented in the article 18 of the ‘Charter of Fundamental Rights of the European Union’ which established the right to asylum guarantying within the rules of the Geneva Convention, and the article 19 which prohibits a collective expulsions\(^{283}\).

Also the UN raised concerns over the EU-Turkey Statement\(^{284}\) for its potential that it might lead to human rights violations: firstly for encouraging discriminations and detentions on grounds of nationalities; secondly, for the delays over the asylum procedures and the poor living conditions in the hotpots; and thirdly for the lack of the monitoring of people having negative asylum decisions\(^{285}\).

Besides this, it should also be noted that Turkey violates the principle of *non-refoulement*\(^{286}\) and there are arbitrary detentions of migrants without legal basis. The Turkish asylum legislation also puts asylum seekers at risk of deportation which creates difficulties for the international protection mechanisms.\(^{287}\) Additionally, the migrant population living outside camps has substantially increased - until the EU-Turkey


\(^{286}\) ‘Principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle of non-refoulement is considered by many authors as part of customary international law, while for others the two requirements for the existence of a customary norm are not met. See also asylum, complementary protection, sovereignty” IOM, International Migration Law: Glossary on Migration’, (2011), 2\(^{nd}\) edition <https://publications.iom.int/system/files/pdf/iml25_1.pdf> p.68

agreement which reduce the migration flow on the Western Balkans - and only the ones that are registered have access to public services such as healthcare or other basic facilities. Furthermore, ‘Human Rights Watch’ (HRW) denounced that since December 2017 the security forces of Turkey have been massively deporting thousands of asylum seekers in the border with Syria. Moreover, HRW revealed that on the Turkish border many asylum seekers have been shot once they were trying to cross Turkish border.

All this create doubts over the funds provided by the EU and lack of respect of the agreements by the Turkish government. Then, considering the main questions of the present thesis would be possible to better intervene in Turkey in order to guarantee the full respect and protect the human rights of all migrants, irrespective of their migration status. The author Oliver Daddow states that the postmodernism removes established and comfortable ways of thinking and propose people to think the unthinkable. This means, that there are always unthinkable ways for EU better externally address migration through the more effective ways of applying and making use of the existing external action tools in order to guarantee the protection of the migrants.

Moreover, the author Oliver Daddow affirmed that the postmodernism theory rejects the conceptual dichotomies. The main intention is then to break down the supposed barriers between domestic and international, inside and outside. Therefore, the deny of conceptual dichotomies would allow EU to more efficiently apply its tools and consider a better approach on the spread human rights and the protection of the migrants outside its borders. By challenging the national/foreign dichotomy over human rights issues and considering its main universal principle, the EU could through the better use

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of the existing mechanisms, ensure and the protection of migrants, for instance in countries under the enlargement policy such as Turkey and Serbia.\footnote{Ibid 221}

4.2. EU’s rule in Serbia

4.2.1. Evolution of EU-Serbia relation

Firstly, it is important to consider that the interaction between the EU and the Western Balkans (Serbia, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Albania, Montenegro, and Kosovo\footnote{As defined by the UNSCR Res 1244}) has a huge impact on the development of the nature of EU’s Foreign Policy. The 1990s showed the incapacity of EU foreign policy tools, namely CFSP/CSDP, to stop the wars. Therefore, Western Balkans represents the most structural EU foreign policy testing ground on the increase of CSDP, in cooperation with the UN, OSCE (Organization for Security and Cooperation in Europe) and NATO\footnote{Stephan Keukeleire and Tom Delreux, \textit{The Foreign Policy of the European Union} (England, Palgrave Macmillan, 2014) 242, 243}. The EU policy towards the Western Balkans – in particular Serbia - includes the enlargement policy and the CFSP. Among international and regional organizations, the EU is considered to be the biggest intervenient in the region on the stabilization efforts\footnote{Federica Bindi and Irina Angelescu(ed), \textit{The Foreign Policy of the European Union: Assessing Europe’s Role in the World}, (2\textsuperscript{nd} edn, Washington, The Brookings Institution, 2012) p.161}. In this line, considering the relationship between the EU and Serbia, it is possible to differentiate the weight of the power which each actor projects. Considering the concept of ‘power’ explained by David Campbell’s and its terminology under a postmodern perspective, the application of power, include impositions, limits, and also the capacity of influencing others\footnote{Oliver Daddow, \textit{International Relations Theory: The Essentials}, (London, SAGE Publications Ltd, 2013) 221,222}. Then considering that the EU is a bigger power and with a more prominent geopolitical influence than Serbia, it is possible to conclude
that the EU, in theory, is capable of influencing on the protection of the human rights of all migrants.

Furthermore, it is also crucial to mention the ‘Stabilization and Association Process’ (SAP) which complemented the EU’s Enlargement Policy. The SAP was launched in 1999 aiming the eventual EU membership of the Western Balkan countries. The SAP, as an EU policy includes economic assistance, trade concessions and contractual relationships in order to not only create a free trade area, but also cooperation and approximation of legislation in the areas of security, justice and freedom. Thus, the region has made notable progress in democracy, security and stability due to SAP298.

In 2012 Serbia got the candidate status and in 2013 the ‘Stabilisation and Association Agreement’ between the country and the EU entered into force. Among other things, the agreement establishes the political dialogue on issues of mutual interest such as CFSP and the facilitation of Visa. Moreover, the article 2 stresses the respect of human rights proclaimed by the Universal Declaration of Human Rights299 and the respect of International Law principles300. However, in spite of the existing provisions on the respect of human rights in the article 5, there is no mention presented related to the human rights of the migrants.301 Then in December of 2013 was also adopted the negotiating framework composed by intentions, guidelines and commitments302.

Serbia, within the enlargement policy, is also part of the ‘Instrument for Pre-accession Assistance’. Considering the ‘Indicative strategy Paper for Serbia’303, it is mentioned that Serbia has ratified all the main international human rights

299 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)
301 Ibid
instruments\textsuperscript{304}. However, in spite of the strategic plan mentions the ‘Migration, Asylum, Refugees Regional Initiative’ (MARRI) - about migration management in Western Balkans in accordance with European standards - and the Regional Housing Programme (RHP) as part of the Sarajevo process - there is no direct reference to the importance of ensuring the protection of the human rights of the migrants\textsuperscript{305}.

The author Miguel Cabrera considered that discourses conceptualize reality.\textsuperscript{306} Then, if in one hand Serbia has ratified all the main international human rights instruments, in the context of the migration flow, in the ‘Indicative strategy Paper for Serbia’ there is no explicit mention to the protection of the human rights of the migrants living in the country. The inexistence of that specific provision, withdraw responsibilities to the country on the protection of the human rights of all migrants.

4.2.2. Role of Serbia in Migration ‘Crisis’

The so-called ‘refugees crisis’ resulted from the increase of the migration flow and particularly affected the region of the Western Balkans due to the Eastern Mediterranean-western Balkan route. Serbia faced an unprecedented increase of the number of migrants in 2015 and in middle of 2016, around 920000 migrants arrived in Serbia, mainly from Afghanistan, Syria and Iraq, and passed through Serbia in direction to Central Europe\textsuperscript{307}. The EU-Turkey statement influenced the migration flow over Serbia and the closure route made the migrants become stranded in Serbia.

Considering the discourse analysis through Lisa Harrison and Theresa Callan’s perspective, the impact of the migration flow and the impact of the social phenomenon of the migration flow, generated different political discourses, answers and interpretation of the ‘reality’\textsuperscript{308}. Then, as previously analysed, this situation created

\textsuperscript{304}Ibid 18

\textsuperscript{305}Ibid 8-18


\textsuperscript{308}Lisa Harrison and Theresa Callan, \textit{Key Research Concepts in Politics \& International Relations} (London, SAGE Publications Ltd. 2013) 33
different reactions among the Member States, namely Hungary and Croatia which decided to close borders.\textsuperscript{309} In this context, the EU organized a conference on the ‘Eastern Mediterranean-Western Balkans Route’ in 2015 showing an immediate concern and considerable intention of EU to develop a deep and fully approach on migration flows as a ‘collective common challenge’. In fact, in this conference was defined the commitment over the respect of international obligations and human rights. Moreover, it was explicitly mentioned as a priority, the respect of the dignity of the migrants and refugees, and protection of their human rights\textsuperscript{310}. Moreover, other key issues discussed, were related to the support of transit countries to increase the capacities on reception, registration and asylum processes\textsuperscript{311}.

The responsibility on migration management in Serbia is shared between different state authorities such as the Commissariat for Refugees and Migration, the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Labour, Employment, Veteran and Social Policy and the Ministry of Justice. Moreover, there is also coordination between state institutions, the government and the international organizations and national organizations, including NGOs that work on the field – which provides a substantial assistance in different sectors\textsuperscript{312}.

Serbia has been applying some strategies to address the migration flows in the country. However, the solutions remain limited and slow. The country argued the lack of funds to deal with the situation\textsuperscript{313}. In response to that in February of 2018, the EU decided to grant more 28 million euros to Serbia in order to reduce organised crime and

\textsuperscript{309} IOM, ‘Compilation of available data and information reporting period 2015’ <http://doe.iom.int/docs/Flows%20Compilation%202015%20Overview.pdf>
\textsuperscript{311} For more information please consult: Luxembourg Presidency of the Council ‘The Conference on the ‘Eastern Mediterranean – Western Balkans Route’ was held to discuss the ‘common challenge’ with all relevant partners on the migratory flows coming from the Middle East to ‘to respond collectively with solidarity’ (8 October 2015) <http://www.eu2015lu.eu/en/actualites/articles-actualite/2015/10/08-conf-balkans/index.html> accessed 25 June 2018
\textsuperscript{313} \textit{Ibid} 29
strengthen the efficiency to control borders. Moreover, 16 million euros were given to support refuges - particularly from Syria - and their host communities.314

Furthermore, it is necessary to mention the role of the ECHO in the country. Besides the money provided by the EU on humanitarian aid - which includes funding many organizations to assist migration in Serbia such as CARE, Danish Refugee Council, CARITAS, UNICEF -, ECHO provides assistance on collective centres including through providing food, water, clothes and informal education. Moreover, the EU works with Serbian authorities, UN agencies and humanitarian organisations in order to provide help to new arrivals. In addition, there is also a regular consultation with the government on addressing different strategies.315

In addition is also pertinent to mention the EU Delegation to Serbia. It has a visible role for instance through the promotion of EU values, the application of EU policies in different areas and monitoring the implementation of EU assistance programmes. However, no action on the protection of the human rights of all migrants has been developed316.

4.2.3. Migration Human Rights Issues

Most of the migrants living in Serbia want to leave the country and, in spite of the all the EU instruments, a UNHCR report concluded that besides the engage of the many actors to improve reception conditions, the engage throughout the country proves to be insufficient317.

As mentioned above, the closure route made the migrants become stranded in Serbia. Some people have been hosted in government-run reception centres, but others

316 For more information please: The Delegation of the European Union to the Republic of Serbia <http://europa.rs/> > accessed 25 June 2018
are homeless around the country. In Serbia, some undocumented migrants are in temporary accommodation facilities and others remain sleeping in rough conditions in Belgrade city centre or at the borders with Croatia and Hungary. A big percentage lives outside of formal refugee camps in very bad conditions and in need of physical and psychological support.

Considering the usual distinction between the concept of migrant and refugees it is useful to analyse it through a postmodern perspective. The author Jacques Derridas explains that the deconstruction analysis can be seen as a strategy of interpretation and criticism of certain concepts. Furthermore, the authors Hodge and Mishra affirm that the deconstruction interrupts and intervenes over the dominant discourses. Then, considering the terminology mostly used regarding the so-called ‘refugee crisis’ is visible that the perspective over the issue is only addressed through the concept of ‘refugee’ and its status defined by the Convention Relating to the Status of Refugees from 1951. Thus, it is possible to verify that this conceptualization of people in need of help is only partially addressed. In fact, the article 6 of the Universal Declaration of Human Rights defines that “Everyone has the right to recognition everywhere as a person before the law.” Thus, the grave situation over the massive increase of the migration flow from Africa and the Middle East could be treated as a migration ‘crisis’ for not including limitation under the law due to the fact that anyone has the right to be recognized as a person, within their rights and obligation. This means that independently from the attribution of the refugee status or the nationality, everyone under threaten and vulnerable conditions, deserves to enjoy protection. The multiple conceptualizations hamper the main goal of protecting the migrants and the

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322 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 6
deconstruction allows a critical analysis over the problem generated by the limitations of the concepts, challenging, as stated by Claudia Aradau, taken-for-granted “truths” about what are international and domestic issues.\textsuperscript{324}

**Conclusion**

The present thesis aimed to research on how to better align the EU external migration management with the protection of the human rights of all the migrants. Through the analysis of the Turkish and Serbian case studies, it was possible to verify the specificities of both countries in order to support the possibility of developing the existing tools related to the enlargement process.

The application of the postmodern concepts such as deconstruction, power, the rejection of dichotomies associated with the interpretation of the various agreements and communications, was possible to critically and deeply interpret the context and reject taken-for-granted ‘truths’ which limit the action of the existing EU instruments.

In order to consider more effective and inclusive approaches to protect the people in need, the postmodernism help to reach some conclusions. In fact, the author Oliver Daddow connects the postmodern approach with critical tools\textsuperscript{325} and the authors Hodge and Mishra affirm that the deconstruction interrupts and intervenes over the dominant discourses\textsuperscript{326}. Then, considering that the discourses - present on the agreements between EU and both countries - represent and categorize ‘reality’,\textsuperscript{327} the restrictions associated with the use of the term ‘refugee’ – and its specific status – and the management of the situation as ‘refugees crisis’, limits a comprehensive and inclusive protection of all the migrants in need of help and within vulnerable conditions. In the end, the issue has been only partially addressed.

\textsuperscript{325} Ibid 218
\textsuperscript{326} Ibid 220,221
\textsuperscript{327} Lisa Harrison and Therea Callan, *Key Research Concepts in Politics & International Relations*, London, (SAGE Publications Ltd. 2013) 32
Recalling the article 6 of the UDHR\textsuperscript{328} which defines that “Everyone has the right to recognition everywhere as a person before the law.”, and taking into account the unprecedented nature of the current migration ‘crisis’, would be useful to develop a critical thinking about the limitations generated by legal conceptualization. Then, as pointed by Aradau, it would be important to challenge taken-for-granted ‘truths’ \textsuperscript{329} which limit a broader external migration management in compliance with the human rights protection of all the migrants.

The specificities of both countries, connected to their involvement on the EU’s Enlargement Policy and for both being transit countries in the context of the migration flow, contributed to prove the possibility of developing the protection of all migrants – outside EU borders - without discrimination of nationalities, through the EU’s Enlargement Policy and its respective conditions. In fact, the conditionality tool has proved to be powerful\textsuperscript{330}. Thus, considering the conditionality a major instrument to influence reforms, could be better aligned with the EU external migration management in order to ensure the human rights’ protection of all migrants in the transit countries such as Turkey and Serbia. Moreover, considering the different levels of power of both countries in relation to EU, and the postmodern concept of ‘power’ developed by David Campbell’s\textsuperscript{331}, it is possible to verify the different EU approaches between the two countries. If Turkey represents a more equal power in relation with the EU and Serbia a weaker one, these will determine the EU’s role and it capacities of a more limited or broader influence, respectively.

European integration, including enlargement, is a useful mean to strengthening state power in the face of global challenges.\textsuperscript{332} In this line would be useful to take advantage of the enlargement tools, mainstream human rights and better face the

\textsuperscript{328} Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 6
\textsuperscript{331} Oliver Daddow, \textit{International Relations Theory: The Essentials}, (London, SAGE Publications Ltd, 2013) 221,222
\textsuperscript{332} Huub Dijstelbloem and Albert Meijer, \textit{Migration and the new technological borders of Europe}, (London, Palgrave Macmillan, 2011) 35
challenges associated with the migration flow considering the lack of protection of the human rights of all the migrants on their route, aiming to reach the EU’s hosting and rebuild their lives.

*In varietate concordia* 

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333 Official motto of the European Union which means in English: ‘United in diversity’
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